

February 20, 2020

By Federal Express

City Manager
City of Norfolk
1100 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

Norfolk Redevelopment and Housing Authority
555 E. Main Street
Norfolk, VA 23510
Attn: Executive Director

Norfolk City Attorney
900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

Re: Deed of Lease and Development Agreement between Norfolk Redevelopment and Housing Authority, the City of Norfolk, and Norfolk District Associates, LLC

Gentlemen,

Our firm represents Norfolk District Associates, LLC (“Cordish”) with respect to the above-referenced Deed of Lease and Development Agreement (the “Cordish-Norfolk Agreement”). On behalf of Cordish, we write to notify Norfolk Redevelopment and Housing Authority (“NRHA”) and the City of Norfolk (“City”) pursuant to Section 17.1.1 of the Cordish-Norfolk Agreement that they are in material breach of multiple provisions, and must take immediate steps to cure those breaches within ninety (90) days. Specifically, as a result of the City entering into the January 10, 2020 Development Agreement by and between the Pamunkey Indian Tribe (“Tribe”), Golden Eagle Consulting II, LLC (“GEC”), and the City (the “Pamunkey Development Agreement”), and the January 10, 2020 Option to Purchase Agreement by and between the Tribe, GEC, and the City (the “Pamunkey Option Agreement”), supporting a planned casino complex to be developed and run by the Tribe, the City has breached Section 8.1 of the Cordish-Norfolk Agreement. Furthermore, despite Cordish’s requests, NRHA and the City have failed to cooperate with Cordish to seek government approvals to expand the Project into a casino, thereby breaching Section 10.2.1 of the Cordish-Norfolk Agreement.

As you know, pursuant to the Agreement, Cordish leased City property from the NRHA and successfully developed it into one of the crown jewels of the revitalized Norfolk downtown: the Waterside project (the “Project”). At the time we entered this project, this was a significant financial drain on the city. This groundbreaking dining, retail, and entertainment complex has been a significant boon for Norfolk. Cordish undertook significant economic risk on the Project, as its prospects for success were uncertain when the project was launched. In total, Cordish expended \$43 million of its own funds to develop

the Project, despite the fact that its obligation to the City was to spend a significantly lower sum.

As you also are aware, the Cordish Companies have developed and operate a number of popular and highly successful casino projects, including the Live! Casino in neighboring Maryland. As part of the bargain that Cordish struck with Norfolk to launch the development of the Waterside Project, NRHA and the City agreed to certain measures to protect Cordish's investment, in particular to grant it the opportunity to expand the Waterfront complex into a casino, if the Commonwealth of Virginia passed legislation to permit gambling in the state. To that end, the Cordish-Norfolk Agreement contains two critically important clauses—clauses that the City and NRHA have violated.

1. By granting exclusive gaming rights to the Pamunkey Tribe, the City has breached Section 8.1 of its Agreement with Cordish.

In Section 8.1, entitled "Exclusive," the City and NRHA promised that they would not "subsidize or provide a performance based grant for a restaurant and entertainment development of over 75,000 square feet similar to the Project for a period of ten (10) years from the Effective Date." Cordish-Norfolk Agreement ¶ 8.1. Because the Effective Date of the lease was October 31, 2013, any such subsidy or grant for a development similar to the Project prior to October 31, 2023 would constitute a breach for which Cordish could sue to prohibit or to recover damages.

It is evident that the City's deals with the Tribe and GEC violates Section 8.1 of the Cordish-Norfolk Agreement. *First*, the Tribe and GEC's planned casino development is "similar to the Project." The Pamunkey Development Agreement provides that the Tribe and GEC will pursue the construction and development of a commercial casino in Norfolk, with the support of the City. *See* Pamunkey Development Agreement, Recitals 3, 4. The contemplated Pamunkey project is similar to the Waterside Project, which, under the Cordish-Norfolk Agreement, contemplated further development into a casino complex. "Project" is defined as "a real estate development" that involves "an entertainment, retail, nightclub, bar and/or restaurant complex for the Permitted Use that is similar in quality to the Urban Properties." Cordish-Norfolk Agreement, p. 6. "Urban Properties" in turn is defined to "mean the Live! Branded properties that affiliates of the Lessee currently operate and maintain located in the States of Maryland, Pennsylvania, Missouri, and Texas and the Commonwealth of Kentucky, as same may evolve." *Id.*, p. 7. Because the "Urban Properties" include casinos, and because the "Project" is defined as an entertainment complex "similar in quality to the Urban Properties," the proposed Pamunkey casino qualifies as "similar to the Project."

Second, in the Pamunkey Development Agreement, the City is providing the Tribe and GEC a "subsidy." Sections 2.A and 9.C of the Pamunkey Development Agreement provide an extremely valuable economic benefit—exclusivity:

[2.]A. Approvals

To the extent permitted by law, the City will work exclusively with the Tribe and GEC in their efforts to obtain approval from the Commonwealth to conduct Gaming in the City, and will not, directly or indirectly, assist or support any other party in its efforts to obtain such approval.

[9.]C. Prohibited Gaming

To the extent permitted by law, the City will not authorize, permit or fail to prohibit the operation of any additional commercial gaming establishments within the City other than the Project, except for such gaming that is presently conducted and authorized under the laws of the Commonwealth as in effect on the date of this Agreement and to the extent not otherwise agreed to by the City with any third party and disclosed to the Tribe prior to the date of this Agreement....

Pamunkey Development Agreement §§ 2.A, 9.C. The exclusivity grant in these two provisions qualifies as a “subsidy” under Section 8.1 of the Cordish-Norfolk Agreement. A “subsidy” is defined to include “a grant by a government to a private person or company to assist an enterprise....” See <https://www.merriam-webster.com/dictionary/subsidy>. The City’s granting exclusivity to the Tribe and GEC fits within this plain English definition of “subsidy.” And in multiple contexts—ranging from various regulatory schemes to case law decisions concerning a variety of fields—a government’s granting exclusive economic rights to a private party is deemed to be a subsidy.

Therefore, by entering into the Pamunkey Development Agreement and Option Agreement, and granting the Tribe and GEC exclusivity for developing a casino, the City has breached Section 8.1 of the Cordish-Norfolk Agreement. It bears emphasis that Cordish’s investigation into the City’s dealings with the Tribe and GEC is ongoing, and Cordish reserves the right to identify additional aspects of those dealings that breach Section 8.1 (and other terms) of the Cordish-Norfolk Agreement.

2. The City and NRHA have failed to assist Cordish in obtaining approval for gaming at the Waterside Project.

Section 10.1.2 of the Cordish-Norfolk Agreement provides that the City and NRHA “shall cooperate with [Cordish] in obtaining any Government Approvals necessary to enable the Premise to be utilized as a casino or other gaming establishment.” Cordish-Norfolk Agreement § 10.1.2. In light of a proposed bill legalizing gaming in Virginia, SB 1126, and the apparent acceleration of momentum towards legalization, Cordish sent a letter on January 13, 2010 invoking this section and requesting that the City and NRHA provide the contractually agreed-upon assistance. Then, one day later, after Cordish learned of the Pamunkey Development Agreement, Cordish’s attorneys sent a second letter asserting that the Pamunkey Development Agreement breached the Cordish-Norfolk Agreement, and again requesting that they comply with Section 10.1.2 by providing the required assistance to obtain approvals for a gaming casino at the Waterside Project.

On January 22, 2020, City Attorney Bernard Pishko sent a curt, two-sentence letter to Cordish, denying that the City's relationship with the Pamunkey Tribe was in breach of the Agreement. NRHA has failed to respond to either letter. The City and NRHA have provided no further communication, and to date, have failed to provide Cordish any assistance under Section 10.1.2. The City's failure to cooperate seems dictated by Pamunkey Development Agreement's exclusivity provisions referenced above—further underscoring that by entering into the deal with the Tribe and GEC, the City has violated its agreement with Cordish.

3. Notice of the City's and NRHA's breach of the Cordish-Norfolk Agreement.

Based on the circumstances set forth above, Cordish hereby notifies the City and NRHA that they are in material breach of the Cordish-Norfolk Agreement. Section 17.1.1(b) provides a 90-day period for the City and NRHA to cure such breaches, or else their breaches give rise to an Event of Default. Curing these breaches must include, among other steps, (1) withdrawing from the Pamunkey Development Agreement and Pamunkey Option Agreement, and (2) assisting Cordish with obtaining government approvals for a casino at the Waterside project.

Cordish remains committed to what has been a successful relationship thus far, and hopes that the City and NRHA will cure these breaches and comply with the Cordish-Norfolk Agreement going forward. Cordish would welcome the opportunity to meet with the City and NRHA to discuss a mutually agreeable path forward that would benefit all parties involved.

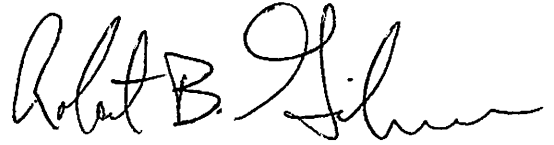
Please understand, however, that if the City and NRHA continue on their current course of violating their obligations to Cordish, and fail to cure their breaches described herein, Cordish intends to pursue all avenues to protect and vindicate its bargained-for rights, including through litigation. If Cordish is forced to file suit, it will seek to recover substantial money damages, specific performance of the Cordish-Norfolk Agreement, and any other legal or equitable remedies to which it is entitled, as well as its attorneys' fees and costs (which the Cordish-Norfolk Agreement provides to the prevailing party in such a dispute). Furthermore, if Cordish perceives that the City and NRHA are taking steps that could cause Cordish irreparable harm, Cordish reserves the right to file suit seeking a temporary restraining order and preliminary injunctive relief, to prevent the City and NRHA from further harming Cordish.

This letter also serves to put the City and NRHA on notice of their legal obligation to preserve, and not destroy or delete, any documents or data of any sort (whether hard copy or electronic) within their possession, custody, or control, relating to the matters set forth in this letter.

Nothing in this letter is a waiver of any additional claims Cordish may assert against your clients, and any other legal and contractual rights Cordish may have, regarding the matters set forth in this letter.

We look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Gilmore". The signature is fluid and cursive, with the first name "Robert" and the last name "Gilmore" being the most prominent parts.

Robert B. Gilmore

cc: Jonathan E. Missner