

EXECUTION VERSION

Development Agreement

By and Between

**The Pamunkey Indian Tribe,
Golden Eagle Consulting II, LLC**

And

The City of Norfolk, Virginia

January 10, 2020

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DEVELOPMENT AGREEMENT

By and Between the Pamunkey Indian Tribe,

Golden Eagle Consulting II, LLC

and

the City of Norfolk, Virginia

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into as of the 10th day of January 2020, by and between the Tribe, whose address is 1054 Pocahontas Trail, King William, Virginia, 23086, Golden Eagle Consulting II, LLC (“GEC”), a Delaware limited liability company, whose address is 730 Cool Springs Blvd, Suite 120, Franklin, Tennessee, 37067, and the City, whose address is 810 Union Street, 11th Floor, Norfolk, Virginia, 23507. All capitalized terms used herein shall have the meanings ascribed to them in Section 1, below.

RECITALS

1. The Tribe has engaged GEC as the Tribe’s exclusive developer for the Project.
2. The Tribe, GEC and the City are parties to the Option Agreement dated as of the date hereof (the “Option Agreement”), which provides the Tribe and GEC with an Option to purchase the Subject Property.
3. Legislation to permit commercial Gaming has been proposed in the Commonwealth’s Legislature and will be on the agenda in the next session of the Legislature. If commercial Gaming is legalized in the Commonwealth in a manner which permits such Gaming to be conducted by the Tribe on the Subject Property, the Tribe and GEC will use their best efforts to obtain a license from the Commonwealth to conduct Gaming on the Subject Property and will diligently pursue the development and construction of a commercial casino in the City.
4. The Tribe and GEC intend to develop the Project on the Subject Property.
5. The Tribe and GEC desire to have the support and cooperation of the City in the development of the Project.
6. The City desires to support the Tribe’s and GEC’s efforts to obtain licensing approval and the development of the Project.
7. The Tribe and the City have established a cooperative and mutually respectful government-to-government relationship with each other and have acknowledged that the Project will impact the City. The Tribe and GEC desire to mitigate said impacts through the means described in this Agreement.

8. The Tribe, GEC and the City have each determined that developing and operating the Project on the Subject Property will be in the best interest of the Tribe's members and the City's residents, and will not be detrimental to the surrounding community in light of the mitigation of impacts contemplated in this Agreement.

Accordingly, the Parties, for good and valuable consideration, the receipt of which is hereby acknowledged, enter into this Agreement to effectuate the purposes set forth above and to be bound by the provisions set forth below:

Section 1. Definitions.

Capitalized terms used in this Agreement shall have the meanings set forth in this Section 1.

"Acquisition Date" means the date that the Subject Property is transferred to the Tribe in fee and the Tribe has obtained the Licensing Approval and all Other Approvals necessary to conduct Gaming thereon under all applicable laws of the Commonwealth.

"Additional Services" means the additional police, fire protection, emergency medical services, and other such services to be provided to protect the health, safety and welfare of the City's residents, the temporary workforce needed to construct the Project, the employees of the Project and the increased number of visitors to the City expected as a result of the operation of the Project.

"Agreement" means this agreement between the Tribe, GEC and the City including all exhibits attached hereto, as the same may be amended, modified, or restated from time to time in accordance with the terms hereof.

"Approvals" means, collectively, the Licensing Approval and the Other Approvals.

"Business Day" means any day, other than a Saturday, Sunday or a day on which banks located in the Commonwealth shall be authorized or required by law to close.

"Casino" means any premises on the Subject Property at which Gaming is conducted.

"City" means the City of Norfolk, a municipal corporation of the Commonwealth.

"Claim" or "Claims" means any and all claims, losses, proceedings, damages, causes of action, liability, costs, and expenses (including reasonable attorneys' fees), arising from or in connection with, or caused by any act or omission of any Party against whom indemnification is sought or such Party's contractors, licensees, invitees, agents, lessees, servants, or employees, related to or in connection with any obligations on such Party's part to be performed under the terms of this Agreement.

"Commonwealth" means the Commonwealth of Virginia.

"Completion Date" means the applicable completion date set forth in Exhibit B for each phase of the Project.

“Court” means the state courts situated in the City of Norfolk, Virginia (appeals therefrom shall be brought in the Virginia Appellate Courts).

“CPA” means a nationally recognized Certified Public Accountant.

“Dispute” means any dispute, claim, or controversy arising under or relating to this Agreement, including those relating to taxes imposed by the City upon the Subject Property or the Project, the breach, termination, or validity of this Agreement, or the dealings between the Parties or with respect to any claim arising by virtue of any representations made by any Party.

“Dispute Notice” means a written notice of any Dispute.

“Distribution” means any conveyance, transfer, payment or distribution of or charge upon Project Assets to or for the benefit of the Tribe that is properly accounted for as a “transfer” or “distribution” in accordance with generally accepted accounting principles.

“Environmental Impact Statement” means an environmental impact statement within the meaning of the National Environmental Policy Act prepared in connection with the Project.

“Electronic Gaming Machine” means any player activated device or terminal utilizing an electronic, mechanical or electromechanical process, including through the use of any application, website, software or other system, that allows a person to wager something of value, where through an element of chance, which may or may not be affected or determined by an element of skill, a person may become entitled to something of value.

“Force Majeure Event” shall mean delays due to (i) strikes, lockouts, casualties, acts of God, war or an injunction or other judicial order, or (ii) material adverse economic events or circumstances which impact businesses generally in the City or the Commonwealth, or the gaming industry specifically.

“Game” means a banking or percentage game played with cards, dice, tiles or dominoes or an electronic, electrical or mechanical device or machine played for money, property, checks, credit or any other representative of value which is permitted by the Commonwealth.

“Gaming” means any form of dealing, operating, carrying on, conducting, maintaining or exposing any Game for pay, including, without limitation, Electronic Gaming Machines, table games, sports betting, and internet-based betting which is permitted by the Commonwealth, whether or not conducted at the Subject Property.

“Governor” means the Governor of the Commonwealth.

“Impact Payments” means those payments described in Section 3 hereof.

“Impacts” means collectively, the following impacts resulting from the Project and the conduct of Gaming at the Subject Property: (i) increased use of City services; (ii) increased use of City infrastructure; (iii) the need for additional infrastructure, City employees and equipment; (iv) increased need for maintenance, repair and replacement of City infrastructure; and (v) costs related to mitigating actual impacts arising out of Gaming at the Subject Property.

“Interior” means the United States Department of the Interior.

“Legal Opinion” means (i) with respect to the City, one or more opinions by legal counsel to the City (which opinion may be issued by the City Attorney) and reasonably acceptable to the Tribe and GEC that this Agreement has been duly executed and authorized by the City and that each of this Agreement and the limited waiver of sovereign immunity as set forth in this Agreement is enforceable in accordance with its terms, (ii) with respect to the Tribe, one or more legal opinions by legal counsel to the Tribe and reasonably acceptable to the City that this Agreement has been duly executed, is authorized by the Tribe and that each of this Agreement and the limited waiver of sovereign immunity as set forth in this Agreement is enforceable in accordance with its terms; and (iii) with respect to GEC, one or more legal opinions by legal counsel to GEC and reasonably acceptable to the City that this Agreement has been duly executed and is authorized by GEC.

“Licensing Approval Date” means the date upon which the Tribe and GEC obtain approval from the Commonwealth to conduct Gaming on the Subject Property, such approval referred to herein as the “Licensing Approval.”

“Minimum Standards” shall have the meaning set forth in the Option Agreement.

“Net Gaming Revenue” means the total of all sums actually received from the operation of Gaming at the Project less the total paid out as winnings to Gaming patrons. Net Gaming Revenue shall not include any amount received from credit extended or collected for purposes other than Gaming or the wagering by a Gaming patron of any promotional gaming credit issued by the Casino.

“Non-Tax Dispute” means any Dispute other than a Dispute relating to any tax imposed by the City on the Tribe, GEC, the Project or the Subject Property.

“Opening Date” means the first date after the Acquisition Date on which the Casino is open to the public for Gaming.

“Other Approvals” means any federal, tribal, Commonwealth, county or municipal permits, licenses, approvals, waivers, authorizations, orders or findings that are applicable to the Tribe or the acquisition of the Subject Property and its remediation, and the development and construction of the Project, other than the Licensing Approval.

“Party” means either the Tribe, GEC or the City or their respective successors or assigns.

“Parties” means, together, the Tribe, GEC and the City and their respective successors or assigns.

“Permitted Distribution” means any Distribution unless (a) at the time of such Distribution or as a result of giving effect thereto, the Project is generally unable to pay its debts as they become due or is otherwise insolvent, (b) such Distribution is made with the intent to delay, hinder or defraud creditors having recourse to Recourse Assets, or (c) at the time of such Distribution, the Tribe is in default of any of its payment obligations to the City (i) under this Agreement or the Option Agreement or (ii) for any taxes legally assessed by the City; provided that at no time shall

the Tribe distribute any Project Assets reasonably necessary to operate and maintain the Project at least in accordance with the Minimum Standards, including but not limited to sufficient cage cash at the Casino.

“Project” means the Casino and other ancillary facilities to be constructed on the Subject Property as contemplated in the Option Agreement.

“Project Assets” means, collectively, (i) all assets of the Tribe and GEC primarily or substantially used or intended to be used in connection with the Project, including the Subject Property, (ii) all Net Gaming Revenues and any other revenues or other assets generated by the Project, (iii) all revenues and other assets which are properly accounted for in accordance with generally accepted accounting principles as revenues or assets of the Project, (iv) all cash, receivables and other assets generated by the Project, (v) all assets acquired with proceeds of any indebtedness the holders of which have recourse to the foregoing assets of this definition, and (vi) all proceeds, income and profits from any of the foregoing assets of this definition including, but not limited to, proceeds from insurance relating to the Project, except that the Tribe may make Permitted Distributions from Project revenues that shall thereafter be excluded from Project Assets.

“Subject Property” means approximately 14 acres of land in the City in the area identified as “Parcel A1” and “Parcel A2” on Exhibit A attached hereto.

“Tribal Council” means the duly elected Chief and Tribal Council of the Tribe.

“Tribe” means the Pamunkey Indian Tribe, a federally-recognized Indian tribe.

Section 2. Project.

A. Approvals.

The Tribe and GEC shall each use their respective reasonable efforts to promptly apply for, pursue and obtain the Approvals necessary to design, develop, construct and operate the Project, and the City shall use its reasonable efforts to assist and support the Tribe and GEC in obtaining such 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. If legislation is enacted by the Commonwealth in a manner which permits commercial Gaming to be conducted by the Tribe on the Subject Property, (a) the Tribe and GEC will use best efforts to obtain the Licensing Approval for the development of a commercial Casino on the Subject Property, and (b) the Tribe and GEC will pursue the development of and financing for a commercial Casino on the Subject Property, (c) the Tribe and/or GEC shall execute a guaranteed maximum price construction contract for the Casino and (d) the Tribe shall not seek to place the Subject Property into trust with the United States Government on behalf of the Tribe. Until all Approvals are obtained, the Tribe shall provide the City, from time to time upon its request, but not more often than on a quarterly basis, with a written update of the status of such Approvals. If any such Approvals are denied or unreasonably delayed, the Tribe shall provide prompt written notice thereof to the City. Any administrative approvals required of the City are administrative functions of the City that are independent of this Agreement.

B. Construction and Use.

The City, the Tribe and GEC shall negotiate diligently and in good faith prior to the exercise of the Option to Purchase under the Option Agreement, to agree upon the terms and conditions of a commercially reasonable construction and use covenant ("Construction and Use Covenant"), in form and substance acceptable to the City, the Tribe and GEC, for the construction of the Project which may include, but not by way of limitation: (a) a design and construction schedule, including submission to, and review and approval by, City, of plans for the Project and related offsite improvements (e.g., infrastructure, utilities, etc.), inclusive of any planned future expansions; (b) a construction commencement target date; (c) a phasing plan, phase completion target dates and a final completion target date; (d) development and construction requirements, including compliance with the Virginia Statewide Building Code; (e) restrictions on use; (f) submission of a financing plan and schedules including all sources of capital demonstrating to City's reasonable satisfaction and approval that the Tribe can reasonably proceed with construction of the Project and related infrastructure improvements; (g) City approval rights of any material changes to the size or scope of the Project consistent with Section 1.1(b) of the Option Agreement; (h) requirements for promoting low and moderate income and resident job opportunities; (i) remedies in the event the Tribe or GEC fails to timely satisfy any target dates; and (j) remedies in the event the City fails to provide any required material support for the Project. The form and substance of the Construction and Use Covenant shall be consistent with applicable terms of this Agreement and be approved by the Parties, using good faith but otherwise acceptable to the Parties in their reasonable discretion. The Construction and Use Covenant will be executed as a closing document on the Acquisition Date unless waived by the Parties.

The Construction and Use Covenant shall include an obligation by the Tribe to use its commercially reasonable efforts to utilize sustainable development and construction principles and environmentally friendly construction methods with the goal of striving to construct a building that is both economically feasible and substantially compliant with the Leadership in Environmental and Energy Design (LEED) program with an at least Silver level certification.

The Construction and Use Covenant shall include a provision that, excluding surface landscaping and hardscaping improvements (e.g., benches, bollards, fencing) approved by the City as part of the Project final plans, in no event shall the Tribe construct, or permit to be constructed, any buildings or other vertical improvements, or install, or permit to be installed any billboard or banner-style exterior signage, as part of the Project or otherwise within the area generally between the existing baseball stadium and the Elizabeth River, such area identified as the "No Construction Zone Area" on the attached Exhibit A.

C. Covenants and Reciprocal Easement Agreement.

The City, the Tribe and GEC shall negotiate diligently and in good faith prior to the exercise of the Option to Purchase under the Option Agreement a commercially reasonable covenants and reciprocal easement agreement ("C&REA") for the Subject Property, which will include, but not by way of limitation: (a) such access, drainage, signage and utility easements as may be reasonably necessary as a result of and for the development and use of the Project and any other improvements consistent with the intended use of the Subject Property; (b) an equitable assessment mechanism for allocating between the City, the Tribe and GEC the cost of maintaining,

repairing and replacing any related improvements, including any roads, retention and detention areas, conservation areas, landscaping and any other improvements benefiting more than the Subject Property; (c) requirements to provide the parking contemplated in Section 3.A(c) below; and (d) requirements for promoting low and moderate income and resident job opportunities. The form and substance of the C&REA shall be consistent with the applicable terms of this Agreement and be approved by the parties, using good faith but otherwise acceptable to the parties in their reasonable discretion. The form and substance of the C&REA will be finalized by the Parties prior to the closing under the Option Agreement and executed as a closing document on the Acquisition Date.

D. Citizen Ordinances.

This Agreement is subject in all respects to applicable laws including, but not limited to, provisions of the Norfolk Charter and the Virginia Code that address the adoption, amendment, or repeal of municipal ordinances; provided, however, that nothing herein shall be deemed to constitute an acknowledgement or agreement by the Tribe or GEC that a citizen initiated ordinance may permit the City to rescind or terminate this Agreement under applicable law or a consent by the Tribe or GEC to any such rescission or termination. If a court of competent jurisdiction finally determines, after the exhaustion of all appeals, that a citizen initiated ordinance has lawfully effected a unilateral rescission or termination of this Agreement by the City under all applicable laws of the Commonwealth and the United States without the further consent or agreement of the Tribe or GEC and notwithstanding all available defenses in law and equity to such rescission or termination of the Tribe or GEC (a "Lawful Rescission"), then the Tribe and GEC hereby, except to the extent provided below, expressly (a) waive any and all causes of action against the City for any and all damages, losses and expenses incurred by either that arise from or in any manner result from such citizen ordinance and (b) agree that the City shall have no liability to the Tribe, GEC or any affiliate of either arising from or in any manner resulting from any such citizen initiated ordinance. In the event the City does not perform any of its obligations under this Agreement or the Option Agreement following a Lawful Rescission, the Parties agree that, except to the extent provided below, (i) the City shall not be deemed to be in default under this Agreement or the Option Agreement, (ii) the City shall not be subject to damages or any other remedies at law or in equity, (iii) each of the Tribe and GEC expressly waives any claim to damages, losses or payment of additional expenses either might have under this Agreement, under the Option Agreement, at law or in equity, and (iv) such nonperformance by the City shall not be deemed a Claim; provided, however, in the event that the City fails to perform its obligations under the Option Agreement as the result of a citizen initiated ordinance the City shall reimburse the Tribe and GEC for reasonable and documented out-of-pocket expenses incurred by the Tribe and GEC or either of them in connection with performing due diligence with respect to the Subject Property or in furtherance of its obligations to consummate the transactions contemplated by the Option Agreement.

E. Obligations to Complete.

After the Acquisition Date, except upon the occurrence of a Force Majeure Event, the Tribe and GEC shall complete each phase of the Project not later than the applicable Completion Date for such phase as set forth in Exhibit B. Upon the occurrence of a Force Majeure Event, the Completion Date(s) shall be extended on a day-for-day basis but only for so long as the Force Majeure Event is in effect, plus such period of time not to exceed 90 days as the Tribe and GEC

may require to remobilize its design and construction team, including its architect, general contractor, subcontractors and vendors of goods and services.

F. Environmental Studies.

The City will be a consulting party in connection with the preparation of any Environmental Impact Statement required for the Project. The City will have a reasonable opportunity to review and prepare comments to proposed submissions regarding the Project required in connection with the preparation and review of such Environmental Impact Statement and that are otherwise required to determine compliance with the National Environmental Policy Act. The Tribe and GEC shall consider, and use reasonable efforts to incorporate, such comments in good faith into the Tribe's and GEC's submissions regarding the Project.

Section 3. Impact Payments and Infrastructure Costs.

A. Taxation; One-Time Impact Costs.

Each of the Tribe and GEC acknowledge that: (i) the Subject Property and the Project will be subject to taxation by the City from and after the Acquisition Date and (ii) in addition to taxes due to the City that are applicable to the Subject Property and the Project, the Impacts listed below shall be subject to Impact Payments. The Tribe shall be responsible for the direct payment when due of all costs of each of the following in connection with construction of the Project:

(a) Improvements to transportation infrastructure which are directly necessary for the Project, including, but not limited to, any road construction, bridges, road maintenance, and traffic signals necessitated by the Project and sidewalks in order to provide direct ingress and egress to the Subject Property via a major roadway without having to navigate through minor or residential roads within the City roadway network system and to provide integrated road system improvements that will mitigate adverse traffic impacts caused by the Project and to allow safe flow of traffic to and from the Project particularly on the interstate entrances and exits, Park Avenue and the downtown streets servicing the Project, and other state and local roads without adverse impact to the City;

(b) Flood mitigation directly necessary for the Project, including, without limitation, construction of a seawall in the area surrounding the Project and a pedestrian promenade to provide connectivity between the Project and downtown Norfolk. The design, timing, implementation, and cost of the flood mitigation improvements and the pedestrian promenade shall be negotiated in good faith by the City and the Tribe within 180 days of the date of this Agreement;

(c) Providing up to and no more than 103 parking spaces for Amtrak at all times following the acquisition of the Subject Property, including during construction of the Project and after the Opening Date, whether by lease, license or some other arrangement acceptable to the City and the Tribe;

(d) Other offsite utility improvements directly necessary for the Project, including, but not limited to, water, sewer and wastewater improvements;

(e) The Tribe shall use its best efforts to continue the Elizabeth River Trail along the waterfront abutting the Subject Property taking into consideration the scope and design of the Project and shall be responsible for all costs relating to the construction of the Elizabeth River Trail through or, if necessary, around the Subject Property. The Tribe and the City agree to work together with respect to planning, design, construction and maintenance of the Elizabeth River Trail; and

(f) Any other infrastructure requirements identified as necessary for the Project in the Environmental Impact Statement.

The scope and estimated costs of the forgoing infrastructure improvements to be funded by the Tribe pursuant to this Section 3.A will be determined upon completion of applicable studies and reviews commissioned in connection with the Project, including any recommendations contained in the Environmental Impact Statement.

B. Wire Transfers.

The Tribe shall make all Impact Payments by wire transfer to an account or accounts specified in writing by the City no later than the date such Impact Payment is due and payable hereunder.

C. Financial Audits.

Following the Opening Date, the Tribe shall provide to the City copies of all financial statements for the Project that are required to be delivered to the Commonwealth within the same time requirements required by the Commonwealth.

D. Compulsive Gambling.

Each of the Tribe and GEC recognizes that the operation of Gaming on the Subject Property may adversely impact individuals who suffer from problem or pathological gambling addiction disorders. Moreover, each of the Tribe and GEC is committed to supporting problem gambling education, awareness and treatment for such individuals. Following the Opening Date, the Tribe shall support compulsive gambling programs and services in a manner consistent with industry practice and in any event will comply with all requirements for funding of such programs and services in the legislation enacted by the Commonwealth permitting the conduct of commercial Gaming. In addition, the Tribe will undertake the following actions prior to commencing Gaming on the Subject Property: (i) the Tribe will provide annual training to front line staff personnel with respect to recognizing people that may have a gambling addiction; (ii) the Tribe will post signage conspicuously at every point of entry to the Casino, the signage shall list the contact information of an agency or organization that can provide the appropriate assistance to persons experiencing a problem; (iii) the Tribe shall have available and provide upon request written materials outlining the various approved agencies where a patron can get assistance for problem gambling; and (iv) the Tribe will implement a program to allow individuals to voluntarily bar themselves from participating in Gaming.

Section 4. Insurance.

(a) Following the Acquisition Date, the Tribe shall obtain and maintain public liability insurance insuring the Tribe, its agents and employees against claims, demands or liability for bodily injury and property damages by or to patrons and other visitors at the Project arising out of or relating to the operation, maintenance or use of the Project. Such liability insurance shall provide coverage according to limits of no less than Five Million Dollars (\$5,000,000) per person and Five Million Dollars (\$5,000,000) per occurrence for both negligent and intentional torts, and on each tenth anniversary of this Agreement, such additional coverage in excess thereof as is customarily carried or maintained under similar circumstances by persons of established reputation engaged in similar businesses as the Project.

(b) Following the Acquisition Date, the Tribe will obtain and maintain all-risk casualty insurance insuring the full replacement value of the improvements to be constructed on the Subject Property in connection with the Project. The Tribe will agree to rebuild all or any portion of the Project subject to a casualty event.

Section 5. Dispute Resolution.

In the event the Project is not being constructed in accordance with the Project's plans and specifications, then the dispute resolution procedures of Section 10.H may be invoked by the City.

Section 6. Consultation.

Representatives of each of the City and the Tribe will meet and consult regarding matters affecting or related to the Project no less frequently than quarterly to the extent requested by the other party. The participants in such consultations and the specifics thereof shall be agreed to by the parties in the Agreement.

Section 7. Local Hiring and Purchasing Preference.

Subject to any employment and vendor preferences relating to members of the Tribe and other federally or state-recognized Indian tribes and Indian-owned businesses as may be implemented from time to time by the Tribe, the Tribe shall work in good faith with the City to: (i) employ (or cause its contractors to employ) City residents during construction and operation of the Project and (ii) purchase goods and services from local vendors provided that the cost and quality is competitive with other sources. The Tribe shall provide the City with semi-annual written reports detailing its compliance with the requirements of this Section.

Section 8. Prohibited Activities.

The Tribe acknowledges and agrees that any Gaming agreement with the Commonwealth will include the following restrictions on activities located on the Subject Property:

A. Gambling Prohibited for Minors.

Unless otherwise permitted by the then-current laws of the Commonwealth, persons under the age of 21 shall not be allowed to partake in Gaming at the Casino, however persons under the

age of 21 may pass through Gaming rooms or areas only if they are *en route* to a non-gaming room or area of the Casino.

B. Alcohol Prohibited for Minors.

Unless otherwise permitted by the then-current laws of the Commonwealth, persons under the age of 21 shall not be allowed to purchase, consume, or otherwise possess alcoholic beverages. All alcohol beverage service shall be subject to liquor laws of the Commonwealth, the County and the City, to the extent applicable, and any federally approved liquor ordinance of the Tribe.

C. Cannabis and Cannabis-Related Products Prohibited.

Unless otherwise permitted by the then-current laws of the Commonwealth, the purchase, sale, use or other consumption, or cultivation of cannabis and cannabis-related products shall not be allowed on the Subject Property or at the Project.

D. Nude Entertainment Prohibited.

Unless otherwise permitted by the then-current laws of the Commonwealth, nude entertainment, nude dancing, or venues containing nudity shall not be permitted at the Subject Property or at the Project.

E. Cigarette Sales; Tobacco and Nicotine Use.

(a) The Tribe may make retail sales but not bulk sales of cigarettes and other tobacco products on the Subject Property.

(b) Persons under the age of 21 shall not be permitted to purchase or consume tobacco, nicotine vapor, or alternative nicotine products at the Project unless otherwise permitted by the laws of the Commonwealth.

Section 9. Undertakings of the City.

In consideration for the mitigation measures to be undertaken by the Tribe in this Agreement, and in further recognition of the many benefits the Project will bring to the City, the City shall do the following:

A. Municipal Services; Additional Transit Services.

Except as otherwise provided for herein, the City shall provide normal and customary general municipal services to the Project as are available to residents and other commercial entities situated in the City (e.g., water, sewer, wastewater, and trash and refuse) ("Municipal Services"). The Parties hereby agree that the Impact Payments are not intended to cover the charges for Municipal Services. To the extent the City provides Municipal Services to the Tribe or the Project, (a) the City agrees to charge the Tribe for such Municipal Services in the same manner and at the then-current rates as it does other consumers and (b) the Tribe agrees to make timely payments for such Municipal Services.

If the Tribe determines or if determined by the City that due to life safety concerns that the operation of the Project will require additional transit services (e.g., bus, light rail, ferry service or any future additional transit services) to those then currently provided by Hampton Roads Transit (or any successor transit operator that services the City), whether in the form of additional routes, vehicles or ferries or operating hours, the Tribe shall make a specific request to the City for such additional transit services and the City will use its reasonable effort to accommodate such request or if the City so determines it shall notify the Tribe and proceed to add such additional services. The Tribe shall be responsible for any and all additional costs to the City relating to the provision of such additional transit services, including costs relating to any transit studies undertaken by the City in its analysis of any such request by the Tribe ("Additional Transit Costs"). All Additional Transit Costs shall be invoiced by the City to the Tribe on a quarterly basis and shall be payable by the Tribe to the City no later than thirty (30) days after delivery thereof.

B. Response to Comments.

The City shall reasonably assist the Tribe in responding to negative comments about the Project.

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; provided, however, this provision of the Agreement shall not be applicable if the Casino ceases operation for any reason after the Opening Date and such cessation continues for 30 consecutive days or for 90 days in any 365-day period (unless such failure to operate is the result of a casualty event covered by insurance and the Tribe is exercising reasonable efforts to repair and reopen the Project with the proceeds thereof).

Section 10. General Provisions.

A. Notices.

Any notices, consents, demands, requests, approvals, and other communications to be given under this Agreement by any Party to the other shall be deemed to have been duly given if given in writing and personally delivered, or sent by nationally recognized overnight courier, or sent by certified mail, postage prepaid, with return receipt requested, at the following addresses:

If to the City:

City Manager
City of Norfolk
Office of the City Manager
810 Union Street
1101 City Hall Building
Norfolk, VA 23510

With copies to:

City Attorney
City of Norfolk
810 Union Street
900 City Hall Building
Norfolk, VA 23510

and:

Holland & Knight LLP
800 17th Street N.W., Suite 1100
Washington, D.C., 20006
Attention: James Meggesto

If to the Tribe:

Pamunkey Indian Tribe
1054 Pocahontas Trail
King William, Virginia 23086
Attention: Chief

With copies to:

Tilden Toelupe LLC
300 E Miller Ct
P.O. Box 1296
Castle Rock, CO 80104
Attention: Mark Tilden

and:

Berg Hill Greenleaf Ruscitti, LLP
1712 Pearl Street
Boulder, CO 80302
Attention: Rory Dilweg

If to GEC:

Golden Eagle Consulting II, LLC
730 Cool Springs Blvd, Suite 120
Franklin, TN 37067
Attention: President

With copies to:

Aaron J. Harkins

Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402

and:

Vincent J. Mastracco, Esq.
Kaufman & Canoles
150 West Main Street, Suite 2100
Norfolk, Virginia 23510

Notices delivered personally or by courier shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of 10:00 am on the third Business Day after mailing. Any Party may change its address for notice hereunder by giving notice of such change in the manner provided in this Section.

B. Binding Effect.

This Agreement shall be binding upon the Parties, together with their respective successors, and permitted assigns.

C. Independent Covenants; Severability.

The existence of any claim or cause of action of any Party ("First Party") against the other Party ("Second Party"), whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Second Party of the covenants and agreements of the First Party contained in this Agreement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, or by a decision of Interior or another agency charged with review of agreements entered into with Indian Tribes, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance here from. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable, including, without limitation, provisions requiring the Tribe to make payments to the City to mitigate impacts of the Project.

D. Language; Captions; References.

Whenever the context requires, references in this Agreement to the singular number shall include the plural, the plural number shall include the singular, and words denoting gender shall include the masculine, feminine, and neuter. Section headings in this Agreement are for convenience of reference only and shall not be considered in construing or interpreting this Agreement. "Hereof," "hereto," "herein," and words of similar import used in this Agreement

shall be deemed references to this Agreement as a whole, and not to any particular section, paragraph, or other provision of this Agreement unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Agreement unless the context indicates to the contrary. Whenever the term "including" is used herein, it shall mean including without limitation.

E. Ambiguities.

The general rule of contract construction that any ambiguity in a contract will be construed against the party drafting such contract shall not apply to this Agreement.

F. No Third Party Beneficiaries.

This Agreement does not create, and shall not be construed as creating, any right enforceable by any person not a party to this Agreement. Any covenant or agreement contained in this Agreement shall be only for the benefit of the Parties and their respective successors and permitted assigns.

G. Relationship of the Parties.

Nothing in this Agreement shall create or be deemed to create the relationship of partners, joint venturers, employer-employee, fiduciaries or principal-agent among the Parties, nor shall any Party have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other Party or to bind any other Party in any manner whatsoever, nor shall any Party make any representation, warranty, covenant, agreement, or commitment on behalf of any other Party.

H. Limited Waivers of Sovereign Immunity and Dispute Resolution.

(a) By the City. The City hereby waives its immunity, if any, in the Courts of the Commonwealth or federal courts of appropriate jurisdiction, in favor of the Tribe and GEC for the purpose of resolving all Disputes. The parties expressly acknowledge and agree, however, that any waiver of sovereign immunity provided for in this Agreement shall not apply to acts of the City related to the performance of governmental functions.

(b) By the Tribe. The Tribe hereby waives on a limited basis its sovereign immunity in the courts of the Commonwealth or federal courts of appropriate jurisdiction in favor of the City for the purpose of resolving all Disputes and with respect to any obligation to pay taxes levied by the City whether such taxes are currently in effect or authorized subsequent to the date of this Agreement, provided that any monetary judgment or award against the Tribe resulting from any Dispute shall, to the extent permitted by law, be enforced or collected only from Project Assets. The Tribe also expressly forgoes and waives any claim that the exhaustion of any Tribal court proceeding is or will be a necessary prerequisite to the initiation or maintenance of any actions subject to the waivers herein. The parties expressly acknowledge and agree, however, that any waiver of sovereign immunity provided for in this Agreement shall not apply to acts of the Tribe related to the performance of governmental functions.

(c) The Parties also agree that to the extent any suit is commenced as provided for herein, such suit and related Claim shall be brought in the Court (and appeals therefrom shall be brought in the Virginia Appellate Courts) or any federal courts of appropriate jurisdiction and the Parties hereby consent to the jurisdiction of such courts.

I. Arbitration.

(a) Upon the request of any party, each of the City, the Tribe and GEC agrees to submit to binding arbitration all Non-Tax Disputes between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise in any way arising out of or relating to this Agreement.

(b) Any arbitration proceeding will (A) proceed in a location in the Commonwealth selected by the AAA; (B) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (C) be conducted by the AAA in accordance with the AAA's commercial dispute resolution procedures, unless the claim or counterclaim is at least \$1,000,000.00 exclusive of claimed arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA's optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to herein as applicable, as the "Rules"). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any dispute.

(c) The arbitration requirement does not limit the right of any party to obtain provisional or ancillary remedies such as replevin, injunctive relief or attachment, before during or after the pendency of any arbitration proceeding.

J. Choice of Law.

The laws of the Commonwealth shall govern the validity or enforceability and the interpretation and construction of all provisions of this Agreement and all issues hereunder.

K. Effective Date.

Subject to Section 15(A) hereof, this Agreement shall become effective on the date (the "Effective Date") that this Agreement is executed by each of the Parties.

L. Amendment/Modification.

This Agreement may not be modified or amended except by a writing of equal formality signed by each of the Parties. The Agreement shall be subject to re-opening upon the occurrence of certain significant events that may occur after the Acquisition Date, including, without limitation, jurisdictional issues, material changes in economic conditions, changes in applicable law, or changes in exclusivity within the Project's primary market. Upon any re-opening of the

Agreement, the Parties will agree to renegotiate the terms of the Agreement in good faith; provided that if agreement is not reached by the parties within 90 days (or such later period as may be agreed to), then the Agreement shall remain in effect.

M. Impairment.

The Tribe agrees that it will not adopt any resolution (i) negating or impairing the provisions of this Agreement, or (ii) revoking, modifying or changing the Tribe's limited waiver of sovereign immunity set forth in this Agreement.

N. Good Faith and Fair Dealing.

The Parties to this Agreement agree that this Agreement imposes on them a duty of good faith and fair dealing.

O. Indemnification.

(i) The Tribe agrees to and shall indemnify, defend, protect, and hold harmless the City from and against any and all Claims, and in case any action or proceeding be brought against the City (or the City's agents, employees, contractors, subcontractors or legal counsel) by reason of any such Claim, the Tribe upon notice from the City shall have the option to defend the City relative to such Claim at the Tribe's expense by counsel reasonably satisfactory to the City. However, in the event that the Tribe does not elect to defend the action or proceeding, the City shall defend the same, at the Tribe's expense, and shall consult with the Tribe during the pendency of the action or proceeding.

(ii) The City agrees to and shall indemnify, defend, protect, and hold harmless the Tribe from and against any and all Claims, and in case any action or proceeding be brought against the Tribe (or the Tribe's agents, employees, contractors, subcontractors or legal counsel) by reason of any such Claim, the City upon notice from the Tribe shall have the option to defend the Tribe relative to such Claim at the City's expense by counsel reasonably satisfactory to the Tribe. However, in the event that the City does not elect to defend the action or proceeding, the Tribe shall defend the same, at the City's expense, and shall consult with the City during the pendency of the action or proceeding.

(iii) Notwithstanding the foregoing provisions of this Section: (A) the City shall be liable to the Tribe under the provisions of this Section only to the extent that the City would have been liable under applicable statutes of the Commonwealth had the action or proceeding giving rise to the Claim for which indemnification is being sought been brought by a non-Party; and (B) the Tribe shall be liable to the City under the provisions of this Section only to the same extent that the Tribe would have been liable assuming the same applicable statutes of the Commonwealth were also applicable to the Tribe had the action or proceeding giving rise to the Claim for which indemnification is being sought been brought by a non-Party.

P. Entire Agreement/Merger.

This Agreement contains the entire agreement between the Parties and supersedes any and all other agreements, either oral or written, between the Parties with respect to the subject matter. This Agreement may only be amended in writing with the approval of each of the Parties.

Q. Execution in Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute but one and the same instrument.

R. Term.

The effectiveness of this Agreement will commence on the Effective Date and will continue in perpetuity but shall be subject to termination or amendment with the written consent of all Parties.

Section 11. 25 U.S.C. §81.

Nothing herein or in any other agreement between the parties is intended, nor shall it be deemed, to encumber any interest in Indian lands within the meaning of 25 U.S.C. §81, and no interpretation shall be given to this Agreement or any such other agreement which would have the effect of such an encumbrance. Notwithstanding any right of the City, or any requirements or restrictions imposed on the Tribe in this Agreement or any such other agreement, any right, requirement or restriction that "encumbers Indian land" within the meaning of 25 U.S.C. §81 in this Agreement or any such other agreement shall not be effective for a period longer than six years and 364 days.

Section 12. Additional Covenants.

A. Conditions to Closing.

As a condition to the execution and delivery of this Agreement by the Parties hereto agree:

(i) The Tribe shall: (A) adopt a Tribal Council resolution of limited waiver of sovereign immunity in reasonable and customary form consistent with the provisions of this Agreement, which formally waives the sovereign immunity of the Tribe exclusively in favor of the City as to Disputes, and (B) deliver to the City its Legal Opinion;

(ii) GEC shall deliver to the City its Legal Opinion; and

(iii) The City shall deliver to the Tribe and GEC the Legal Opinions.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

City of Norfolk, Virginia

Pamunkey Indian Tribe

By: [Signature]
Title: City Manager
Date: 1/10/20

By: _____
Title: Chief
Date: _____

ATTEST:

Golden Eagle Consulting, LLC

[Signature]
City Clerk

By: _____
Title: _____
Date: _____

Approved as to Form and Correctness:

By: [Signature]
Title: City Attorney
Date: 1/10/20

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

City of Norfolk, Virginia

Pamunkey Indian Tribe

By: _____
Title: City Manager
Date: _____

By: _____
Title: Chief
Date: _____

ATTEST:

Golden Eagle Consulting II, LLC

City Clerk

By: Riase Green
Title: Treasurer
Date: 11/13/20

Approved as to Form and Correctness:

By: _____
Title: City Attorney
Date: _____

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the date first above written.

City of Norfolk, Virginia

By: _____
Title: City Manager
Date: _____

Pamunkey Indian Tribe

By:  _____
Title: Chief
Date: 1/12/2020

ATTEST:

City Clerk

Golden Eagle Consulting, LLC

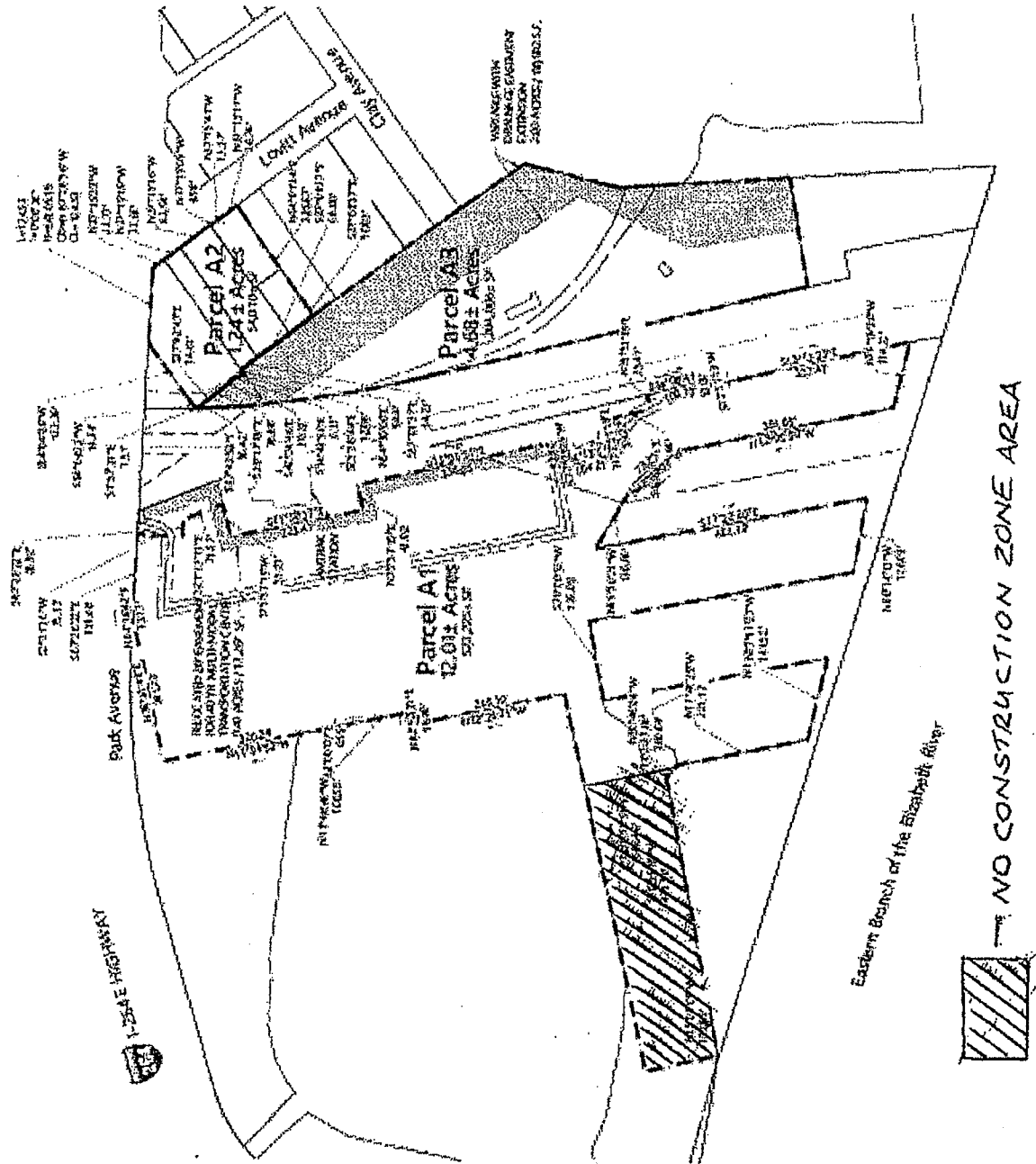
By: _____
Title: _____
Date: _____

Approved as to Form and Correctness:

By: _____
Title: City Attorney
Date: _____

Exhibit A

Map of the Subject Property



The Subject Property includes the parcels identified as "Parcel A1" and "Parcel A2."

Exhibit B

Construction Milestones

Construction Phase	Completion Date (In months following Acquisition Date)
<u>Site Work</u>	
Mobilize and Setup Worksite	Three Months
Clear Site	Four Months
Site Grading	Six Months
Site Utilities	Nine Months
Roadways and Temporary Parking	Twelve Months
Landscaping	Eighteen Months
<u>Casino, Hotel and Parking Garage</u>	
Foundations	Nine Months
Structural Steel	Twelve Months
Underground	Fourteen Months
Exterior Walls	Seventeen Months
Interior Rough-In	Twenty-One Months
Interior Finishes	Twenty-Two Months
Install FF&E	Twenty-Four Months

Each of the Tribe, GEC and the City acknowledge and agree this Exhibit B will be revised in its entirety to conform to the construction commencement target date, the phasing plan, the phase completion target dates and the final completion target date for the Project set forth in the final Construction and Use Covenant.