City of NORFOLK

C: Dir., Department of Development

To the Honorable Council
City of Norfolk, Virginia

June 28, 2016

From: Charles E. Rigney, Sr., Director
Department of Development

Subject: Cooperation Agreement with the Economic Development Authority of the City of Norfolk

Reviewed: Peter H. Chapman, Deputy City Manager

Ward/Superward: 4/7

Approved: Marcus D. Jones, City Manager

Item Number: **R-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Economic Development Authority of the City of Norfolk

III. **Description:**
This agenda item is an ordinance authorizing the City Manager to enter into a cooperation agreement with the Economic Development Authority (the "EDA").

IV. **Analysis**
This ordinance allows the City of Norfolk (the "City") to provide up to five million dollars ($5,000,000) in a revenue sharing performance agreement with the EDA to induce a significant national retailer to locate at 6000 Northampton Boulevard. The retail is an approximate 350,000 square foot store with an exclusive parking field of at least 1,200 spaces. This is a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement. The costs will partially offset infrastructure related costs related to the development of this specific site.

V. **Financial Impact**
- The City has agreed to up to $5 million to help offset infrastructure related costs of the development site and induce a national retailer to locate on the property.
- The project is estimated to be a $75 million investment and will generate at least $2.5 million in direct city tax revenues.
- The project would create approximately 250 full time jobs and nearly 500 construction jobs.

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

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter and ordinance have been coordinated with the Economic Development Authority, the Department of Development and the City Attorney's Office.

Supporting Material from the Department of Development:

- Ordinance
- Cooperation Agreement
- Exhibit A – Grant Agreement

6/14/2016mr

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
Department of Development

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A COOPERATION AGREEMENT WITH THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK.

– – –

WHEREAS, the City of Norfolk and the Economic Development Authority of the City of Norfolk (the "Authority") are vitally concerned with the attraction and retention of new businesses;

WHEREAS, the City is presently negotiating the sale of property located at 6000 Northampton Boulevard in the City of Norfolk (the "Property") and has presented a proposed Agreement of Sale to the City Council of the City of Norfolk for its approval;

WHEREAS, the proposed Agreement of Sale provides for the purchase and development of the Property for the Proposed Retail Use, as such term is defined in the Agreement of Sale, of an approximately 350,000 square foot retail store with an exclusive parking field of at least 1,200 spaces on the Property;

WHEREAS, development of the Property for Grantee's Proposed Retail Use and the ongoing use of the Property by

Grantee for the Proposed Retail Use have been found by both the Directors of the Authority and the City Council of the City to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement;

WHEREAS, as inducement for the buyer to enter into the Agreement of Sale and to construct, equip and operate the Property for the Proposed Retail Use, the Authority and the City have determined that it is advisable to enter into a Cooperation Agreement, in the form attached hereto as Exhibit A, wherein the City and the Authority agree to the terms and conditions upon which the Authority will make certain payments to the buyer of the Property up to the maximum grant amount of Five Million and 00/100 Dollars ($5,000,000.00);

WHEREAS, Section 15.2-4905 (12) of the Code authorizes the Authority:

> to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and

other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed;

WHEREAS, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities; now, therefore

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

Section 1:- That the City Manager is authorized to enter into the Cooperation Agreement attached hereto.

Section 2:- That the City Manager is authorized to correct, amend, or revise the Cooperation Agreement as he deems necessary in order to carry out the intent of the Council and to execute the Cooperation Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

COOPERATION AGREEMENT

(City of Norfolk - EDA)

THIS COOPERATION AGREEMENT ("Cooperation Agreement") is made and entered into as of the ____ day of _____, 20__, by and between the **CITY OF NORFOLK, VIRGINIA,** a municipal corporation of the Commonwealth of Virginia (the "City") and the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK,** a duly organized and existing body corporate and politic constituting a political subdivision of the Commonwealth of Virginia (the "Authority").

RECITALS

WHEREAS, the Authority is duly established and its existence was validated pursuant to the Virginia Industrial Development and Revenue Bond Act (the "Act"), Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the "Code");

WHEREAS, the Authority is empowered under the Act to cooperate with the City in actions taken for the purpose of promoting economic development and the commerce, safety, health, welfare, convenience or prosperity of citizens of Virginia within the Authority's area of operation (which in the Authority's case is coextensive with the territorial boundaries of the City);

WHEREAS, the City and the Authority are vitally concerned with the attraction and retention of new businesses;

WHEREAS, the City and Ikea Property, Inc. (the "Grantee") have entered that certain Agreement of Sale, dated as of _____, 2016 for property known as "Lake Wright East" containing 18.78 acres, more or less, and located at 6000 Northampton Boulevard in the City of Norfolk (the "Property");

WHEREAS, the Agreement of Sale provides for the purchase and development by Grantee for Grantee's Intended Improvements, as such term is defined in the Agreement of Sale, of an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field of at least 1,200 spaces, together with all of Grantee's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height, all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated;

WHEREAS, development of the Property for Grantee's Intended Improvements and the ongoing use of the Property by Grantee for the Intended Improvements have been found by both the Directors of the Authority and the City Council of the City to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein;

WHEREAS, as inducement for the Grantee to enter into the Agreement of Sale and to construct, equip and operate the Property for the Intended Improvements, the Authority and the

City have determined that it is advisable for the Authority to enter into a Grant Agreement, in the form attached to the Agreement of Sale as Exhibit D and attached hereto as Exhibit A, wherein the Authority agrees to make certain payments to Grantee up to the maximum grant amount of Five Million and 00/100 Dollars ($5,000,000.00) upon the terms and conditions set forth in the Grant Agreement;

WHEREAS, Section 15.2-4905 (12) of the Code authorizes the Authority:

> to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed;

WHEREAS, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities;

WHEREAS, on June 28, 2016, the Council of the City adopted Ordinance No. _____, approving this Cooperation Agreement, authorizing the execution and delivery hereof on behalf of the City and the performance of all obligations undertaken by the City under this Cooperation Agreement;

WHEREAS, on _____, 2016, the Board of Directors of the Authority adopted a resolution approving the form and substance of the Agreement and this Cooperation Agreement, authorizing the execution and delivery thereof and hereof on behalf of the Authority, and authorizing the performance of, and agreeing to perform, all obligations undertaken by the Authority under the Agreement and this Cooperation Agreement; and

WHEREAS, the parties hereto desire to enter into this Cooperation Agreement for the purpose of setting forth their understandings and agreements in connection with the Purchase Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the public benefits to accrue to the City, the Authority, South Hampton Roads and the Commonwealth, and the inhabitants thereof from the development and continued operation of the Property for the Intended Improvements and in consideration of the mutual covenants hereinafter set forth, the Authority and the City agree as follows:

1. Appropriation of Funds. The City agrees, subject to appropriation, to transfer funds to the Authority to enable the Authority to fulfill its obligations under the Grant

Agreement attached hereto as Exhibit A. This Cooperation Agreement is subject to the appropriation of funds by the City Council of the City of Norfolk. No amounts have been appropriated, and, unless and until such appropriation(s) is made, the City is without funding obligation.

2. Authority Obligations. The Authority agrees that any funds appropriated by the City pursuant to this Cooperation Agreement shall be used exclusively for the purposes of making the required payments to Grantee under the Grant Agreement.

3. Non-Discrimination. In carrying out this Cooperation Agreement, the Authority and the City agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin and agree to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation, and selection for training including apprenticeship.

4. Applicable Law. This Cooperation Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. In the event of litigation hereunder, venue shall be in the Circuit Court of the City of Norfolk.

5. Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by registered or certified mail shall be deemed to be given by the sender when mailed; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

If to the Authority:

Economic Development Authority of the City of Norfolk
500 East Main Street, Suite 1500
Norfolk, VA 23510
Attention: Executive Director

With a copy to:

Kaufman & Canoles, P.C.
150 W. Main Street Suite 2100
Norfolk, Virginia 23510
Attention: George Consolvo, Esq.

If to the City:

City Manager
City of Norfolk
810 Union Street
1101 City Hall Building
Norfolk, Virginia 23510

With a copy to:

City Attorney
City of Norfolk
810 Union Street, Suite 900
Norfolk, Virginia 23510

6. Binding on Successors in Interest. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

7. Entire Agreement. This Cooperation Agreement constitutes the final, complete and exclusive written expression of the intents of the parties with respect to the subject matter hereof which will supersede all previous communications, representations, agreements, promises or statements.

8. Severability. If any one or more of the provisions contained in this Cooperation Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Cooperation Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

9. Amendment, Modification, Alteration. No amendment, modification or alteration of the terms of this Cooperation Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.

10. Headings. The titles of articles and sections of this Cooperation Agreement are for reference purposes only and shall be of no binding effect.

11. Waiver. The waiver by either party of any default or breach by the other party of any of the provisions of this Cooperation Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Cooperation Agreement.

12. Compliance with Laws. The parties shall comply with all applicable laws, ordinances and regulations with regard to any work, use, construction, and operation done or conducted with regard to this Cooperation Agreement.

13. Rights and Remedies Cumulative. The rights and remedies provided by this Cooperation Agreement are cumulative and the use of any right or remedy by either party shall not preclude or waive its rights to use any and all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14. Authority to Execute Agreement. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Cooperation Agreement and to perform its duties under this Cooperation Agreement; the person executing this Cooperation Agreement on its behalf has the authority to do so; upon execution and delivery of this Cooperation Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Cooperation Agreement does not violate any bylaw, charter, regulation, law or other governing authority of the party.

15. Counterparts. This Cooperation Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

16. No Third Party Beneficiaries. This Cooperation Agreement is intended solely for the benefit of the parties hereto. This Cooperation Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof.

[SIGNATURE PAGES FOLLOW.]

WITNESS the execution of this Cooperation Agreement (City of Norfolk-EDA) by the duly authorized officials of the City and the Authority as of the day and year first set forth above.

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO CONTENTS:

_____
Director, Department of Development

APPROVED AS TO FORM AND CORRECTNESS:

_____
Assistant City Attorney

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

[CONTINUATION OF SIGNATURE PAGES TO COOPERATION AGREEMENT (CITY OF NORFOLK - EDA)]

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK

By:_____
Name :_____
Title :_____

APPROVED AS TO CONTENTS:

_____
Executive Director, Economic Development
Authority of the City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:

_____
Counsel to the Economic Development
Authority of the City of Norfolk

EXHIBIT A

GRANT AGREEMENT

THIS GRANT AGREEMENT is made as of the ___ day of _____, 20__, between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and IKEA PROPERTY, INC., a Delaware corporation ("Grantee").

WITNESSETH:

WHEREAS, the City of Norfolk, Virginia (the "City") and Grantee have entered that certain Agreement of Sale dated _____ __, 2016, for certain real property known as "Lake Wright East" containing 18.78 acres, more or less, and located at 6000 Northampton Boulevard in the City (the "Property"),

WHEREAS, in the Agreement of Sale the City agreed to provide incentives to the Grantee, through the Authority, upon the term and conditions set forth herein;

WHEREAS, the Agreement of Sale provides for the purchase and development by Grantee for the "Intended Improvements," as defined below; and

WHEREAS, development of the Property for Grantee's Intended Improvements and the ongoing use of the Property by Grantee for the Intended Improvements has been found by both the Directors of the Authority and the City Council of the City (the "City Council") to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein.

NOW, THEREFORE, WITNESSETH:

1. Definitions.

The following terms shall have the meanings set forth unless the context clearly requires otherwise:

1.1. "Intended Improvements" means and includes an approximately 350,000 square foot blue and yellow IKEA retail furniture and furnishings store (including any other uses found from time to time in any other IKEA retail store), with an exclusive parking field of at least 1,200 spaces, together with all of Buyer's required colors and trade dress and building and site signage and flags, including a navigational sign tower at least 120 feet in height, all related on-site and off-site improvements, and any and all development and contract rights and all other appurtenances thereto necessary to develop the store and other improvements contemplated, to be constructed, equipped, occupied and operated by Grantee on the Property on a continuous basis.

1.2. "Calendar Year" means the calendar year beginning January 1 and ending December 31.

{00537632;v4}

1.3. "Maximum Grant Amount" means the maximum cumulative amount to be paid to Grantee over the term of the grant which shall be Five Million Dollars ($5,000,000.00).

1.4. "Grant" means the annual sums to be transferred to the Grantee pursuant to the terms of this Agreement as an inducement for the Grantee to purchase the Property and to construct, equip, occupy and operate its business operations for the Intended Improvements at the Property, subject to the Maximum Grant Amount.

2. The Grant.

2.1. *Amount of the Grant.* Subject to the conditions and limits set forth in Sections 3.1 and 3.2 below, subject to the Maximum Grant Amount, and subject to annual appropriation and transfer of funds to the Authority by the City, the Authority will pay to Grantee a sum of money each year during the Grant Term (hereinafter defined), which annual grant payments shall be calculated using the following performance-based formula:

One-half percent (0.5%) of all gross receipts from the Grantee's business operations for the Intended Improvements at the Property during the applicable Calendar Year.

2.2. *Term of the Grant.* The term of the Grant (the "Grant Term") shall commence upon completion of construction of the Improvements (the "Commencement Date"), as evidenced by the issuance of a Certificate of Occupancy, and the opening of the Grantee's business operations at the Property for the Intended Improvements. The Grant Term shall expire upon the first to occur of (A) when the Maximum Grant Amount has been paid to Grantee or (B) upon payment by the Authority of the fifteenth (15th) annual Grant payment to the Grantee. The Grant payments shall commence on the first August 1 following the end of the first full Calendar Year after the Commencement Date and, subject to the terms and conditions set forth herein, shall be paid on each August 1 thereafter during the Grant Term. In the event of an abandonment of Grantee's business operations at the Property for the Intended Improvements for a period of more than six (6) continuous months for reasons other than a casualty or other material damage, Act of God, or other force majeure event outside of the reasonable control of Grantee (in any such case, a "Force Majeure Event"), the Grant Term shall terminate immediately and no further Grant payments shall be made by the Authority.

3. Conditions of the Grant.

The obligation of the Authority to disburse the Grant is subject to the satisfaction of the conditions set forth below.

3.1. *Conditions to Initial Disbursement.* The initial disbursement of the Grant by the Authority shall occur by no later than the first August 1 following the end of the first full Calendar Year after the Commencement Date provided that the following conditions have been satisfied:

A. The Commencement Date shall have occurred.

B. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement and shall continue to be true and

correct in all material respects at the time of the proposed disbursement of the initial Grant payment.

C. The City shall have calculated and advised the Authority in writing of the amount of the initial disbursement, the City Council of the City shall have appropriated funds for the then current Grant payment and shall have transferred such funds to the Authority. The City's calculation of the amount of the initial Grant payment shall be deemed accurate and correct absent manifest error.

3.2. *Conditions to Each Annual Grant Payment*. Each subsequent disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The conditions to the initial annual Grant payment shall have been satisfied.

B. Subject to the occurrence of a Force Majeure Event, Grantee shall have continuously operated its business for the Intended Improvements at the Property. For purposes of this Agreement, "continuous business operations" and to "continuously operate" shall mean to continue to operate Grantee's business for the Intended Improvements every weekday during normal business hours, excluding holidays.

C. The representations and warranties set forth below shall be true and correct in all material respects as of the date of this Agreement, and shall continue to be true and correct in all material respects at the time of the proposed disbursement of each year's Grant payment.

D. Based upon such documentation as the City deems appropriate, the City shall have calculated and advised the Authority in writing of the amount of the current Grant payment, the City Council of the City shall have appropriated funds for the Grant, and the City shall have transferred such funds to the Authority. The City's calculation of the amount of each annual Grant payment shall be deemed accurate and correct absent manifest error.

4. Representations and Warranties.

Grantee represents and warrants to the Authority that:

4.1. *Due Organization, Authority and Qualification*. Grantee is a duly organized and validly existing limited liability company under the laws of the State of North Carolina, is registered to do business in Virginia, is in good standing in the state of its organization, and has the full power and authority to own its properties and other assets and to transact the Intended Improvements at the Property.

4.2. *Taxes*. Grantee has filed and shall file all tax returns which are required to be filed in the Commonwealth of Virginia and elsewhere and has paid all taxes (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by it. All tax liabilities within the Commonwealth of Virginia and elsewhere were adequately provided for when due and are now shown current on the books of Grantee. No material tax liability has been asserted by the Internal Revenue Service, the

Commonwealth of Virginia, the City, or any other jurisdiction for taxes (or interest or penalties thereon) in excess of those already paid.

4.3. *Compliance with Laws*. To Grantee's best knowledge, Grantee and all of its assets and properties located in the Commonwealth of Virginia, including without limitation the Property, are and shall be in compliance in all material respects with all applicable laws, rules and regulations of each Federal, state, municipal or other governmental department, agency or authority, including without limitation the Americans with Disabilities Act of 1990, the regulations promulgated thereunder, and all applicable environmental, land use and zoning laws and regulations, to the extent applicable.

4.4. *Information Necessary to Calculate Grant Payments*. Reports of gross receipts and other relevant documents required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of Revenue of the City for the applicable tax year must be timely filed and copies delivered to the Authority (collectively, the "Required Information"), which shall then provide copies of such Required Information to the City. Grantee's failure to timely file Required Information with the Authority shall not jeopardize the payment of any Grant payment unless and until the Authority notifies Grantee of Grantee's failure to provide Required Information and Grantee does not cure such failure within thirty (30) days of Grantee's receipt of such notice.

5. General Matters.

5.1. *Authority Obligations Subject to Appropriation; Exculpation*.

A. All obligations of the Authority hereunder for the disbursement of the Grant and any other payment of money are subject to and expressly conditioned upon funds being appropriated, calculated and approved for such purpose by the City Council, the amount of Grantee's grant payment being calculated and approved by the City, and the funds being delivered to the Authority, and shall not at any time constitute a legal obligation of the Authority for the disbursement of the Grant or the payment of money except to the extent so appropriated and delivered.

B. Neither the directors of the Authority nor any person executing this Agreement on behalf of either party shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, and neither the Commonwealth of Virginia nor any such political subdivision thereof shall be liable thereon, nor in any event shall this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute an indebtedness within the meaning of any Commonwealth of Virginia municipal debt limitation or restriction.

C. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority or Grantee in his or her individual capacity, and no such director, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

5.2. *Assignment*. Grantee may not assign its rights under this Agreement without the prior written consent of the Authority and the City.

5.3. *Waiver*. The failure of the Authority or Grantee to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the Authority or Grantee of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the Authority or Grantee, as applicable.

5.4. *Severability*. If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present of future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, and said remaining parts of this Agreement shall be enforceable, to the extent they are consistent with the spirit and intent of this Agreement in its original form.

5.5. *Licensee and Permits*. It shall be the ultimate responsibility of Grantee at its expense to secure all licenses and permits required to be obtained by it with respect to construction, completion, equipping and occupancy of the Improvements.

5.6. *Notices Applicable Law*. This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. In the event of a conflict arising under this Agreement, venue shall be in the Circuit Court of the City of Norfolk.

5.7. *Interpretation*. For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation, company or partnership. Headings or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.8. *Notices*. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail, registered or certified, shall be deemed to be given by the sender when mailed; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

To the Authority: Economic Development Authority of the City of Norfolk

500 E. Main Street, Suite 1500
Norfolk, VA 23510

With a copy to: Kaufman & Canoles, P.C.
150 W. Main Street, Suite 2100
Norfolk, VA 23510
Attn: George L. Consolvo

And with a copy to: City Attorney
City of Norfolk
810 Union Street, Suite 900
Norfolk, VA 23510

To Grantee: IKEA Property, Inc.
420 Alan Wood Road
Conshohocken, PA 19428
Attention: President
Phone: 610-834-0180
Email address: douglas.greenholz2@ikea.com

With a copy to: Larsson & Scheuritzel P.C.
Centre Square West
1500 Market Street, Suite 3510
Philadelphia, PA 19102
Attention: David J. Larsson, Esq.

5.9. *Non-Discriminatory Policies.*

A. Grantee will comply with all applicable laws regarding the discrimination of employees or applicants for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment. Grantee agrees to post, to the extent required by any applicable laws, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state, to the extent required by any applicable laws, that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.10. *Third Party Beneficiaries.* The City shall be a third party beneficiary of this Agreement. Except for the City, this Agreement is intended solely for the benefit of the parties hereto. Except for the City, this Agreement is not intended and shall not be construed to benefit or create any rights for any third party. It is the express intent of the parties hereto that there be no third party beneficiaries hereof, except for the City.

5.11. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the Authority and Grantee.

WITNESS the following signatures, thereunto duly authorized:

ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF NORFOLK

By: _____
Name: _____
Title: _____
Date: _____

IKEA PROPERTY, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND
CORRECTNESS:

_____
Counsel to the Economic Development
Authority of the City of Norfolk