C: Dir., Cultural Facilities, Arts and Entertainment

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

October 13, 2015

From: John Rhamstine, Director of Cultural Facilities, Arts and Entertainment

Subject: Approve a Lease Agreement to place artwork at 768 Granby Street

Reviewed: Wynter C. Benda, Deputy City Manager

Ward/Superward: 2/6

Approved: Marcus D. Jones, City Manager

Item Number: **R-23**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**
This agenda item is an ordinance approving a lease agreement with TAK Acquisitions, L.L.C., for the use of certain space at 768 Granby Street.

IV. **Analysis**
This lease agreement will allow the City of Norfolk ("City"), through its Public Art Program, to install a sculpture on the corner of Olney Road and Granby Street where The Plot II is located. The City has worked through the public art process with the art planning committee, the community and the Public Art Commission. Final sculpture design has been approved by all groups involved. The artwork will be owned by the City and can be relocated if necessary.

V. **Financial Impact**
The City, through its Public Art Program, will be responsible for the long term maintenance of the artwork and for the cost of creating and installing the sculpture, as well as, removal should that ever become necessary.

VI. **Environmental**
N/A

VII. **Community Outreach/Notification**
Public notification for this agenda item was conducted through the City's agenda notification process.

810 Union Street #1101 ▪ Norfolk, Virginia 23510
Phone: 757-664-4242 ▪ Fax: 757-664-4239

VIII. Board/Commission Action

Community Representatives served on the public art planning committee. The design has been vetted by the community through the Downtown Norfolk Council and the Arts District Working Group.

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the City Attorney's Office and the Department of Cultural Facilities, Arts and Entertainment.

Supporting material from the City Attorney's Office:

- Ordinance
- Lease Agreement

8/3/2015 -wld

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN TAK ACQUISITIONS, LLC, AS LESSOR, AND THE CITY OF NORFOLK, AS LESSEE, FOR THE LEASE OF THAT CERTAIN PROPERTY OWNED BY TAK ACQUISITIONS, LLC, LOCATED AT 768 GRANBY STREET, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY OF NORFOLK.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease Agreement between Tak Acquisitions, LLC, as Lessor, and the City of Norfolk, as Lessee, a copy of which is attached hereto as Exhibit A, by which Tak Acquisitions, LLC leases to the City of Norfolk, that certain property owned by Tak Acquisitions, LLC, located at 768 Granby Street, shown and described on Exhibit B and Exhibit C, which are attached hereto and made a part hereof, is hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease Agreement for and on behalf of the City, and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Lease Agreement as he may deem advisable in order to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after the date of its adoption.

EXHIBIT A

Prepared by: Office of the Norfolk City Attorney
Nathaniel Beaman IV, Deputy City Attorney (VSB#18486)
Return to: Office of the Norfolk City Attorney
Tax Map Reference No.: n/a

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made this _____ day of _____, 2015, by and between **TAK ACQUISITIONS, L.L.C.**, a Virginia limited liability company ("TAK"), **Lessor**, and the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("City"), **Lessee**, whose address is 810 Union Street, Norfolk, Virginia 23510.

WITNESSETH:

TAK, for and in consideration of the rents, covenants and agreements hereinafter set forth, to be paid, kept and performed by City, subject to the annual appropriation of funds by City Council, has demised and leased and does hereby demise and lease unto City, and City does hereby lease from TAK, a parcel of property sixteen square feet in area located at the corner of the intersection of Olney Road and Granby Street in the City of Norfolk as more particularly described in Exhibit A and shown on Exhibit B ("Premises"), both of which are attached hereto and made a part hereof.

1. **TERM OF LEASE**

City agrees to lease the Premises for a term of ten (10) years, such term to commence as of September 1, 2015 (the "Commencement Date") and to end on August 31, 2025 (the "Termination Date"), subject to the annual appropriation of funds by City Council.

2. **OPTION TO RENEW**

So long as City has not defaulted under any provision of this Lease, including the payment of any amount due hereunder, the City has the option to renew this Lease for additional terms of five years each, upon the same terms and conditions as this Lease. City must give TAK

written notice of its intention to renew at least ninety (90) days before the termination date of any current term.

3. **EARLY TERMINATION**

Either party may terminate this Lease at any time by giving the other party at least six (6) months written notice of the desire to terminate.

4. **USE**

City covenants and agrees to use the Premises for the purpose of building a sculpture or other public artwork.

5. **ACCEPTANCE OF PREMISES**

City acknowledges that it is familiar with the Premises and hereby agrees to accept the Premises in its present condition. City acknowledges that neither TAK nor anyone on TAK's behalf has made any representations or warranties with respect to the condition of the Premises.

6. **RENT**

Subject to the annual appropriation of funds by City Council, City covenants and agrees to pay to TAK as rent for the Premises during each year of the term granted hereunder the annual sum of ONE DOLLAR ($1.00) payable on the first day of each and every year.

7. **ENVIRONMENTAL COSTS**

Notwithstanding anything in this agreement to the contrary, City does not hereby become responsible or in any manner whatsoever assume liability for environmental conditions or liabilities existing prior to its occupancy hereunder.

8. **CHANGE IN SCOPE OF TAXATION**

Nothing contained in this lease shall require City to pay any franchise, estate, inheritance, succession, capital levy, transfer of property tax of TAK, or federal income or state income tax or excess profits or revenue tax.

9. **INSURANCE**

TAK acknowledges that City is self-insured. To the extent permitted by law, and subject to any rights to sovereign immunity which may be applicable, and without waiving any right or defense City may have as a municipal corporation, City will be responsible for loss or damage to the Premises caused by the negligence of City's officers, employees, or agents.

10. **UTILITIES**

City shall at its own cost and expense, pay electrical, utility meter and services charges, if any, including any deposits required by utility suppliers with respect to the Premises.

11. **REPAIRS**.

City shall keep and maintain the Premises in a good and complete state of repair and condition, except for ordinary wear and tear. City shall not call upon TAK during the term of this Lease to make any repairs

12. **REQUIREMENTS OF PUBLIC AUTHORITIES**

City shall suffer no waste or injury in or about the Premises and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the use and occupancy of the Premises.

13. **NON-LIABILITY OF TAK**

TAK shall not be liable for any damage or injury which may be sustained by City or any other person by reason of the elements, or resulting from acts, conduct or omissions on the

part of City or of City's agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or party, except for the negligence of TAK, its agents or employees.

14. **IMPROVEMENTS**

Except as set forth herein, City covenants and agrees that it will not make any improvements, changes or installations in and about the Premises without the prior written consent of TAK, which shall not be unreasonably withheld.

15. **ASSIGNMENT AND SUBLETTING**

City will not assign this Lease or sublet the Premises without obtaining TAK's prior consent in writing.

16. **COVENANT AGAINST LIENS**

City agrees that it shall not encumber, or suffer or permit to be encumbered, the Premises or the fee thereof by any lien, charge or encumbrance.

17. **SUBORDINATION**

This Lease shall be subject and subordinate at all times to any lien of any mortgage now or hereafter placed on the Premises or any part thereof without the necessity of any further instrument or act on the part of City to effectuate such subordination, but City covenants and agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgage as shall be desired by a mortgagee.

18. **SECURITY**

No security shall be required of City on this Lease.

19. **CONDEMNATION**

If the entire Premises shall be taken for any public or quasi-public use, by any power or authority having the right to take the same by condemnation, eminent domain, or otherwise, the amount awarded for compensation for the whole of the Premises so taken shall be paid to TAK.

20. **SURRENDER BY CITY AT END OF TERM**

City will surrender possession of the Premises and remove property in the possession of City, by whomsoever owned, at the end of the term of this Lease, or at such other time as TAK may be entitled to re-enter and take possession of the Premises pursuant to any provision of this Lease, and leave the Premises in as good order and condition as they were at the beginning of the term, reasonable wear and tear excepted.

21. **DEFAULT BY CITY**

If during the term of this Lease City shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this Lease, any such failure shall continue for 15 days after TAK gives City notice thereof, City shall be deemed to be in default, and TAK shall have the right to terminate this Lease.

22. **QUIET ENJOYMENT**

TAK covenants that City, on paying the rental and performing the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Premises for the term aforesaid.

23. **NOTICES**

26.1. Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties, or if either of the parties shall desire to give or serve upon the other any notice, demand, request, or other

communication with respect hereto or the Premises, each such notice, demand request or communication shall be in writing, and any law or statute to the contrary notwithstanding, shall be given or served as follows:

(a) if given or served by TAK, either by hand delivery, overnight courier or by mailing the same to City by registered or certified mail, postage prepaid, return receipt requested, addressed to City at the City Manager, 810 Union Street, Room 1101 City Hall Building, Norfolk, Virginia 23510 or at such other address as City may from time to time designate by notice given to TAK in the manner herein provided; and

(b) if given or served by City, by hand delivery, overnight courier or by mailing the same to TAK by registered or certified mail, postage prepaid, return receipt requested, addressed to TAK at TAK Acquisitions, L.L.C., 795 Monticello Avenue, Norfolk, Virginia 23510, or at such other address as TAK may from time to time designate by notice given to City in the manner herein provided.

26.2. Every notice, demand, request, or other communication hereunder shall be deemed to have been given or served at the time that the same shall be hand delivered, delivered to an overnight courier, or deposited in the United States mail, return receipt requested.

24. **WAIVER OF TRIAL BY JURY**

TAK and City hereby mutually waive their rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any want connected with this Lease, City's use or occupancy of the Premises and any claim of injury or damage.

25. **ENTIRE AGREEMENT**

This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

26. **APPLICABLE LAW**

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and any suit arising out of this Lease shall only be brought in the State or Federal Courts located in the City of Norfolk, Virginia. In the event of any such suit, the parties hereto consent to the personal jurisdiction of such courts and waive any defense based on improper venue.

27. **BIND AND INURE CLAUSE**

The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

(SIGNATURE PAGES TO FOLLOW)

TAK ACQUISITIONS, L.L.C.

By: _____

Title: MANAGER

State of Virginia
City of Norfolk**, to-wit:**

I, Debra Ann Burrell, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the 30 day of April, 2016, do hereby certify Paul Allen Sharp, MANAGER (Title), on behalf of TAK Acquisitions, L.L.C., whose name is signed to the foregoing Lease Agreement dated _____ ____, 20___, has acknowledged the same before me in my City and State aforesaid.

Given under my hand this 07 day of August, 2015

_____ [SEAL]
Notary Public
Registration No. 215309

DEBRA ANN BURRELL
NOTARY PUBLIC
MY COMMISSION NUMBER 215309
COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK

By:_____
City Manager

ATTEST:

_____
City Clerk

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the ____ day of _____, _____, do hereby certify that _____, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names are signed to the foregoing Lease Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 20___.

_____[SEAL]
Notary Public
Registration No._____

APPROVED AS TO CONTENTS:

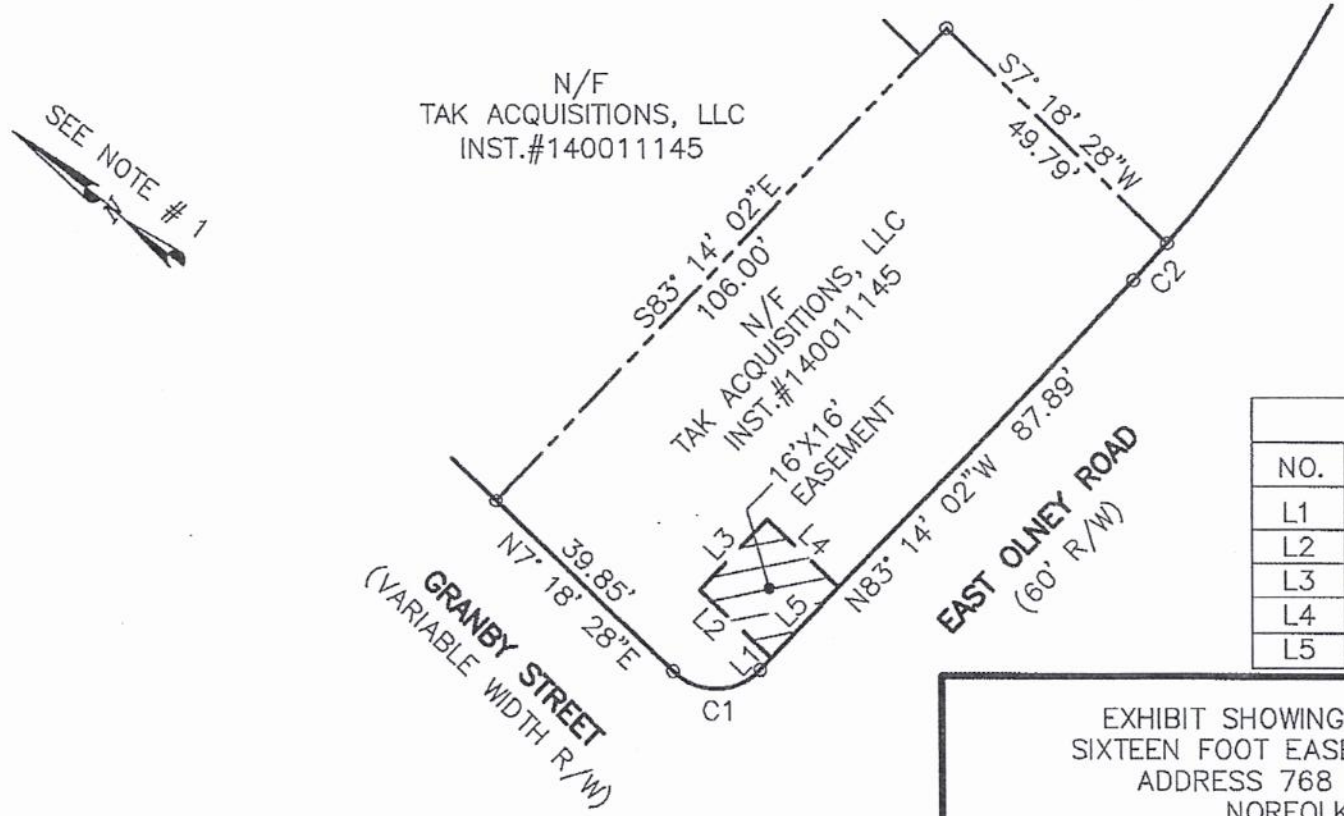
_____
Director of Cultural Affairs,
Arts and Entertainment

APPROVED AS TO FORM AND CORRECTNESS:

_____
Deputy City Attorney

EXHIBIT B

CURVE TABLE						
CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD	CHORD BEARING
C1	10.00'	15.80'	10.09'	90°32'30"	14.21'	N37°57'48"W
C2	200.00'	8.02'	4.01'	02°17'51"	8.02'	N84°22'58"W



LINE TABLE		
NO.	DISTANCE	BEARING
L1	2.59'	S83°14'02"E
L2	16.00'	N06°45'58"E
L3	16.00'	S83°14'02"E
L4	16.00'	S06°45'58"W
L5	16.00'	N83°14'02"W

NOTES:

1. MERIDIAN SOURCE AND COORDINATES SHOWN HEREON ARE BASED ON THE VIRGINIA COORDINATE SYSTEM OF 1983, SOUTH ZONE (NAD83)(1993-HARN).
2. AREA OF EASEMENT ACQUISITION = 256 SQUARE FEET OR 0.006 ACRES.

DENOTES AREA OF EASEMENT

EXHIBIT SHOWING SIXTEEN FOOT BY SIXTEEN FOOT EASEMENT ON PROPERTY
ADDRESS 768 GRANBY STREET
NORFOLK, VIRGINIA

30 0 30 60

DRAWING SCALE 1"=30'

150268

DATE	SCALE	DRAWN BY	CHECKED BY
07/31/2015	1"=30'	MEO	KCM

DIVISION OF SURVEYS
DEPARTMENT OF PUBLIC WORKS
NORFOLK, VIRGINIA

EXHIBIT C

16' by 16' Easement
At Granby St. and Olney Road

A rectangular lot, piece or parcel of land situate, lying and being in the City of Norfolk, Virginia, said parcel being a sixteen-foot easement and being further described as follows: COMMENCING at a point that is the intersection of the southeastern right-of-way return of Granby Street and the northern right-of-way of Olney Road; thence, S 83°-14'-02" E, 2.59 feet along the said northern right-of-way of Olney Road to the POINT OF BEGINNING; thence, N 06°-45'-58" E, 16.00 feet to a point; thence, S 83°-14'-02" E, 16.00 feet to a point; thence, S 06°-45'-58" W, 16.00 feet to a point on the said northern right-of-way line of Olney Road; thence, N 83°-14'-02" W, 16.00 feet along said northern right-of-way of Olney Road to the point of beginning.

The above-described parcel contains 0.006 acre of land, more or less.

July 31, 2015

CERTIFICATE OF FUNDING

I certify that the money required for this Lease Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account: 4000 16 4166 5590 FY12

Activity Code: 4166

Amount: $10.00

Vendor Code: VC 16 0000025172

Contract/Agreement No.: CT16-25591

Director of Finance Date