
**COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT
PERFORMANCE AGREEMENT**

This **COMMONWEALTH'S DEVELOPMENT OPPORTUNITY FUND GRANT PERFORMANCE AGREEMENT** (this "Agreement") made and entered this ____ day of July, 2016, by and among the **COUNTY BOARD OF ARLINGTON, VIRGINIA** (the "County"), a body corporate and politic of the Commonwealth of Virginia (the "Commonwealth"), **BASKET SAVING, INC.** ("Basket Savings"), a Delaware corporation authorized to transact business in the Commonwealth, and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY** (the "IDA"), a political subdivision of the Commonwealth. Individually, the County, Basket Savings, and the IDA may each be referred to hereinafter as the "Party," or collectively as the "Parties."

RECITALS:

WHEREAS, on November 24, 2015, the County submitted a letter to the Virginia Economic Development Partnership Authority ("**VEDP**") in order to apply for certain grant funds from the Commonwealth's Development Opportunity Fund (the "**Fund**") for the purpose of inducing Basket Savings to locate, equip, operate, and maintain its application software development company headquarters in Arlington County (the "**Facility**"); and

WHEREAS, on November 1, 2015, pursuant to the VEDP application procedures, Basket Savings submitted a letter to VEDP indicating, among other things, that without the support from the Fund, there is a possibility that it may locate its Facility outside of Virginia; and

WHEREAS, on December 5, 2015, the Office of the Governor of the Commonwealth of Virginia awarded a Commonwealth's Development Opportunity Fund grant in the amount of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) (the "**COF Grant**") to the County for the purpose of inducing Basket Savings to locate, equip, operate, and maintain the Facility in Arlington County, thereby making a significant Capital Investment, as hereinafter defined, and creating and Maintaining, as hereinafter defined, a significant number of New Jobs, as hereinafter defined; and

WHEREAS, pursuant to Section 2.2-115 of the Code of Virginia of 1950, as amended ("**Virginia Code**"), the County has agreed to disburse the COF Grant to the IDA, and the IDA has agreed to accept and disburse the COF Grant to Basket Savings, pursuant to the terms of this Agreement; and

WHEREAS, Basket Savings has agreed to accept the COF Grant from the IDA as an incentive to make or have made on its behalf a Capital Investment of at least Ten Million and 00/100 Dollars (\$10,000,000.00) in furniture, fixtures, and machinery and equipment and to create and Maintain a minimum of sixty-five (65) New Jobs at the Facility, all as of the Performance Date, as hereinafter defined, pursuant and subject to the terms and conditions of this Agreement; and

WHEREAS, the County, the IDA, and Basket Savings desire to set forth their understanding and agreement as to the payout of the COF Grant, the use of the COF Grant proceeds, the obligations of Basket Savings regarding Capital Investment and New Job creation and Maintenance, and the repayment by Basket Savings of all or part of the COF Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the COF Grant.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable considerations, mutual benefits, promises and undertakings of the Parties to this Agreement, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties covenant and agree as follows:

SECTION 1. INCORPORATION OF RECITALS AND DEFINITIONS.

a) **Incorporation of Recitals.** The foregoing recitals are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement. Accordingly, the foregoing recitals are fully incorporated into this Agreement by this reference as if fully set forth herein.

b) **Specific.** In addition to any other capitalized term for which a meaning is expressly defined in this Agreement, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

“Capital Investment” means a capital expenditure on or after November 1, 2015, by or on behalf of Basket Savings in taxable real property, taxable tangible personal property, or both, at the Facility, excluding existing real property improvements.

“Capital Investment,” as referred to in this Agreement, is the expected capital expenditure of Ten Million and 00/100 Dollars (\$10,000,000.00) in furniture, fixtures, and machinery and equipment for the Facility.

A capital expenditure related to a leasehold interest in real property will be considered to be made “on behalf of Basket Savings” if a lease between a developer (or other lessor) and Basket Savings is a capital lease or is an operating lease having a term of at least ten years, and the real property would not have been constructed or improved but for Basket Savings’ interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by Basket Savings will count as Capital Investment.

The purchase or lease of furniture, fixtures, and machinery and equipment, including under an operating lease, and expected tenant improvements and building up-fit by or on behalf of Basket Savings, will qualify as Capital Investment.

“Maintain” means that the New Jobs created will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in Basket Savings’ employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“New Job” means new permanent full-time employment of an indefinite duration at the Facility for which the standard fringe benefits are provided by Basket Savings for the employee, and for which Basket Savings an average annual wage of at least Ninety-Five Thousand and 00/100 Dollars (\$95,000.00). Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of Basket Savings’ operations, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs.

“Performance Date” means June 30, 2019. If the County, in consultation with the IDA and VEDP, deems that good faith and reasonable efforts have been made and are being made by Basket Savings to achieve the Targets, the County may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the County shall send written notice of the extension to the IDA, Basket Savings, and VEDP and the date to which the Performance Date has been extended shall be the “Performance Date” for the purposes of this Agreement.

“Targets” means Basket Savings’ obligations to make or have made on its behalf Capital Investment at the Facility of at least Ten Million and 00/100 Dollars (\$10,000,000.00) (the “**Capital Investment Target**”) and to create and Maintain at least sixty-five (65) New Jobs at the Facility (the “**New Jobs Target**”), all as of the Performance Date. Together, the Capital Investment Target and the New Jobs Target may be referred to hereinafter as the “Targets.”

SECTION 2. TARGETS.

a) Basket Savings covenants and agrees to locate, equip, operate, and maintain the Facility in Arlington County, make or have made on its behalf a Capital Investment of at least Ten Million and 00/100 Dollars (\$10,000,000.00) at the Facility, and create and Maintain at least sixty-five (65) New Jobs at the Facility, all as of the Performance Date.

b) Basket Savings covenants and agrees to use its best efforts to ensure that at least thirty percent (30%) of the New Jobs are offered to “Residents” of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of

the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

c) Basket Savings covenants and agrees to use its reasonable best efforts to assist the County and the IDA from time-to-time in promoting the County's attributes as a place to do business.

d) Basket Savings covenants and agrees that the average annual wage of the New Jobs will be at least Ninety-Five Thousand and 00/100 Dollars (\$95,000.00), which is more than the prevailing average annual wage in the County of Eighty-Three Thousand Seven Hundred Twenty and 00/100 Dollars (\$83,720.00).

e) The County is not a high-unemployment locality, with an unemployment rate for 2014, which is the last year for which such data is available, of 3.2% as compared to the 2014 statewide unemployment rate of 5.2%. The County is not a high-poverty locality, with a poverty rate for 2014, which is the last year for which such data is available, of 8.5% as compared to the 2014 statewide poverty rate of 11.8%.

f) The Company filed its application for the COF Grant prior to January 1, 2016.

SECTION 3. DISBURSEMENT OF COF GRANT.

a) **Disbursement to the County.** By its signature below, the County requests of VEDP the disbursement of the COF Grant. VEDP has informed the County and Basket Savings that the time period for the disbursement of the COF Grant from the Commonwealth to the County is likely to be 30-45 days. It is anticipated that, upon request as set forth above, VEDP will transfer to the County the COF Grant in the amount of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00).

b) **Disbursement to the Company.** The COF Grant proceeds shall be retained by the County and disbursed in three payments as follows:

i) **First Payment.** Within thirty (30) days of its receipt of the COF Grant proceeds, the County will disburse Forty Thousand and 00/100 Dollars (\$40,000.00) to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to Basket Savings.

ii) **Second Payment.** Basket Savings will provide notice and evidence reasonably satisfactory to the County, the IDA, and VEDP when the following have been achieved: A) the issuance of the Certificate of Occupancy for the Facility, and B) the creation and Maintenance of twenty-five (25) New Jobs at the Facility. Such evidence will be subject to verification. Within thirty (30) days of the verification of the achievement of such milestones, the County will disburse an additional Forty Thousand and 00/100 Dollars (\$40,000.00) of the COF Grant

proceeds to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to Basket Savings.

iii) Third Payment. Basket Savings will provide notice and evidence reasonably satisfactory to the County, the IDA, and VEDP of the creation and Maintenance of another twenty-five (25) New Jobs (for an aggregate of at least fifty (50) New Jobs) by Basket Savings at the Facility. Such evidence will be subject to verification. Within thirty (30) days of the verification of the achievement of such milestones, the County will disburse the remaining Forty-Five Thousand and 00/100 Dollars (\$45,000.00) of the COF Grant proceeds to the IDA. Within thirty (30) days of its receipt of such COF Grant proceeds, the IDA will disburse such COF Grant proceeds to Basket Savings.

c) Return of COF Grant Proceeds Not Disbursed. Any COF Grant proceeds not disbursed to the IDA within ninety (90) days of the Performance Date will be promptly returned by the County to VEDP for redeposit to the Commonwealth's Development Opportunity Fund.

d) Use of the COF Grant Proceeds. The COF Grant proceeds shall be used to pay for or reimburse the cost for build-out of the Facility or for training, as permitted by Section 2.2-115(D) of the Virginia Code.

SECTION 4. BREAK-EVEN POINT; STATE AND LOCAL INCENTIVES.

a) Break-Even Point. VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. According to VEDP, the break-even point compares new revenues realized as a result of the Capital Investment and New Jobs at the Facility with the Commonwealth's expenditures on incentives, including but not limited to, the COF Grant.

b) State Incentives. In addition to the COF Grant, in order to induce Basket Savings to make a Capital Investment of at least Ten Million and 00/100 Dollars (\$10,000,000.00) and to create and Maintain a minimum of sixty-five (65) New Jobs by locating, equipping, operating, and maintaining the Facility in Arlington County as of the Performance Date, the Commonwealth expects to provide an estimated Sixty-Five Thousand and 00/100 Dollars (\$65,000.00) from the Virginia Jobs Investment Program, which shall be used by Basket Savings to pay or reimburse itself for recruitment and training costs.

c) Local Matching Funds and Incentives. As permitted by Virginia Code Section 2.2-115 and required by VEDP's Commonwealth's Development Opportunity Fund guidelines, and as an additional inducement to Basket Savings, the County has agreed to match the COF Grant by making the following local incentives:

(i) BPOL Reduction. As part of the required local matching funds and incentives, subject to an annual designation as a "qualified new or expansion technology business" pursuant to Chapter 66 of the Arlington County Code, as

amended, Basket Savings will be eligible for the reduced Qualified Technology Business – Business, Professional and Occupational License (BPOL) tax rate as provided in Section 11-86 of the Arlington County Code, as amended (the “**BPOL Reduction Incentive**”). The BPOL Reduction Incentive, which will reduce Basket Savings’ BPOL tax payments by fifty percent (50%) for up to ten (10) years, will have an estimated value to Basket Savings of approximately Thirty-Eight Thousand and 00/100 Dollars (\$38,000.00) over the three (3) years of this Agreement and an estimated value to Basket Savings of approximately One Hundred Sixty Thousand and 00/100 Dollars (\$160,000.00) over ten (10) years.

(ii) IDA Grant. In addition to the BPOL Reduction Incentive, as part of the required local matching funds, subject to appropriation, the County, through the IDA, will fund an incentive grant (the “**IDA Grant**”) of up to Eighty-Seven Thousand and 00/100 (\$87,000.00) pursuant to the terms of that certain Arlington County Economic Development Incentive Grant Agreement, dated the date herewith, by and among the Parties. During years two (2) and three (3) of this Agreement, the County, through the IDA, will fund an IDA Grant of up to Forty-Three Thousand Five Hundred and 00/100 Dollars (\$43,500.00) in each of year two (2) and year three (3) of this Agreement for an estimated total value to Basket Savings of up to Eighty-Seven Thousand and 00/100 Dollars (\$87,000.00).

If, by the Performance Date, the value of the BPOL Reduction Incentive and the IDA Grant paid or committed to be paid by the County total less than the One Hundred Twenty-Five Thousand and 00/100 Dollar (\$125,000.00) COF Grant local match requirement, the County through the IDA, subject to appropriation, will make an additional grant to Basket Savings of the difference at the Performance Date, so long as Basket Savings has met its Targets.

SECTION 5. REPAYMENT OBLIGATION.

a) If Statutory Minimum Eligibility Requirements are Not Met. Section 2.2-115 of the Virginia Code requires that Basket Savings make a Capital Investment of at least \$5,000,000 in the Facility and create and Maintain at least 50 New Jobs at the Facility in order to be eligible for the COF Grant. Failure by Basket Savings to meet either of these statutory minimum eligibility requirements by the Performance Date shall constitute a breach of this Agreement and the entire COF Grant must be repaid. Basket Savings must repay to the IDA any COF Grant proceeds received and the IDA shall repay such COF Grant proceeds to the County. The County must repay to VEDP any COF Grant proceeds received from the IDA and any COF Grant proceeds being held for disbursement.

b) If Statutory Minimum Eligibility Requirements are Met. The provisions of this subsection b) are applicable only if Basket Savings has met the statutory minimum eligibility requirements set forth in subsection a). For purposes of repayment, the COF Grant is to be allocated as Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$62,500.00) or fifty percent (50%) to the Capital Investment Target and Sixty-Two Thousand Five Hundred and 00/100 Dollars (\$62,500.00) or fifty percent (50%) to the New Jobs Target. If Basket Savings has

met at least ninety percent (90%) of both of the Targets as of the Performance Date, then and thereafter Basket Savings is no longer obligated to repay any portion the COF Grant. If Basket Savings has not met at least ninety percent (90%) of either or both of its Targets as of the Performance Date, Basket Savings shall repay to the IDA that part of the COF Grant that is proportional to the shortfall from the Target or Targets for which it received COF proceeds. For example, if as of the Performance Date, Basket Savings has received all One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) of the COF Grant proceeds, but the Capital Investment is only Seven Million Five Hundred Thousand and 00/100 Dollars (\$7,500,000.00) or seventy-five percent (75%) of the Capital Investment Target, and only Fifty-Two (52) New Jobs have been Maintained or eighty percent (80%) of the New Jobs Target, Basket Savings shall repay to the IDA twenty-five percent (25%) of the moneys that it received allocated to the Capital Investment Target or Fifteen Thousand Six Hundred Twenty-Five and 00/100 Dollars (\$15,625.00) and twenty percent (20%) of the moneys that it received allocated to the New Jobs Target or Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00)

c) **Determination of Inability to Comply.** If the County, the IDA, or VEDP shall determine at any time prior to the Performance Date (the “**Determination Date**”) that Basket Savings is unable or unwilling to meet the Targets by and through the Performance Date, and if the County, the IDA, or VEDP shall have promptly notified Basket Savings of such determination, Basket Savings must repay to the IDA all of the COF Grant proceeds previously disbursed to Basket Savings. Such a determination will be based on such circumstances as a filing by or on behalf of Basket Savings under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of Basket Savings, an abandonment of the Facility by Basket Savings, or other similar significant event that demonstrates that Basket Savings will be unable or is unwilling to satisfy the Targets for the COF Grant. In such event, the County will repay to VEDP all of the COF Grant proceeds not previously disbursed through the IDA to the Company.

d) **Repayment Dates.** *Such repayment shall be due from the Company to the IDA within ninety days after the Performance Date or the Determination Date, as applicable.* Any moneys repaid by Basket Savings to the IDA hereunder shall be repaid by the IDA to the County. The County shall repay any moneys received from the IDA or any moneys being held for disbursement promptly to VEDP for redeposit into the COF Grant Fund. The County and IDA shall use its best efforts to recover such funds, including legal action for breach of this Agreement. Neither the County nor the IDA shall have any responsibility for the repayment of any sums due from Basket Savings hereunder unless said sums have been received by the IDA from Basket Savings.

SECTION 6. COMPANY REPORTING.

a) Basket Savings shall provide, at Basket Savings’ expense, detailed verification reasonably satisfactory to the County, the IDA, and VEDP of Basket Savings’ progress on the Targets. Such progress reports will be provided annually, starting at October 1, 2016, and covering the period through the prior June 30. Further, Basket Savings shall provide progress reports at such other times as the County, the IDA or VEDP may reasonably require.

b) As applicable, Basket Savings shall be responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on its behalf.

c) With each such progress report, Basket Savings shall report to VEDP the amount paid by Basket Savings in the prior calendar year in Virginia corporate income tax or, as applicable, shall provide to VEDP a copy of its Virginia income tax form filed with respect to its status as a pass-through entity. VEDP has represented to Basket Savings that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

d) Basket Savings hereby authorizes the County's Department of Real Estate Assessment and Commissioner of Revenue's Business Tax Division to release to VEDP, Basket Savings' real estate tax, business personal property tax, and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target. If VEDP should require additional documentation or consents from Basket Savings to access such information, Basket Savings shall promptly provide, at Basket Savings' expense, such additional documentation or consents as the County, the IDA, or VEDP may request.

e) If requested by VEDP, Basket Savings shall provide to VEDP copies of the Company's quarterly filings with the Virginia Employment Commission covering the period from the date of this Agreement through the Performance Date.

SECTION 7. NOTICES.

a) **Notices, Demands, and Communications Between the Parties.** Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed to:

To the County: County of Arlington
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201
Attn: Mark Schwartz, County Manager
Fax: (703) 228-3218
Email: MSchwartz@ArlingtonVA.US

With Copies to: County of Arlington
Office of the Arlington County Attorney
2100 Clarendon Blvd, Suite 403

Arlington, Virginia 22201
Attn: Robert E. Dawson, Assistant County Attorney
Fax: (703) 228-7106
Email: RDawson@ArlingtonVA.US

County of Arlington
Department of Economic Development
1100 North Glebe Road, Suite 1500
Arlington, Virginia 22201
Attn: Victor L. Hoskins, Director
Fax: (703) 228-0805
Email: VHoskins@ArlingtonVA.US

To the Company: **BASKET SAVINGS, INC.**
1220 North Fillmore Street, Suite 300
Arlington, Virginia 22201
Attn: Neil Kataria, CEO
Email: Neil@basketsavings.com

To the IDA: Industrial Development Authority of Arlington County
2100 Clarendon Blvd, Suite 501
Arlington, Virginia 22201
Attn: Jason Friess, Secretary/Treasurer
Fax: (703) 224-3401
Email: JFriess@arlingtonva.us

With a Copy to: McGuireWoods, LLP
1750 Tysons Blvd, Suite 1800
Tysons Corner, Virginia 22102
Attn: Michael W. Graff, Jr.
Fax: (703) 712-5191
Email: mgraff@mcguirewoods.com

To VEDP: Virginia Development Economic Partnership
Until May 23, 2016: 901 East Byrd Street, 19th Floor
After May 23, 2016: 901 East Cary Street, 8th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Attn: Daniel C. Gundersen, Interim President and CEO
Fax: (804) 545-5611
Email: dgundersen@yesvirginia.org

With a Copy to: Virginia Development Economic Partnership
Until May 23, 2016: 901 East Byrd Street, 19th Floor
After May 23, 2016: 901 East Cary Street, 8th Floor
Richmond, Virginia 23219

Post Office Box 798 (zip: 23218-0798)
Attn: Sandra Jones McNinch, General Counsel
Fax: (804) 545-5611
Email: smcninch@yesvirginia.org

b) Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

SECTION 8. MISCELLANEOUS.

a) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement among the Parties hereto as to the COF Grant and may not be amended or modified, except in writing, signed by each of the Parties hereto. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. Company may not assign its rights and obligations under this Agreement without the prior written consent of the County, the IDA and VEDP.

b) **Governing Law; Venue.** This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Arlington, and such litigation shall be brought only in such court.

c) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

d) **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. In the event that all or any portion of this Agreement is found to be unenforceable, this Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Agreement or that portion which is found to be unenforceable.

e) **Relationship of Parties.** The provisions of this Agreement are intended solely for the purpose of defining the relative rights of the Parties and no relationship of

partnership, joint venture, or other joint enterprise shall be deemed to be created hereby by and among the Parties pursuant to this Agreement.

f) **Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

g) **No Waiver of Sovereign Immunity by County.** Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the County pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the County's elected and appointed officials, officers and employees.

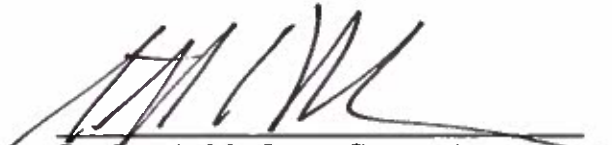
h) **Attorney's Fees.** Attorney's fees shall be paid by the party incurring such fees.

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the County, the IDA, and Basket Savings have each executed, or caused to be duly executed, this Commonwealth's Development Opportunity Fund Grant Performance Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the day and year first written above.

Approved as to form:

THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA, a
body corporate and politic of the
Commonwealth of Virginia


Stephen A. MacIsaac, County Attorney

By: 
Mark Schwartz, County Manager

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 18th day of October, 2016, before me, personally appeared Mark Schwartz, who acknowledged himself to be the County Manager of Arlington County in the above instrument, and that he, as County Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the County Board of Arlington County, Virginia, a body corporate and politic of the Commonwealth of Virginia by himself as County Manager of Arlington County, Virginia

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 1/31/19



**INDUSTRIAL DEVELOPMENT
AUTHORITY OF ARLINGTON
COUNTY, a political subdivision of the
Commonwealth of Virginia**

By: John Washington
Name: John Washington
Title: Chair

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

On this the 26 day of October, 2016, before me, personally appeared John Washington, who acknowledged himself/herself to be the Chair of the Industrial Development Authority of Arlington County, Virginia in the above instrument, and that he/she, as Chair, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia by himself/herself as Chair of the Industrial Development Authority of Arlington County, Virginia.


IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 10/31/16

JOANNA B. COLES
NOTARY PUBLIC
REGISTRATION # 225910
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
OCTOBER 31, 2016

BASKET SAVINGS, INC., a Delaware corporation

By: 
Name: Neil Kutana
Title: CEO

ACKNOWLEDGMENT

STATE OF Virginia
COUNTY OF Arlington

On this the 6th day of October, 2016, before me, personally appeared Neil Kutana, who acknowledged himself to be the CEO of Basket Savings, Inc. in the above instrument, and that he, as CEO, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Basket Savings, Inc., a Delaware corporation, by himself as CEO of Basket Savings, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires: 5/31/2020

