

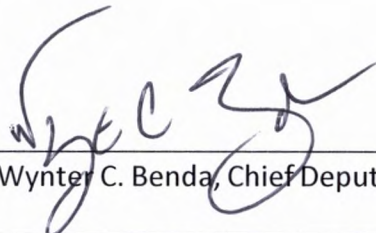


To the Honorable Council
City of Norfolk, Virginia

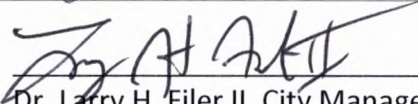
September 24, 2019

From: Jared Chalk, Interim Director
Department of Development

Subject: An Ordinance approving an intergovernmental agreement between the Pamunkey Indian Tribe and the City of Norfolk, approving an option to purchase between the City of Norfolk and Golden Eagle Consulting II, LLC

Reviewed: 
Wynter C. Benda, Chief Deputy City Manager

Ward/Superward: 4/7

Approved: 
Dr. Larry H. Filer II, City Manager

Item Number: PH-5

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk

III. **Description:**

This agenda item is an ordinance approving a resolution an intergovernmental agreement between the Pamunkey Indian Tribe and the City of Norfolk (the "City"), approving an option to purchase between the City and Golden Eagle Consulting II, LLC to develop a resort hotel and casino on land owned by the City and located at Harbor Park.

IV. **Analysis**

Pamunkey Indians, a sovereign nation, are identifying sites for a variety of uses and wish to apply to the US Department of Interior to operate a class 2 or 3 casino in Virginia on land adjacent to Harbor Park. They have the ability to have a casino with Class 2 games under their federal recognition by right. The project scope is subject to change based on market and general assembly actions, but initial projections include a \$700 million resort development with upwards of 4,500 slots, 225 tables, a full-service hotel with 3-5 restaurants and as spa. In addition, a parking garage will be constructed to serve the area.

The option agreement has a total term of five (5) years with option payments of \$100,000 per year and allows the Tribe to exercise its option for either a commercial or tribal casino. The property to be purchased is approximately 13.25 acres. If a tribal casino, after closing on the sale, Tribe pays \$125,000 per year until casino opens. After opening, the Tribe will pay

the City 4% of Net Gaming Revenues with a minimum of \$3M per year (escalated with real estate values) If a commercial casino, the Tribe will pay taxes including any local option that might be approved by the General Assembly. In both scenarios the Tribe is responsible for any infrastructure, flood mitigation, or utility improvements directly necessary as a result of the casino project.

V. Financial Impact

Purchase price is based on appraisal of \$750,000 per acre for a total purchase price of \$9,937,500. The Tribe will pay the City 4% of Net Gaming Revenues with a minimum of \$3 million per year (escalated with real estate values).

VI. Environmental

There are no known environmental issues associated with this property.

VII. Community Outreach/Notification

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

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

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

Supporting Material from the City Attorney's Office:

- Ordinance

Form and Correctness Approved:

By [Signature]
Office of the City Attorney

RAP

Contents Approved:

By [Signature]

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE PAMUNKEY INDIAN TRIBE AND THE CITY OF NORFOLK, APPROVING AN OPTION TO PURCHASE BETWEEN THE CITY OF NORFOLK, GOLDEN EAGLE CONSULTING II, LLC, AND THE PAMUNKEY INDIAN TRIBE, AND AUTHORIZING THE CITY MANAGER TO ENTER INTO THE INTERGOVERNMENTAL AGREEMENT AND THE OPTION TO PURCHASE ON BEHALF OF THE CITY OF NORFOLK.

- - -

WHEREAS, the City of Norfolk (the "City") and the Pamunkey Indian Tribe (the "Tribe") recognize that each is a governmental entity with mutual responsibility for the welfare of its people;

WHEREAS, the Tribe and Golden Eagle Consulting II, LLC ("GEC") desire to acquire an option to purchase land suitable for the development and operation of a casino (the "Project"), which land is intended to be conveyed to the United States of America in trust for the benefit of the Tribe;

WHEREAS, the City owns approximately fourteen (14) acres of land located in the City of Norfolk, Commonwealth of Virginia (the "Commonwealth") as more fully described on Exhibit A to the Option to Purchase (the "Land"), a copy of which is attached hereto as Exhibit A (the "Option Agreement"), and identified as Parcel A1

and Parcel A2 therein; it being agreed that Parcel A1 is intended to exclude any lands reasonably necessary, as determined by the City, to provide vehicular and bus access, including turnabout areas and pedestrian drop-off and pickup areas, to and from the existing Amtrak Station;

WHEREAS, GEC and the Tribe have requested an option to purchase the Land upon the terms and conditions set forth in the Option Agreement;

WHEREAS, as a condition to entering into the Option Agreement, the City and the Tribe must enter into an Intergovernmental Agreement (the "IGA"), a copy of which is attached hereto as Exhibit B, in connection with the Tribe's intent to develop and construct the Project on the Land and thereafter to operate the Project;

WHEREAS, as a condition to entering into the Option Agreement and the IGA, the Tribe has agreed to, and will, submit a Trust Application to the United States Department of Interior for the Tribe's acquisition in trust of the Land as part of the Tribe's initial reservation land for the purposes of conducting gaming upon the Land; NOW, THEREFORE

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

Section 1:- That the Option to Purchase among the City of Norfolk, Golden Eagle Consulting II, LLC, and the Pamunkey Indian Tribe, a copy of which is attached hereto as Exhibit A, wherein the City grants to Golden Eagle Consulting II, LLC and the Pamunkey Indian Tribe an option

to purchase the Land, is hereby approved.

Section 2:- That the Intergovernmental Agreement between the Pamunkey Indian Tribe and the City of Norfolk, a copy of which is attached hereto as Exhibit B, wherein the City of Norfolk and the Pamunkey Indian Tribe agree to the terms under which the Pamunkey Indian Tribe will construct and operate the Project on the Land, is hereby approved.

Section 3:- That the City Manager is authorized to correct, amend, or revise the Intergovernmental Agreement and the Option to Purchase as he may deem necessary in order to carry out the intent of the Council and to execute the Intergovernmental Agreement and the Option to Purchase, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

Intergovernmental Agreement

By and Between

The Pamunkey Indian Tribe

And

The City of Norfolk, Virginia

September [], 2019

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LIST OF EXHIBITS AND SCHEDULES

Exhibit A Map of the Subject Property

Exhibit B Description of the Project and Construction Milestones

INTERGOVERNMENTAL AGREEMENT

By and Between the Pamunkey Indian Tribe

and

the City of Norfolk, Virginia

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into as of the ____ day of September 2019, by and between the Tribe, whose address is 1054 Pocahontas Trail, King William, Virginia, 23086, 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 City and the Tribe recognize that each is a governmental entity with mutual responsibility for the welfare of its people.

2. The Tribe has engaged Golden Eagle Consulting II, LLC (“GEC”), a Delaware limited liability company, as the Tribe’s exclusive developer for the Project.

3. 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.

4. The Tribe will submit a Trust Application to the United States Department of the Interior for the acquisition in trust of the Subject Property as part of the Tribe’s initial reservation land.

5. The Tribe’s intention is to develop the Project on the Subject Property.

6. 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 pursue the development of a commercial casino in the City but will continue to fully pursue the Trust Application.

7. The Tribe is currently negotiating a Compact with the Governor of the Commonwealth, which Compact may provide for the joint exercise of jurisdiction of the Tribe and the Commonwealth to regulate Gaming on the Subject Property pursuant to state and federal laws where applicable.

8. The Tribe desires to have the support and cooperation of the City in the conclusion of the Compact, the Trust Application and the development of the Project.

9. The City desires to support the Tribe's efforts to obtain approval of the Compact and Trust Application and the development of the Project.

10. 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 desires to mitigate said impacts through the means described in this Agreement.

11. The Tribe may utilize certain municipal and related services rather than duplicate such services on the Subject Property and accordingly desires to pay, or reimburse the City, for such services that the Project will require, and the City desires to provide such services.

12. The Tribe 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 earlier to occur of the Trust Acquisition Date or the Fee Acquisition Date.

“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 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 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.

“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.

“Compact” means the Tribe-Commonwealth gaming compact, as the same may be amended, modified, or restated from time to time in accordance with the terms thereof, or procedures prescribed by the Secretary of Interior pursuant to IGRA governing the conduct of Class III (as defined in IGRA) gaming activities by the Tribe.

“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, 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.

“Fee Acquisition Date” means the date that the Subject Property is transferred to the Tribe in fee if the Tribe is granted the right to conduct Gaming thereon under all applicable laws of the Commonwealth.

“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 under IGRA or by the Commonwealth.

“Gaming” means any Class II or Class III (each as defined in IGRA) gaming, and any other 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 under IGRA or by the Commonwealth, whether or not conducted at the Subject Property.

“Governor” means the Governor of the Commonwealth.

“Guaranteed Amount” means an amount equal to Three Million and 00/100 Dollars (\$3,000,000), as adjusted annually by the 10-Year Average Annual Growth Rate of Total Assessed Value, as contemplated in Section 5(A). In no case shall the Guaranteed Amount be less than Three Million and 00/100 Dollars (\$3,000,000). The Guaranteed Amount shall be prorated for any partial year. Commencing on January 31 of each calendar year occurring after the Opening Date, the City shall determine the Guaranteed Amount to be paid by the Tribe for the immediately preceding calendar year utilizing the 10-Year Average Annual Growth Rate of Total Assessed Value from Schedule 1, or similarly numbered or titled table, “Assessed Valuations and Estimated Actual Values of Taxable Property Last Ten Fiscal Years” in the City’s annual Comprehensive Annual Financial Report (e.g., Guaranteed Amount for the immediately preceding calendar year example with Opening Date index year of 2019 would be a 0.74% increase above the base of \$3,000,000 or \$3,022,343).

“IGRA” means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. Section 2701 et seq. and 18 U.S.C. Sections 1166 to 1168.

“Impact Payments” means those payments described in Section 5 hereof.

“Impacts” means collectively, the following off-reservation impacts resulting from the Project and the conduct of Gaming at the Subject Property: (i) loss of City tax revenue; (ii) increased use of City services; (iii) increased use of City infrastructure; (iv) the need for additional infrastructure, City employees and equipment; (v) increased need for maintenance, repair and replacement of City infrastructure; and (vi) costs related to mitigating actual off-reservation 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, an opinion by legal counsel to the City (which opinion may be issued by the City Attorney) and reasonably acceptable to the Tribe that this Agreement has been duly executed and authorized by the City, and (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 the limited waiver of sovereign immunity as set forth in this Agreement is enforceable in accordance with its terms.

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

“Mitigation Payments” means the payments contemplated in Section 5.A of this 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.

“NIGC” means the National Indian Gaming Commission, the federal Indian gaming regulatory body.

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

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

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

“Percentage Amount” means, for any period, an amount equal to four percent (4%) of all Net Gaming Revenue for such period.

“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 under this Agreement or the Option Agreement; provided that at no time shall the Tribe distribute any Project Assets reasonably necessary to operate and maintain the Project, 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 primarily or substantially used or intended to be used in connection with the Project, (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.

“Protected Assets” means, collectively, (i) any interests in real property held in trust by the United States of America or the Commonwealth for the benefit of the Tribe, and any improvements, fixtures or accessions to such property, (ii) any assets against which it would be a violation of federal law or state law for the City to enforce remedies, (iii) any assets belonging to or held in trust for individual members of the Tribe, including assets credited to trust accounts for minors or legally incompetent persons, (iv) assets credited to any special revenue funds which are subject to restrictions in connection with the administration of any state or federal grants or programs by the Tribe, (v) any assets used in connection with the provision of customary governmental services by the Tribe, such as those related to health, safety and welfare, (vi) any assets that can only be legally owned by an Indian tribe, and (vii) Permitted Distributions made in accordance with this Agreement.

“Recourse Assets” means any Project Assets other than Protected Assets.

“Secretary” means the Secretary of the United States Department of the Interior or an officer acting on behalf thereof.

“Subject Property” means approximately 14 acres of land in the City in the area shaded in brown on Exhibit A attached hereto.

“10-Year Average Annual Growth Rate of Total Assessed Value” means the percentage growth for each year as shown in Schedule 1, or similarly numbered or titled table, “Assessed Valuations and Estimated Actual Values of Taxable Property Last Ten Fiscal Years” in the City’s annual Comprehensive Annual Financial Report. The growth rate for a fiscal year is calculated by dividing the current value by the previous value (Percentage Growth Rate = (Ending value / Beginning value) -1) for each of the ten (10) immediately preceding fiscal years. The Average Annual Growth Rate (AAGR) is calculated by dividing the sum of the 10 immediately preceding fiscal years growth rate determined above by 10 as the number of years (AAGR = (Growth Rate Year 1 + Growth Rate Year 2 + Growth Rate Year 3 + Growth Rate Year 4 + Growth Rate Year 5 + Growth Rate Year 6 + Growth Rate Year 7 + Growth Rate Year 8 + Growth Rate Year 9 + Growth Rate Year 10) / 10).

“Tribal Code Compliance Officers” means engineers, architects or similar experts who shall be knowledgeable regarding building, fire, health and safety codes generally to be retained by the Tribe.

“Tribal Codes” means ordinances setting forth codes adopted by the Tribe for building, fire, health and safety for the Subject Property.

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

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

“Trust Acquisition Date” means the date the Subject Property is accepted into trust by the United States of America for the benefit of the Tribe and is finally determined to be eligible for

the conduct of Gaming by the Tribe pursuant to IGRA after the exhaustion of all administrative and legal challenges thereto.

“Trust Application” means a fee-to-trust application of the Tribe to Interior with respect to the Subject Property.

Section 2. Project.

A. Approvals.

The Tribe shall use its reasonable efforts to promptly apply for, pursue and obtain all Approvals necessary to design, develop, construct and operate the Project, and the City shall use its reasonable efforts to assist and support the Tribe in obtaining such Approvals. 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 will seek Approvals for the development of a commercial Casino on the Subject Property, (b) the Tribe and GEC will pursue the development of and financing for a commercial Casino on the Subject Property, and (c) it shall be a condition to the Subject Property being placed into trust with the United States Government on behalf of the Tribe that the Tribe shall have executed a guaranteed maximum price construction contract for the Casino. Without limiting the foregoing, the City agrees to support the acquisition of the Subject Property in trust for the Tribe for Gaming purposes and the proclamation thereof as part of the Tribe’s initial reservation, including, without limitation, by sending letters of support to the U.S. Department of the Interior in connection with the Trust Application, and to cause the Trust Acquisition Date to occur as soon as practicable following submission of the Trust Application. Until all such 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 and the Tribe, in consultation with Interior, shall negotiate diligently and in good faith prior to the exercise of 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 Interior, 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 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. Any provisions in the Construction and Use Covenant relating to the design, permitting or construction of the Project shall provide for extensions of time for performance by the Tribe due to delays in the processing of the Trust Application. Notwithstanding the foregoing, each of the City and the Tribe acknowledges and agrees that the Construction and Use Covenant will be subject to applicable federal law and will comply with all requirements of Interior necessary for the Subject Property to be accepted into trust for the Tribe. The Construction and Use Covenant will be executed as a closing document on the Fee 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.

This Agreement will include, to the extent permitted by Interior, a commercially reasonable covenants and reciprocal easement agreement (“C&REA”) for the Subject Property, the terms and conditions of which will be negotiated by the Parties in good faith prior to the exercise of the Option Agreement, 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 and the Tribe 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 5.B(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. Notwithstanding the foregoing, each of the City and the Tribe acknowledges and agrees that the terms and conditions of the C&REA will be subject to applicable federal law and will comply with any requirements necessary for the Subject Property to be accepted into trust for the Tribe. The form and substance of the

C&REA will be finalized by the Parties prior to the expiration of the Option Agreement and executed as a closing document on the Fee Acquisition Date.

D. Events of Default; Leaseback.

As a condition to the Subject Property being placed into trust with the United States Government on behalf of the Tribe, the Tribe (a) shall have established Tribal leasing regulations that have been submitted to, and approved by, the Secretary under the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (the “HEARTH Act”) that permits the City to lease the Subject Property from the Tribe for a term of 25 years with one renewal period of 25 years (the “Maximum HEARTH Act Term”) and (b) shall have executed a lease option with the City pursuant to which, at the City’s option, the City may lease the Subject Property back from the Tribe for the Maximum HEARTH Act Term for annual payments of \$10 (a “HEARTH Act Lease”) in the event that (i) the Tribe fails to make any payment due to the City within 30 days following written notice to the Tribe that such payment was not made when due; or (ii) the Project ceases to operate Gaming that meets the Minimum Standards for any reason 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); or (iii) the Tribe fails to commence construction on the Project prior to the second (2nd) anniversary of the Trust Acquisition Date; provided that if the City exercises its leaseback option as a result of such failure to construct, the Subject Property will revert back to the Tribe if it commences construction of the Project within ninety (90) days following the City’s exercise of the option. No Mitigation Payments will be payable to the City for any period during which the Subject Property is leased to the City pursuant to a HEARTH Act Lease.

E. Obligations to Complete.

After the Acquisition Date, except upon the occurrence of a Force Majeure Event, the Tribe 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 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 the Environmental Impact Statement 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 the Environmental Impact Statement and that are otherwise required to determine compliance with the National Environmental Policy Act. The Tribe shall consider, and use reasonable efforts to incorporate, such comments in good faith into the Tribe’s submissions regarding the Project.

Section 3. Future Land Acquisition.

If the Tribe acquires lands in the City in addition to the Subject Property and subsequently seeks to have such land acquired in trust for the Tribe, the Parties agree to negotiate in good faith a separate agreement to mitigate any impacts of any activities proposed to be conducted by the Tribe thereon, including, without limitation, loss of City tax revenues. Absent such an agreement and notwithstanding any other terms of this Agreement, the City shall have no obligation to support any application for such new land going into trust.

Section 4. Mitigation Measures.

The Parties agree that the Impact Payments are made in lieu of all taxes and other assessments for the Subject Property otherwise due to the City and/or the City's departments, boards or commissions including, but not limited to, its police and fire departments. In conjunction with the measures set forth herein, the Impact Payments constitute the Tribe's mitigation efforts and are in full and complete satisfaction of all Impacts for the Subject Property whether or not identified in this Agreement.

Section 5. Impact Payments and Infrastructure Costs.

A. Mitigation Payments.

(a) Following the Trust Acquisition Date, in order to mitigate the Impacts resulting from the Project, to fund certain police, fire protection, emergency medical and other services to be provided for the Project by the City, and as payments in lieu of taxes against all property (real and personal) and all activity that would otherwise be taxable by the City if the Subject Property were not acquired in trust, and as consideration for the City's assistance and support of the Project as contemplated in this Agreement, the Tribe shall pay to the City the amounts set forth below for the applicable periods (the "Mitigation Payments"):

(1) For the period from the Trust Acquisition Date until the Opening Date, \$125,000 per year payable in monthly installments;

(2) From and after the Opening Date, the greater of (a) the applicable Guaranteed Amount or (b) four percent (4%) of all Net Gaming Revenue.

(b) Prior to the Opening Date, Mitigation Payments shall be due and payable to the City monthly in arrears, on the last Business Day of each calendar month. On and after the Opening Date, any required Mitigation Payments shall be paid quarterly in arrears within 45 days after the last day of each calendar quarter commencing on the first such date to occur after the Opening Date; provided, however, that if by the terms of the Compact, the Tribe is required to make a payment to the Commonwealth based upon gaming revenue of the Project on a basis more frequently than quarterly, then the Tribe agrees to pay such Mitigation Payments to the City on a basis no less frequently than the Tribe is making such payments to the Commonwealth.

(c) On January 31 of each calendar year occurring after the Opening Date, the Tribe shall determine the aggregate Percentage Amounts paid to the City for the immediately preceding calendar year. If such amount is less than the Guaranteed Amount, prorated for any partial year, the Tribe shall pay to the City, no later than February 15 (or if such date is not a Business Day, then the Business Day immediately following February 15), an amount equal to the difference between such Guaranteed Amount and such aggregate Percentage Amounts.

(d) The City will not seek payments to be made after the Trust Acquisition Date from the Commonwealth of Virginia regarding the Project and to the extent the City receives any such payments through the Compact or otherwise, such amounts shall be credited towards the Mitigation Payments.

(e) If Gaming that meets the Minimum Standards ceases to be conducted at the Project following the Opening Date for more than 90 consecutive days (other than in connection with any temporary closure resulting from a Force Majeure Event, a casualty event or new construction on the Subject Property), then the Parties agree to meet and negotiate in good faith an alternate calculation for the Mitigation Payments that will thereafter be due and payable to the City based on the highest and best use of the Subject Property; provided, however, that in no event will the aggregate Mitigation Payments for any calendar year be less than the Guaranteed Amount.

B. One-Time Impact Costs.

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 or required by the Compact.

The scope and estimated costs of the forgoing infrastructure improvements to be funded by the Tribe pursuant to this Section 5.B 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.

C. 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.

D. Financial Audits.

Following the Trust Acquisition Date, the City shall have the right, upon reasonable prior notice to the Tribe, to examine those portions of the financial audits provided by the Tribe to the Commonwealth pursuant to the Compact related to the calculation of Net Gaming Revenue or, if the Compact does not require that the Tribe provide such audits to the Commonwealth, the Tribe at its own expense shall cause an independent CPA to annually furnish to the City no later than 90 days following the end of each fiscal year of the Tribe, the calculation of Net Gaming Revenue for the prior fiscal year. In addition, within 45 days following the end of each fiscal quarter following the Opening Date, the Tribe will provide to the City quarterly unaudited financial statements of the Project related to the calculation of Net Gaming Revenue for each prior fiscal quarter.

E. Compulsive Gambling.

The Tribe recognizes that the operation of Gaming on the Subject Property may adversely impact individuals who suffer from problem or pathological gambling addiction disorders. Moreover, the Tribe is committed to supporting problem gambling education, awareness and treatment for such individuals. The Tribe shall make a contribution of Sixty Thousand Dollars (\$60,000) no later than thirty (30) days after the Opening Date and Thirty Thousand Dollars (\$30,000) annually thereafter no later than thirty (30) days after each anniversary of the Opening Date to a local center for the treatment of compulsive gambling or in lieu thereof to the City. 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; and (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.

Section 6. Insurance.

(a) Following the Trust 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 as provided in the Compact, or if the Compact does not require that such insurance be provided, then 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 Trust 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 7. Ordinances and Inspection.

A. Tribal Codes.

In order to protect the health and safety of all patrons, guests and employees of the Project, the Project shall meet the building, health and safety codes established by the Tribe. The Tribe shall adopt Tribal Codes that are no less restrictive than similar codes now or hereafter in effect in the Commonwealth. The Tribe shall retain or hire Tribal Code Compliance Officers, who shall be knowledgeable regarding building, health and safety codes generally (including the Tribal Codes) and who shall be responsible for (i) reviewing the Project's plans and specifications in order to confirm that the Project's design and construction meet the minimum standards set forth in, and otherwise comply with, the Tribal Codes; (ii) granting all building permits for the Project in compliance with such Tribal Codes; (iii) conducting all inspections to assure compliance with the Project's plans and specifications and all building permits; and (iv) inspecting the compliance of the Tribe with the Tribal Codes as to health and safety, specifically as to any food service operations or restaurants within the Project.

B. Dispute Resolution.

In the event either (i) the City believes that the Tribal Codes are less restrictive than similar codes now in effect in the Commonwealth or the City, or (ii) the Project is not being constructed in accordance with the Project's plans and specifications or such construction or the operations of

the Casino or its food service operations or restaurants is in violation of the Tribal Codes, then the dispute resolution procedures of Section 12.H may be invoked by the City.

Section 8. 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 9. 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 10. Prohibited Activities.

The Tribe acknowledges and agrees that the Compact (or another agreement with the Commonwealth in the event Gaming is conducted pursuant to the laws of the Commonwealth) will include the following restrictions on activities located on the Subject Property and it will adopt Tribal ordinances that address such issues:

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.

F. Billboards and Signage.

Subject to the Construction and Use Covenant, the Tribe shall be permitted to erect billboards and signage on the Subject Property but agrees that all billboards and signage will be in conformity with then-current rules and regulations of the City for billboards and signage applicable to commercial enterprises.

Section 11. 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.

The City shall provide the services identified in this Agreement. 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 .

Section 12. 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

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 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 under this Agreement, provided that any monetary judgment or award against the Tribe resulting from any Dispute shall be enforced or collected only from Recourse 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 and the Tribe agrees to submit to binding arbitration all Claims 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 both Parties.

L. Amendment/Modification.

This Agreement may not be modified or amended except by a writing of equal formality signed by both Parties. The Agreement shall be subject to re-opening upon (i) changes in law affecting the exclusivity of Indian gaming in the Commonwealth prior to the Trust Acquisition Date, (ii) each thirtieth anniversary of the Agreement, and (iii) the occurrence of certain significant events that may occur after the Trust 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 both Parties.

Q. Approval by Interior.

At a mutually acceptable time, the Parties agree to submit this Agreement to Interior for either (i) approval pursuant to 25 U.S.C. § 81 or (ii) a written reply from Interior that this Agreement does not require approval under 25 U.S.C. § 81 to be enforceable.

R. 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.

S. 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 13. Management Limitations

Notwithstanding any provision in this Agreement or any other agreements between the parties, or any other right to enforce the provisions of this Agreement or such other agreements, the City shall not engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Tribe's gaming operations (collectively, "Management Activities"), including:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;
- (b) any working or employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or place or placement of any gaming device or equipment; or
- (h) budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided however, that upon the occurrence of a default by the Tribe, the City will not be in violation of the foregoing restrictions solely because the City:

- (a) enforces compliance with any term in this Agreement or such other agreements between the parties that does not require the gaming operations to be subject to any third-party decision-making as to any Management Activities; or
- (b) requires that all or any portion of any revenues of the gaming operations be applied to satisfy valid terms of this Agreement or such other agreements between the parties; or
- (c) otherwise forecloses on all or any portion of any collateral securing the Tribe's obligations under this Agreement or such other agreements between the parties.

NOTWITHSTANDING ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION(S) CONTAINED IN THIS AGREEMENT OR IN ANY OTHER AGREEMENT BETWEEN THE PARTIES, THE PARTIES HERETO AGREE THAT WITHIN THE MEANING OF IGRA: (A) THIS AGREEMENT AND SUCH OTHER AGREEMENTS, INDIVIDUALLY AND COLLECTIVELY, DO NOT AND SHALL NOT PROVIDE FOR THE MANAGEMENT OF ALL OR ANY PART OF THE TRIBE'S GAMING OPERATIONS BY ANY PERSON OTHER THAN THE TRIBE OR DEPRIVE THE TRIBE OF THE SOLE PROPRIETARY INTEREST AND RESPONSIBILITY FOR THE CONDUCT OF THE TRIBE'S GAMING OPERATIONS; AND (B) NEITHER THE CITY NOR ANY OF ITS AGENTS, EMPLOYEES, OFFICERS OR OTHER REPRESENTATIVES WILL EXERCISE ANY REMEDY OR OTHERWISE TAKE ANY ACTION UNDER OR IN CONNECTION WITH THIS AGREEMENT OR SUCH OTHER AGREEMENTS BETWEEN THE PARTIES IN A MANNER THAT WOULD CONSTITUTE MANAGEMENT OF ALL OR ANY PART OF THE TRIBE'S GAMING OPERATIONS OR

THAT WOULD DEPRIVE THE TRIBE OF THE SOLE PROPRIETARY INTEREST AND RESPONSIBILITY FOR THE CONDUCT OF SUCH GAMING OPERATIONS.

Section 14. 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 15. 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 the Legal Opinion; and
- (ii) The City shall deliver to the Tribe the Legal Opinion.

[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: _____
Title: City Manager
Date: _____

By: _____
Title: Chief
Date: _____

ATTEST:

City Clerk

Approved as to Form and Correctness:

By: _____
Title: City Attorney
Date: _____

Exhibit A

Map of the Subject Property

Exhibit B

Description of the Project and Construction Milestones

A. Commercial Casino Development

PHASE 1 DESCRIPTION AND TIMELINE:

PHASE 2 DESCRIPTION AND TIMELINE:

B. IGRA Casino Development

PHASE 1 DESCRIPTION AND TIMELINE:

PHASE 2 DESCRIPTION AND TIMELINE:

OPTION TO PURCHASE

This **OPTION TO PURCHASE** (this “Option Agreement”) is entered into effective as of September __, 2019 (the “Effective Date”) by and between **CITY OF NORFOLK** (“City”), a municipal corporation of the Commonwealth of Virginia, **GOLDEN EAGLE CONSULTING II, LLC** (“GEC”), a Delaware limited liability company, and the **PAMUNKEY INDIAN TRIBE** (the “Tribe”), a federally recognized Indian tribe.

BACKGROUND

A. The City and the Tribe recognize that each is a governmental entity with mutual responsibility for the welfare of its people.

B. The Tribe and GEC are parties to a certain Amended and Restated Development Agreement dated as of April 11, 2019, pursuant to which GEC has agreed to acquire an option to purchase a fee interest in a location suitable for the Project (hereinafter defined) which is intended to be conveyed to the United States of America in trust for the benefit of the Tribe promptly upon the approval of the Secretary of the United States Department of the Interior.

C. The City owns approximately 14 acres of land located in the City of Norfolk, Commonwealth of Virginia (“Commonwealth”) as more fully described on the attached **Exhibit A** (“Land”) and identified as Parcel A1 and Parcel A2 therein; it being agreed that Parcel A1 is intended to exclude any lands reasonably necessary, as determined by the City, to provide vehicular and bus access, including turnabout areas and pedestrian drop-off and pickup areas, to and from the existing Amtrak Station to Park Avenue, it being further agreed that the legal description and graphic depiction of Parcel A1, as shown on the attached Exhibit A, is intended to provide for this, provided, however, in the event the City reasonably determines that additional area is needed to provide such access, the City, the Tribe and GEC shall reasonably cooperate in good faith to revise the boundary of Parcel A1 to provide such access.

D. GEC has requested an option to purchase the Land, and the City agrees to grant GEC an option to purchase the Land, subject to the terms and conditions of this Option Agreement.

E. As a condition to entering into this Option Agreement, the City and the Tribe shall enter into the Intergovernmental Agreement dated as of the date hereof (as amended, restated, supplemented or replaced from time to time, the “IGA”) in connection with the Tribe’s intention to develop and construct the Project (hereinafter defined) on the Land and thereafter to operate the Project for the Intended Use (hereinafter defined).

F. As a condition to entering into this Option Agreement and the IGA (hereinafter defined), the Tribe has agreed to, and will, submit a Trust Application (hereinafter defined) to the Interior Department (hereinafter defined) for the Tribe’s acquisition in trust of the Land as part of the Tribe’s initial reservation land.

G. 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 that permits the Tribe to conduct such gaming on the Land under the laws of the Commonwealth, the Tribe and GEC will pursue the development of the Project as a commercial casino on the Land to potentially permit the development of the Project and the opening of the Project to the public to occur earlier than would otherwise occur if the Trust Application is approved and the Tribe only acquires the Land in trust; provided, however, that the Tribe and GEC will continue to fully pursue the Trust Application even if commercial gaming is legalized in the Commonwealth permitting the development of the Project as a commercial casino on the Land.

H. The parties hereto acknowledge and agree that the Tribe intends, but shall not be obligated, to negotiate a Tribe-Commonwealth gaming compact or procedures prescribed by the Secretary of Interior governing the conduct of Class III gaming activities by the Tribe (a "Gaming Compact"), which Gaming Compact may provide for the joint exercise of jurisdiction by the Tribe and the Commonwealth to regulate Gaming (hereinafter defined) on the Land pursuant to state and federal laws where applicable.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the receipt and sufficiency of which are acknowledged by City, GEC and the Tribe, the parties agree as follows:

ARTICLE I

Description of Land and Intended Uses

Section 1.1 Intended Uses for Land.

(a) The parties anticipate that the project ("Project") will be developed by the Tribe on the Land, and will consist of a high-quality destination resort casino consistent in quality and design with (i) other recently-constructed casino resort destinations, containing one or more hotels (if Class III gaming is approved for the Project), on the East coast (e.g., MGM National Harbor in Oxon Hill, Maryland, Mohegan Sun in Uncasville, Connecticut, Turning Stone Resort Casino in Verona, New York, Resorts World Catskills in Monticello, New York, and, for hotel purposes only, The Main Norfolk), (ii) the renderings provided to the City prior to the date hereof, all as more particularly described on **Exhibit B** attached hereto and by this reference made a part hereof, and all as depicted generally on **Exhibit C** attached hereto and by this reference made a part hereof ("Conceptual Plan"), and (iii) unless otherwise consented to in advance in writing by the City, containing at least the Minimum Standards (the "Intended Use"); provided 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 GEC and 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 baseball stadium and the Elizabeth River, such area identified as the "No Construction Zone Area" on the attached **Exhibit I**.

(b) Minimum scope (which shall include 750 electronic gaming machines, 25 gaming tables, 150 hotel guest rooms (if Class III gaming is approved), and sufficient parking, including the minimum number of spaces as presently required under the agreement with Amtrak) for the Project to be constructed on the Land, as well as descriptions of other components, features and amenities intended or anticipated to be incorporated into the Project to be constructed on the Land as of the date hereof are described on **Exhibit D** attached hereto and by this reference made a part hereof (“Minimum Standards”). In the event GEC and the Tribe propose any change to the Project that would result in the Minimum Standards not being satisfied, GEC and the Tribe shall propose such change to the City in writing, it being agreed that any such change shall require the City’s prior written consent, which consent shall be in the City’s sole and absolute discretion. In the event the City withholds its consent to any such change or the Minimum Standards are otherwise not satisfied, then the City shall have the right to terminate the Option Agreement and the IGA with written notice, in which event the City shall retain any deposit and all Option Payments (as defined in Section 2.2(b) below). Each of the parties acknowledges and agrees that the Minimum Standards are intended to set forth minimum standards for the scope and certain design elements of the Project, and that the intent of the parties is to ensure that the overall quality of the Project and its amenities will be consistent with those described in the Conceptual Plan regardless of the final size and scope of the Project; provided that, for purposes of clarification, unless the City otherwise approves same in advance in writing, which approval shall be in the City’s sole and absolute discretion, in order for the parties to proceed to Closing (in addition to the other conditions to Closing set forth herein), the Project shall contain no less than the Minimum Standards.

Section 1.2 Status of Ownership. The City represents to GEC and the Tribe that it is the fee simple titleholder to the Land. The City shall not, during the Option Term (or thereafter if the Option to Purchase (hereinafter defined) is exercised), without the prior written consent of GEC and the Tribe: (a) contract for sale, restrict, obligate, mortgage or otherwise encumber the Land; (b) permit any change to the physical condition of the Land; (c) take such action as would adversely affect the condition of the Land, (d) take such action that would violate, increase or expand any existing violation of any safety, health, wetlands, environmental, building or zoning laws and regulations, (e) violate the provisions of any instrument of record affecting the Land, or (f) interfere with or impair GEC’s and the Tribe’s rights under this Option to Purchase.

ARTICLE II

Option to Purchase the Land

Section 2.1 Option to Purchase. The City hereby grants to GEC and the Tribe, acting together, the exclusive right to purchase the Land (“Option to Purchase”), and exercise such other rights granted, and perform such covenants and obligations set forth in this Option Agreement, subject to the terms and conditions set forth herein.

Section 2.2 Basic Terms of Option. The basic terms of the Option to Purchase are set forth below:

(a) Term. The term of the Option to Purchase shall be three (3) years, commencing on the Effective Date and expiring at 12:00 midnight on the day immediately

preceding the third (3rd) anniversary of the Effective Date (as extended, the “Option Term”). Provided that no GEC-Tribe Default (hereinafter defined) exists as of the date of the GEC-Tribe Option Term Exercise Notice (hereinafter defined) or as of the first (1st) day of the applicable Option Extension Period (hereinafter defined), then GEC and the Tribe shall have the right to extend the Option Term for up to two (2) additional terms of one (1) year each (each, an “Option Extension Period”) by giving the City written notice (the “GEC-Tribe Option Term Exercise Notice”) of GEC’s and the Tribe’s irrevocable election to exercise such right no more than six (6) months, and no less than three (3) months, prior to the expiration of the then-existing Option Term.

(b) Option Payments. GEC shall pay the City option payments of One Hundred Thousand and 00/100 Dollars (\$100,000.00) per year (each, an “Option Payment” and, collectively, “Option Payments”) including for each extension term with respect to which GEC and the Tribe has exercised its rights. The first Option Payment shall be made by GEC within three (3) business days after the Effective Date. Provided this Option Agreement has not been previously terminated in accordance with the terms and provisions herein, additional Option Payments of One Hundred Thousand and 00/100 Dollars (\$100,000.00) each shall be made by GEC no later than the first (1st) anniversary of the Effective Date and each subsequent anniversary thereof, until exercise or expiration of the Option Term.

(c) Termination of Option by GEC. The Option to Purchase may be terminated by GEC at any time for any reason, but Option Payments theretofore paid shall not be refunded except as provided herein. If GEC terminates the Option to Purchase, it shall not be obligated to make any more Option Payments.

(d) Termination of Option by City. So long as the City is not in default of its obligations hereunder, the Option to Purchase may be terminated by the City only as expressly set forth in this Option Agreement, including, without limitation, in accordance with the circumstances set forth in this Section 2.2(d), below.

(i) Failure to Make Option Payments. The City may elect to terminate the Option to Purchase if GEC fails to make any required Option Payment, and said failure continues for a period of ten (10) business days from the date written notice thereof is given by the City to GEC.

(ii) Failure to Timely Submit Trust Application or Denial of the Application. The City may elect to terminate the Option to Purchase by written notice to GEC and the Tribe if the Tribe fails to submit the fee-to-trust application (the “Trust Application”) of the Tribe to the United States Department of the Interior, Bureau of Indian Affairs (“Interior Department”) with respect to the Land within ninety (90) days following the Effective Date or if the Trust Application is denied by the Interior Department at any time after the exhaustion of all administrative and legal challenges thereto. GEC and the Tribe hereby covenant to deliver true and correct copies of the portions of the Trust Application that relate to the Land (with any confidential Tribal information contained therein excluded or redacted to the extent such information could otherwise be subject to public disclosure pursuant to the Virginia Freedom of Information Act or any other similar applicable state, federal or local laws; provided, however, that,

notwithstanding the foregoing, the Tribe shall not exclude or redact, and shall be required to provide and shall provide to the City, any information that is subject to public disclosure pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552) to the City for review within three (3) business days following submittal thereof to the Interior Department, along with reasonable evidence identifying the date of submittal (e.g., date stamped copy).

(iii) Intergovernmental Agreement. The City may also elect to terminate the Option to Purchase by written notice to GEC and the Tribe upon the occurrence of a “Material Default” (as defined in the IGA) under the IGA which is not cured or waived within any applicable cure periods.

(e) Exercise of Option. GEC and the Tribe, in their sole discretion, may elect to exercise the Option to Purchase by giving the City written notice thereof (“Notice of Exercise”), which Notice to Exercise shall include an earnest money deposit by GEC, in cash or other immediately available funds, in the amount equal to five percent (5%) of the Purchase Price to be held by the Title Company, as escrow agent, which shall, if Closing occurs, be applied to the Purchase Price at Closing or shall otherwise be disbursed in accordance with the terms and provisions of this Option Agreement. The Notice of Exercise shall designate the Closing Date in accordance with the terms of Section 4.2 below. The Notice of Exercise may be given by GEC anytime during the Option Term, and only to the extent this Option Agreement has not been terminated as set forth in Section 2.2(d)(i) through (iii), inclusive. Notwithstanding the foregoing or any contrary provision contained in this Option Agreement, in the event GEC fails to timely exercise the Option to Purchase by giving the City its Notice of Exercise on or before expiration of the Option Term, this Option Agreement shall be deemed terminated and of no further force or effect, the City shall retain any Option Payments made by GEC then to date and the parties shall have no further obligations or liabilities following such termination, except those that expressly survive expiration or termination of this Option Agreement.

Section 2.3 Memorandum of Option to Purchase. Simultaneously with execution of this Option Agreement, the City, GEC and the Tribe shall execute and record among the Land Records of the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia, that Memorandum of Option to Purchase attached as **Exhibit F** (“Memorandum of Option Agreement”). In the event that this Option to Purchase is duly terminated pursuant to the provisions of this Option Agreement, the City, GEC and the Tribe shall execute and record among such Land Records, that Termination of Memorandum of Option to Purchase attached as **Exhibit G** (“Termination of Memorandum of Option Agreement”).

ARTICLE III

Development Approvals and Contingencies to Option to Purchase

Section 3.1 GEC’s and the Tribe’s Right of Entry Upon Land. The City shall provide GEC and its agents, employees, designees, representatives and contractors (collectively, the “GEC Parties”), at GEC’s sole cost and expense, a right of entry to do the following: (i) to enter the Land to perform such tests, inspections and examinations of the Land and any improvements thereon as GEC deems reasonably advisable; and (ii) to make investigations with regard to title to the Land, soil and environmental tests (including, with the City’s prior written approval, which

approval shall not be unreasonably withheld, conditioned or delayed, invasive testing including but not limited to conducting test borings in order to determine subsoil conditions), matters of survey, flood plain of the Land, utilities availability, zoning and building code, conducting engineering tests and other applicable governmental requirements with regard to the Land and any improvements thereon. GEC shall be responsible for the payment of any services, labor or materials which could result in the filing of any construction liens against the Land as a result of the forgoing. GEC and the Tribe shall indemnify, defend and hold the City harmless from and against all cost, loss, damage and expense, including reasonable attorneys' fees, arising out of the activities of GEC or the GEC Parties upon the Land pursuant to this Section 3.1. The preceding indemnity obligation shall survive termination of this Option Agreement. The City agrees to cooperate with GEC and the GEC Parties in GEC's activities hereunder but the City shall not be obligated to incur any out-of-pocket expense. In this regard, upon the City's, GEC's and the Tribe's execution of this Option Agreement, the City agrees to furnish GEC and the Tribe with copies of all surveys, title policies, environmental reports, soil reports and engineering studies or other documentation relating to the Land and the improvements thereon in the City's possession or control, if any.

If GEC determines that the results of its inspections, investigations and the like are unsatisfactory to GEC, GEC and the Tribe may terminate this Option Agreement by giving the City written notice thereof on or before the expiration of the Option Term. If GEC and the Tribe terminate this Option Agreement at any time on or before the expiration of the Option Term, neither GEC nor the Tribe, on the one hand, nor the City on the other, shall have any further liability to the other under this Option Agreement, except as otherwise expressly provided in this Option Agreement and except with respect to provisions which by their terms survive the termination of this Option Agreement.

Section 3.2 Title Insurance. GEC and the Tribe may elect to notify the City of any Title Objections (hereinafter defined) in accordance with the provisions of this Section 3.2. No later than ninety (90) days after the Effective Date hereof, GEC and the Tribe shall obtain an owner's title commitment (the "Title Commitment") for the Land issued by a reputable title insurance company licensed to do business in the Commonwealth (the "Title Company") in the amount of the Purchase Price, and, within fifteen (15) business days after GEC's and the Tribe's receipt of such Title Commitment and copies of all of the documents which are the basis of each requirement and each exception in the Title Commitment (it being agreed that a full, correct and complete copy of such Title Commitment, along with a copy of all exception documents, shall be promptly provided by GEC and the Tribe to the City upon GEC's or the Tribe's receipt of same), GEC and the Tribe shall notify the City of any matters reported in the Title Commitment that are unacceptable (such matters are referred to herein as the "Title Objections").

The City shall have a reasonable time to cure any Title Objections, but the City shall have the option of declining to cure any Title Objection by providing written notice thereof to GEC and the Tribe within sixty (60) days after receipt of GEC's and the Tribe's written notice of such Title Objections, and if the City declines to cure any Title Objection or does not cure all of the Title Objections that it has agreed to cure, GEC and the Tribe shall have the right either to waive such Title Objections in writing and take title to the Land subject to such Title Objections which shall be considered "Permitted Exceptions" or to terminate this Option Agreement within fifteen (15) business days after the earlier to occur of the expiration of the Option Term or receiving written

notice from the City of the City declining to cure any such Title Objections, it being agreed that, in the event that (a) GEC and the Tribe timely notify the City of any Title Objections, (b) the City declines to cure any such Title Objections, and (c) GEC and the Tribe fail thereafter to timely terminate this Option Agreement, then GEC and the Tribe shall be deemed to have waived such Title Objections and shall take title to the Land subject to such Title Objections. Notwithstanding the foregoing to the contrary, the leases described on **Exhibit H** shall be Permitted Exceptions, provided that the City shall be obligated to terminate and/or amend same prior to Closing so that the Amtrak Lease and Tides Lease do not affect the Land post-Closing, except that the City may enter into (i) any amendment or other modification of the Amtrak Lease to extend and continue the term of the existing Amtrak Lease post-Closing without the prior approval of GEC and the Tribe so long as Amtrak's rights to parking spaces on the Land or otherwise within the Project do not exceed 103 reserved spaces for Amtrak's use, including use by customers and passenger buses, provided that the City will use commercially reasonable efforts to obtain Amtrak's agreement to relocate one or more of such parking spaces to locations proximate to the Amtrak station (which spaces shall be located on the Land) so long as such parking spaces are provided by GEC and the Tribe at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, as more fully set forth in Section 4.6(b)(iii) below, it being agreed that, during construction of the Project only, GEC and the Tribe shall be permitted to temporarily provide such 103 reserved spaces in a location not located on the Land but reasonably proximate to the Amtrak station so long as GEC and the Tribe provide a professional shuttle service at all times or at such times as reasonably agreed to by the parties between such temporary spaces and the Amtrak station, at no cost to the City, Amtrak, its customers or other end users, and (ii) any amendment or other modification of the Tides Lease (hereinafter defined) so long the Tides Lease will not affect the Land post-Closing.

In the event that GEC and the Tribe elect the Option to Purchase, then, at Closing, GEC and the Tribe shall obtain, at their expense, an ALTA Owner's Policy of Title Insurance in the amount of the Purchase Price or such other amount as required by its lender (the "Title Policy"), subject to the Permitted Exceptions and such other matters, if any, otherwise acceptable to GEC and the Tribe. If this Option Agreement is terminated pursuant to this Section 3.3, neither party shall have any further liability to the other except as expressly provided in this Option Agreement.

All matters of title that are shown as exceptions in the Title Commitment and which do not constitute Title Objections or that are Title Objections which are either (i) cured by the City or (ii) waived by GEC and the Tribe in writing or deemed waived by GEC and the Tribe as provided above shall be referred to collectively as the "Permitted Exceptions".

GEC and the Tribe shall have the further right to object to additional matters of record arising between the date of GEC's and the Tribe's title examination and the date of Closing hereunder, which matters shall be discharged by the City at its expense prior to Closing, or, if not, GEC and the Tribe shall have the right to (1) terminate this Option Agreement and receive a refund of any deposit hereunder and any Option Payments theretofore paid by GEC or the Tribe to the City; or (2) enforce the Option Agreement through an action for specific performance, injunctive relief and/or other equitable remedies, it being acknowledged and agreed by GEC and the Tribe that each hereby waives the right to initiate any action for money damages and in no event shall the City be liable for any direct or indirect damages under this Option Agreement.

The Title Commitment shall provide that all "standard exceptions" (including those for taxes and assessments not shown in the public records, parties in possession, mechanics liens and matters disclosed by an accurate survey) shall be deleted from the Title Policy when issued. The City shall provide to the Title Company such affidavits, undertakings and other instruments as may be reasonably required to delete all standard exceptions.

Section 3.3 Survey. Upon the parties' execution of this Option Agreement, the City shall provide to GEC and the Tribe a copy of all existing surveys on the Land within its possession. No later than ninety (90) days after the Effective Date hereof, GEC and the Tribe shall obtain, at their expense, a current survey of the Land prepared by a registered professional land surveyor licensed within the Commonwealth ("Survey"). Within fifteen (15) business days after GEC's and the Tribe's receipt of such Survey (it being agreed that a full, correct and complete copy of such Survey shall be promptly provided by GEC and the Tribe to the City upon GEC's and the Tribe's receipt of same), GEC and the Tribe shall notify the City in writing of any adverse matters affecting the Land shown in the Survey to which GEC or the Tribe objects ("Survey Objections").

The City shall have a reasonable time to cure any Survey Objections, but the City shall have the option of declining to cure any Survey Objection by providing written notice thereof to GEC within sixty (60) days after receipt of GEC's written notice of such Survey Objections, and if the City declines to cure any Survey Objection or does not cure any Survey Objections that it has agreed to cure, GEC shall have the right either to waive such Survey Objections in writing and take title to the Land subject to such Survey Objections which shall be considered "Permitted Survey Exceptions" or to terminate this Option Agreement within fifteen (15) business days after the earlier to occur of the expiration of the Option Term or receiving written notice from the City of the City declining to cure any such Survey Objections, it being agreed that, in the event that (a) GEC and the Tribe timely notify the City of any Survey Objections, (b) the City declines to cure any such Survey Objections, and (c) GEC and the Tribe fail thereafter to timely terminate this Option Agreement, then GEC and the Tribe shall be deemed to have waived such Survey Objections and shall take title to the Land subject to such Survey Objections.

If this Option Agreement is terminated pursuant to this Section 3.3, neither GEC and the Tribe, on the one hand, nor the City on the other, shall have any further liability to the other except as expressly provided in this Option Agreement.

Section 3.4 Parties' Designated Representatives. Upon the full execution of this Option Agreement, the City shall notify GEC and the Tribe of its representative for the Project who will be responsible for assisting GEC and the Tribe with coordinating with the City of Norfolk any approvals required hereunder. The City, upon further written notice to GEC and the Tribe, may change its designee. The City's designee shall have no authority to grant any approvals required hereunder. GEC and the Tribe each acknowledges that any City approvals required for development of the Project (other than those required by the City Council) are administrative functions of the City of Norfolk that are separate from and independent of this Option Agreement. Upon the full execution of this Option Agreement, GEC and the Tribe shall each notify the City of its representative for the Project who will be responsible for coordinating, as agents of GEC and the Tribe, the Project. GEC and the Tribe, upon further written notice to the City, may each change its designee.

ARTICLE IV

Purchase and Sale of Land

Section 4.1 Purchase and Sale of Land.

(a) Obligation to Purchase and Sell. Upon GEC's and the Tribe's exercise of the Option to Purchase, the City shall be obligated to sell, and GEC and the Tribe shall be obligated to purchase, the Land, including all improvements thereon, in accordance with this Article IV, and the other terms and conditions of this Option Agreement.

(b) Purchase Price. The purchase price for the Land and improvements thereon shall be seven hundred and fifty thousand and 00/100 Dollars (\$750,000.00) per acre of the Land ("Purchase Price"), which fixed purchase price is based on a third-party appraisal of the Land and is hereby acknowledged by the parties to be the fair market value of the Land and the improvements thereon as of the Effective Date. For clarification purposes, Option Payments shall not be credited against the Purchase Price.

(i) Cash Payment at Closing. Upon Closing of the transaction, GEC and the Tribe shall pay the Purchase Price, subject to application of the deposit, and any adjustments for expenses and prorations provided herein ("Cash Payment").

(ii) "As Is" Transaction. GEC and the Tribe will accept the Land and improvements from the City at Closing, subject to the terms and conditions set forth in this Option Agreement. Except as expressly set forth in this Option Agreement, GEC and the Tribe shall accept the use and conveyance of the Land and improvements in their "as is" condition.

Section 4.2 Closing Time and Place. If GEC and the Tribe exercise the Option to Purchase, the closing hereunder ("Closing") shall occur at the City's office or at such other location mutually agreed to by the parties hereto at 10:00 a.m. on the closing date designated by GEC and the Tribe in the Notice of Exercise. In no event shall such closing date be (a) earlier than the date that is thirty (30) days following the later to occur of (i) the date that GEC and the Tribe exercise the Option to Purchase or (ii) the date that all conditions to closing set forth in Section 4.7 herein have been satisfied (unless waived), (b) later than the date that is sixty (60) days following the later to occur of (i) the date that GEC and the Tribe exercise the Option to Purchase or (ii) the date that all conditions to closing set forth in Section 4.7 herein have been satisfied (unless waived) or (c) later than one hundred and eighty (180) days following the date that GEC and the Tribe exercise the Option to Purchase (in any event, such date being the "Closing Date").

Section 4.3 Escrow Closing. Notwithstanding the foregoing, the City, GEC and the Tribe shall each have the right, on or prior to the Closing Date, to deposit into escrow with the Title Company all closing documents and other items required to fully and completely consummate Closing pursuant to this Option Agreement, in which event either party exercising such right shall not be required to attend Closing in person, and such failure to attend Closing shall not constitute a default hereunder. The City, GEC and the Tribe shall endeavor in good faith to compile and calculate all required prorations and adjustments, and to prepare (or cause the Title

Company to prepare) a settlement statement acceptable to each of the City, GEC and the Tribe detailing all items and costs of Closing, no later than two (2) business days prior to the Closing Date).

Section 4.4 Expenses of Closing. At the time of Closing: (a) GEC and the Tribe shall pay: (i) all real estate recordation taxes in order to transfer title pursuant to the Deed; (ii) the title insurance premium, (iii) the cost of the Survey, (iv) recording fees for any other Closing documents required hereunder, including the Construction and Use Covenant and the C&REA; (v) the fees and disbursements of GEC's and the Tribe's counsel and any other expense(s) incurred by GEC, the Tribe or their respective representative(s) in inspecting or evaluating the Land or closing this transaction, and (vi) all costs and expenses in connection with obtaining financing for the purchase of the Land, including recordation of any deed of trust, mortgage or other security agreement executed and recorded in connection with such financing; and (b) the City shall pay (i) all real estate transfer taxes due as the seller, if any, in connection with the recordation of the Deed, (ii) the fees and disbursements of the City's counsel, and (iii) all termination fees, release fees and other charges required to be paid in order to terminate any contracts with respect to the Land at Closing and to release from the Land the lien of any mortgage or other security interest which the City shall be obligated to remove pursuant to the terms of this Option Agreement.

Section 4.5 Proration of Real Estate Taxes. Ad valorem real estate taxes applicable to the Land, if any, for the current year shall be prorated at Closing. If the Closing occurs before the tax rate is fixed for that year, the proration of taxes, if applicable, shall be based upon the tax rate for the preceding year applied to the latest assessed valuation. All other ad valorem real estate taxes and assessments (e.g. if the Land is part of a larger tax assessment parcel) shall be paid by the City, if required, at Closing.

Section 4.6 Covenants.

(a) City Covenants. The City makes the following covenants to GEC and the Tribe:

(i) While this Option Agreement is in effect, the City will neither negotiate nor enter into any back up contract for the sale of any portion of the Land or improvements thereon.

(ii) While this Option Agreement is in effect, the City shall not enter into any new leases or other rights of occupancy with respect to any portion of the Land or improvements thereon for a term expiring any time on or after Closing (it being expressly agreed, for purposes of clarification, that the City shall be permitted to enter into any new leases or occupancy agreements for parking and temporary entertainment events (e.g., carnivals, car and/or boat shows, food, cultural and convention-related events) only, provided the same expire, otherwise terminate prior to, or no longer affect the Land as of, Closing), except that the City may enter into (i) any amendment or other modification of the Amtrak Lease to extend and continue the term of the existing Amtrak Lease post-Closing without the prior approval of GEC and the Tribe so long as Amtrak's rights to parking spaces on the Land or otherwise within the Project do not exceed 103 reserved

spaces for Amtrak's use, including use by customers and passenger buses, provided that the City will use commercially reasonable efforts to obtain Amtrak's agreement to relocate one or more of such parking spaces to locations proximate to the Amtrak station (which spaces shall be located on the Land) so long as such parking spaces are provided by GEC and the Tribe at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, as more fully set forth in Section 4.6(b)(iii) below, it being agreed that, during construction of the Project only, GEC and the Tribe shall be permitted to temporarily provide such 103 reserved spaces in a location not located on the Land but reasonably proximate to the Amtrak station so long as GEC and the Tribe provide a professional shuttle service at all times or at such times as reasonably agreed to by the parties between such temporary spaces and the Amtrak station, at no cost to the City, Amtrak, its customers or other end users, and (ii) any amendment or other modification of the Tides Lease (hereinafter defined) so long the Tides Lease will not affect the Land post-Closing.

(iii) The City agrees to assist GEC and the Tribe with any applications for any City approvals required herein. GEC and the Tribe acknowledge that any City approvals which may be required for development of the Project are independent administrative functions of the City of Norfolk that are separate from and independent of the Option Agreement and the IGA.

(b) GEC and Tribe Covenants. Each of GEC and the Tribe makes the following covenants to the City:

(i) GEC and the Tribe agree, at their sole cost and expense, to use commercially reasonable efforts to satisfy the conditions required for GEC and the Tribe to elect to exercise the Option to Purchase and, if so, to proceed to Closing as expressly set forth in this Option Agreement.

(ii) Promptly after the execution and delivery of this Option Agreement, GEC and the Tribe shall commence and diligently prosecute its due diligence investigations and studies related to the Land and the feasibility of the Project and Related Improvements. GEC and the Tribe shall commence and diligently prosecute any necessary applications, architectural and engineering work, negotiations and execution, as the case may be, of construction, demolition, and utility relocations or abandonment, contracts or commitments, necessary or appropriate to satisfy the conditions required for GEC and the Tribe to elect to exercise the Option to Purchase and, if so, to proceed to Closing as expressly set forth in this Option Agreement. Notwithstanding the foregoing, to the contrary, in no event shall GEC or the Tribe have the obligation to prosecute the obtaining of any permit or approval if it determines that any such permit or application will not be issued or granted on terms that are acceptable to it.

(iii) GEC and the Tribe acknowledge and agree that parking will continue to be provided, at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, for up to and no more than 103 reserved spaces for Amtrak, including use by customers and passenger buses, on the Land or otherwise within the Project, provided that the City will use commercially reasonable

efforts to obtain Amtrak's agreement to relocate one or more of such parking spaces to locations proximate to the Amtrak station (which spaces shall be located on the Land) so long as such parking spaces are provided by GEC and the Tribe at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, it being agreed that, post-Closing, Amtrak will be granted access to and through the Property, if applicable, for pickup and drop-off purposes at the Amtrak station; provided, however, that during construction of the Project only, GEC and the Tribe shall be permitted to temporarily provide such 103 reserved spaces in a location not located on the Land but reasonably proximate to the Amtrak station so long as GEC and the Tribe provide a professional shuttle service at all times or at such times as reasonably agreed to by the parties between such temporary spaces and the Amtrak station, at no cost to the City, Amtrak, its customers or other end users. GEC and the Tribe acknowledge and agree that parking may continue to be provided for Amtrak and its customers and for the Tides and its customers during the term of the Option Agreement pursuant to the Amtrak Lease and Tides Lease, respectively.

(iv) The Tribe and GEC will obtain any necessary rezoning of any land to be used or developed in connection with the Project that is not part of the Land.

(v) The Tribe and GEC will obtain all approvals necessary for the Project on the Land and Related Improvements on adjacent lands, including, without limitation, any required review and approval of plans by the City whether required under applicable laws, rules and regulations or otherwise contractually required under the Construction and Use Covenant or any other agreement, Virginia Marine Resource Commission, Army Corps of Engineers, and any other authorities as a result of the Project having water frontage.

(vi) The Tribe and GEC will fully pursue the Trust Application following the Effective Date hereof; provided, however, that, if commercial gaming is legalized in the Commonwealth permitting the development and operation of the Project by the Tribe as a commercial casino on the Land, the Tribe and GEC will pursue the development of the Project as a commercial casino on the Land to potentially permit the development of the Project and the opening of the Project to the public to occur earlier than would otherwise occur if the Trust Application is approved and the Tribe acquires the Land in trust; provided further that the Tribe and GEC may continue to fully pursue the Trust Application even if commercial gaming is legalized in the Commonwealth permitting the development and operation of the Project by the Tribe as a commercial casino on the Land.

Section 4.7 Conditions to Closing.

(a) GEC's and the Tribe's Conditions to Closing. The obligation of GEC and the Tribe under this Option Agreement to purchase the Land and improvements thereon from the City is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by GEC and the Tribe in writing on or prior to the Closing Date):

(i) Title to the Land and improvements thereon shall be good and marketable, and subject to no liens, encumbrances, leases, licenses, rights of occupancy, security interests, restrictions, rights-of-way, easements or encroachments (collectively “Exceptions”) other than the Permitted Exceptions and such other matters, if any, otherwise acceptable to GEC and the Tribe. The Title Company shall be prepared to issue, at its standard premium rates, the Title Policy insuring the title to the Land and improvements thereon, subject only to the Permitted Exceptions and such other matters, if any, otherwise acceptable to GEC and the Tribe, in the amount of the Purchase Price.

(ii) All representations, warranties, acknowledgments and covenants made by the City in this Option Agreement shall be true and correct in all material respects and shall continue to be true and correct in all material respects as of the Closing Date.

(iii) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated by a governmental entity or agency that would prevent the development and construction, and use, of the Project on the Land for its Intended Use and the Related Improvements.

(iv) The Tribe shall have (1) received a final record of decision from the Interior Department authorizing the acquisition by the United States of the Land in trust for the Tribe for gaming purposes, in which event the Land shall be conveyed in fee to the United States pursuant to the Deed, or (2) been granted the right to conduct commercial Gaming on the Land while owned in fee under the laws of the Commonwealth, in which event the Land shall be transferred by the City to the Tribe in fee pursuant to the Deed. In the event that as of the Closing Date the Tribe has both received a final record of decision from the Interior Department authorizing the acquisition by the United States of the Land in trust for gaming purposes and been granted the right to conduct commercial Gaming on the Land under the laws of the Commonwealth, then the Land shall be conveyed by the City as contemplated in either clause (1) or clause (2) of the preceding sentence as elected by the Tribe and GEC.

(v) The IGA shall be in full force and effect and neither GEC, the Tribe, nor the City shall be in default thereunder.

(vi) The City and the Tribe shall have approved and finalized the form of Construction and Use Covenant contemplated by the IGA, which shall be executed by the parties on the Closing Date; provided that each of the City and the Tribe acknowledges and agrees that the Construction and Use Covenant will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(vii) The City and the Tribe shall have approved and finalized the form of C&REA contemplated by the IGA, which shall be executed by the parties on the Closing Date; provided that each of the City and the Tribe acknowledges and agrees that the C&REA will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(viii) The City and the Tribe shall have approved and finalized the form of a Rail Easement Agreement (the “Rail Easement Agreement”) relocating the existing easement on the Land benefitting Norfolk Southern, which Rail Easement Agreement shall be acceptable to Norfolk Southern; provided that each of the City and the Tribe acknowledges and agrees that the Rail Easement Agreement will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(ix) The City and the Tribe shall have approved and finalized the form of, and terms and conditions of, a Stormwater and Sewer Easement Agreement (the “Stormwater and Sewer Easement Agreement”) establishing such easement on, under and through the Land benefitting the City and any applicable utility providers, to the extent reasonably necessary for the construction of the Project or reasonably required as a result of the construction of the Project and providing, at a minimum, for a resilient stormwater plan reasonably acceptable to the City that considers drainage and runoff from surrounding areas other than the Land and provides that drainage and runoff from the Project and the Land do not materially add to the drainage and runoff obligations in areas surrounding the Land; provided that each of the City and the Tribe acknowledges and agrees that the Stormwater and Sewer Easement Agreement will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(x) GEC and the Tribe shall have received all governmental permits, licenses and other approvals, including the right to conduct gaming on the Land pursuant to the Indian Gaming Regulatory Act or applicable law of the Commonwealth, required for the development and construction of the Project and any Related Improvements on terms satisfactory to GEC and the Tribe, expressly including a building permit for the Project based on the final plans for the Project approved by the City (to the extent the Land is owned in fee by the Tribe at the time construction of the Project commences), and, including, to the extent applicable, but not limited to, site plan, subdivision plat, zoning and environmental permits necessary for the Tribe’s development and construction of the Project on the Land for its Intended Use, the Related Improvements, and any other improvements that the Tribe desires to construct that are consistent with the Intended Use, but excluding those permits, licenses and other approvals which are customarily and reasonably obtained after the commencement of construction.

(xi) The Tribe shall have entered into a Gaming Compact on terms satisfactory to the Tribe, to the extent Class III gaming pursuant to the Indian Gaming Regulatory Act will initially be conducted at the Project.

(xii) All conditions required for GEC and the Tribe to elect to exercise the Option to Purchase and, if so, to proceed to Closing as expressly set forth in this Option Agreement shall have been satisfied to GEC’s and the Tribe’s satisfaction or have otherwise been waived in writing by GEC and the Tribe.

In the event that any of the foregoing conditions to Closing have not been met or waived in writing by GEC and the Tribe on or before the Closing Date, GEC and the Tribe shall have the

right to terminate this Option Agreement at any time thereafter by written notice to the City, and (1) if the termination is because the Closing condition(s) herein are not satisfied and same is not due to a GEC-Tribe Default, then upon GEC's demand the City shall return any deposit hereunder to GEC excluding any Option Payments, or (2) if the termination is because the Closing condition(s) herein are not satisfied but such Closing conditions are due to a GEC-Tribe Default, then the City shall retain any deposit hereunder and any Option Payments then made to date by GEC, provided that the City shall retain all rights and remedies in the event of a GEC-Tribe Default as set forth elsewhere in this Option Agreement. Further, so long as a GEC-Tribe Default then exists beyond any applicable notice and cure periods, in the event that GEC and the Tribe terminate this Option Agreement, GEC and the Tribe agree to provide to the City a copy of all survey, design, environmental, engineering and other due diligence reports and materials prepared by GEC, the Tribe or their agents.

(b) City's Conditions to Closing. The obligation of the City under this Option Agreement to sell the Land and improvements thereon to GEC and the Tribe is subject to the satisfaction of each of the following conditions (any of which may be waived in whole or in part by the City in writing on or prior to the Closing Date):

(i) All representations, warranties, acknowledgments and covenants made by GEC and the Tribe in this Option Agreement shall be true and correct in all material respects and shall continue to be true and correct in all material respects as of the Closing Date.

(ii) No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated by a governmental entity or agency that would prevent the development and construction, and use, of the Project on the Land for its Intended Use and the Related Improvements.

(iii) The Tribe shall have (1) received a final record of decision from the Interior Department authorizing the acquisition by the United States of the Land in trust for the Tribe for gaming purposes, in which event the Land shall be conveyed in fee to the United States pursuant to the Deed, or (2) been granted the right to conduct commercial Gaming on the Land while owned in fee under the laws of the Commonwealth, in which event the Land shall be transferred by the City to the Tribe in fee pursuant to the Deed. In the event that as of the Closing Date the Tribe has both received a final record of decision from the Interior Department authorizing the acquisition by the United States of the Land in trust for gaming purposes and been granted the right to conduct commercial Gaming on the Land under the laws of the Commonwealth, then the Land shall be conveyed by the City as contemplated in either clause (1) or clause (2) of the preceding sentence as elected by the Tribe and GEC.

(iv) The City and the Tribe shall have approved and finalized the form of Construction and Use Covenant contemplated by the IGA, which shall be executed by the parties on the Closing Date; provided that each of the City and the Tribe acknowledges and agrees that the Construction and Use Covenant will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(v) The City and the Tribe shall have approved and finalized the form of C&REA contemplated by the IGA, which shall be executed by the parties on the Closing Date; provided that each of the City and the Tribe acknowledges and agrees that the C&REA will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(vi) The City and the Tribe shall have approved and finalized the form of the Rail Easement Agreement relocating the existing easement on the Land benefitting Norfolk Southern, which Rail Easement Agreement shall be acceptable to Norfolk Southern; provided that each of the City and the Tribe acknowledges and agrees that the Rail Easement Agreement will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(vii) The City and the Tribe shall have approved and finalized the form of, and terms and conditions of, a Stormwater and Sewer Easement Agreement establishing such easement on, under and through the Land benefitting the City and any applicable utility providers to the extent reasonably necessary for the construction of the Project or reasonably required as a result of the construction of the Project and providing, at a minimum, for a resilient stormwater plan reasonably acceptable to the City that considers drainage and runoff from surrounding areas other than the Land and provides that drainage and runoff from the Project and the Land do not materially add to the drainage and runoff obligations in areas surrounding the Land; provided that each of the City and the Tribe acknowledges and agrees that the Stormwater and Sewer Easement Agreement will comply with all requirements of the Interior Department necessary for the Land to be accepted into trust for the Tribe.

(viii) The IGA shall be in full force and effect and no default by the Tribe shall exist thereunder.

(ix) The City shall have approved substantially final plans for the Project, which final plans shall be sufficiently complete such that the general contractor for the Project can apply for and obtain all necessary building permits to proceed with construction of the Project and related infrastructure improvements.

(x) GEC and the Tribe shall have received all governmental permits, licenses and other approvals, including the right to conduct gaming on the Land pursuant to the Indian Gaming Regulatory Act or applicable law of the Commonwealth, required for the development and construction of the Project and any Related Improvements on terms satisfactory to GEC and the Tribe, expressly including a building permit for the Project based on the final plans for the Project approved by the City (to the extent the Land is owned in fee by the Tribe at the time construction of the Project commences), and, including, to the extent applicable, but not limited to, site plan, subdivision plat, zoning and environmental permits necessary for the Tribe's development and construction of the Project on the Land for its Intended Use, the Related Improvements, and any other improvements that the Tribe desires to construct that are consistent with the Intended Use, but excluding those permits, licenses and other approvals which are customarily and reasonably obtained after the commencement of construction.

(xi) GEC and the Tribe shall be ready, willing and able to commence construction of the Project and any Related Improvements in accordance with the IGA and the Construction and Use Covenant, as evidenced by GEC and the Tribe providing to the City a financing plan, including all sources of capital, and a true, correct and complete copy of a bona fide guaranteed maximum price construction contract for the construction of the Project fully executed by the Tribe, GEC and a general contractor reasonably acceptable to the City demonstrating to the City's reasonable satisfaction and approval that GEC and the Tribe can reasonably proceed with construction of the Project and related infrastructure improvements.

(xii) GEC and the Tribe shall have made such arrangements (at its cost) as are reasonably satisfactory to the City and consistent with the terms and provisions of this Option Agreement necessary for the City to continue to provide up to and no more than 103 reserved parking spaces for Amtrak, including use by customers and passenger buses, following Closing, it being agreed that, post-Closing, Amtrak will need access to and through the Property, if applicable, for pickup and drop-off purposes at the Amtrak station; provided, however, that during construction of the Project only, GEC and the Tribe shall be permitted to temporarily provide such 103 reserved spaces in a location not located on the Land but reasonably proximate to the Amtrak station so long as GEC and the Tribe provide a professional shuttle service at all times or at such times as reasonably agreed to by the parties between such temporary spaces and the Amtrak station, at no cost to the City, Amtrak, its customers or other end users.

(xiii) All conditions required for GEC and the Tribe to elect to exercise the Option to Purchase have been satisfied to the City's reasonable satisfaction or have otherwise been waived in writing by the City.

In the event that any of the foregoing conditions to Closing have not been met or waived in writing by the City on or before the Closing Date, the City shall have the right to terminate this Option Agreement at any time thereafter by written notice to GEC and the Tribe, and (1) if the termination is because the Closing condition(s) herein are not satisfied and same is not due to a GEC-Tribe Default, then upon GEC's demand the City shall return any deposit hereunder to GEC excluding any Option Payments, or (2) if the termination is because the Closing condition(s) herein are not satisfied but such Closing conditions are due to a GEC-Tribe Default, then the City shall retain any deposit hereunder and any Option Payments then made to date by GEC, provided that the City shall retain all rights and remedies in the event of a GEC-Tribe Default as set forth elsewhere in this Option Agreement.

Section 4.8 Closing Documents.

(a) The City's Closing Documents. At the Closing, the City, in addition to any other documents required to be delivered under the terms of this Option Agreement, shall deliver fully executed copies of the following:

(i) A special warranty deed (the "Deed") to the Land and all improvements thereon, duly executed and acknowledged by the City conveying good, marketable fee simple title to the Land either to (1) the Tribe, if commercial Gaming on

the Land conducted by the Tribe is approved or otherwise permitted by Commonwealth, in a commercially reasonable form acceptable to the Parties, or (2) the United States in trust for the Tribe, if the Trust Application has been approved, in a commercially reasonable form acceptable to the Parties and which satisfies all requirements of the Interior Department to accept the Land in trust for the Tribe, in each case free and clear of all liens and encumbrances, and subject to no exceptions other than the Permitted Exceptions and those set forth in the form Deed and in proper form for recording.

(ii) A bill of sale (the “Bill of Sale”) conveying all personal property owned by the City located on the Land in its then as-is condition, containing no warranties regarding same, but otherwise in form and substance reasonably acceptable to the City, GEC and the Tribe.

(iii) A standard owner’s affidavit as customarily required by title companies pertaining to mechanic’s liens and absence of tenants in occupancy of the Land. The owner’s affidavit shall also contain a covenant by the City that is acceptable to the Title Company to insure over any gaps in time between the effective date of Title Commitment (not more than ten (10) days prior to the Closing) and the actual recordation thereof.

(iv) A certificate to the effect that the City’s representations and warranties set forth in this Option Agreement are true and correct in all material respects as of the Closing Date or updating the representations and warranties set forth in this Option Agreement to reflect the facts existing as of the Closing Date. If the certificate reflects facts that are material and adverse to GEC’s and the Tribe’s acquisition and ownership of the Land for its Intended Use, then GEC and the Tribe shall have the right to terminate this Option Agreement by written notice to the City and the deposit, if any, and any Option Payments, shall be released to GEC.

(v) A settlement and disbursement sheet reflecting the credits, prorations and other terms of this Option Agreement in a form that is mutually acceptable to the City, GEC and the Tribe (the “Settlement Statement”).

(vi) An assignment (the “General Assignment”), if reasonably necessary, of any permits, approvals, warranties, guaranties, bonds, sewer and water allocations, pre-development rights, impact fees, documents, contract rights, licenses, and approvals applicable to any part of the Land, including, but not by way of limitation, all surveys, environmental studies, engineering studies.

(vii) The Construction and Use Covenant.

(viii) The C&REA.

(ix) The Rail Easement Agreement, if a signatory thereto.

(x) The Stormwater and Sewer Easement Agreement establishing such easement on, under and through the Land benefiting the City and any applicable utility providers to the extent reasonably necessary for construction of the Project or reasonably

required as a result of the construction of the Project and providing, at a minimum, for a resilient stormwater plan reasonably acceptable to the City that considers drainage and runoff from surrounding areas other than the Land and provides that drainage and runoff from the Project and the Land do not materially add to the drainage and runoff obligations in areas surrounding the Land.

(xi) Evidence reasonably acceptable to GEC that the City has duly authorized, executed and delivered all documents and agreements necessary to effect the sale of the Land.

(xii) A parking agreement between GEC, the Tribe and the City (the "Parking Agreement") regarding GEC's and the Tribe's agreement to provide, at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, up to and no more than 103 reserved parking spaces for Amtrak, including use by customers and passenger buses, on the Land or otherwise within the Project post-Closing, provided that the City will use commercially reasonable efforts to obtain Amtrak's agreement to relocate one or more of such parking spaces to locations proximate to the Amtrak station (which shall be located on the Land) so long as such parking spaces are provided by GEC and the Tribe at no cost to the City and, at the City's election, at no cost to Amtrak or its customers or other end users, it being agreed that, post-Closing, Amtrak will be granted access to and through the Property, if applicable, for pickup and drop-off purposes at the Amtrak station; provided, however, that during construction of the Project only, GEC and the Tribe shall be permitted to temporarily provide such 103 reserved spaces in a location not located on the Land but reasonably proximate to the Amtrak station so long as GEC and the Tribe provide a professional shuttle service at all times or at such times as reasonably agreed to by the parties between such temporary spaces and the Amtrak station, at no cost to the City, Amtrak, its customers or other end users.

(xiii) A written opinion of counsel of the City, in form commercially reasonably satisfactory to GEC and the Tribe (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals) and subject to other customary assumptions and qualifications, including, without limitation: (1) that the City has the power to enter into the transactions contemplated by this Option Agreement (including, without limitation, entry into this Option Agreement); (2) that all actions by the City required to be authorized in the transaction contemplated by this Option Agreement have been duly authorized by a valid ordinance that are not subject to appeal; and (3) that this Option Agreement and all documents required to effectuate the transactions contemplated hereby which are to be executed by the City (including, without limitation, all agreements and instruments to be executed by the City at the Closing) have been duly executed and delivered by the City, and constitute binding obligations of the City.

(xiv) The City shall deliver to GEC and the Tribe any other documents or instruments required hereunder or reasonably requested by GEC or the Tribe, the Title Company or GEC's or the Tribe's lenders in order to consummate the transactions contemplated herein provided such instruments are commercially reasonable and do not result in an amendment to the terms of this Option Agreement.

(b) GEC's and the Tribe's Closing Documents. At the Closing, GEC and the Tribe, in addition to any other documents required to be delivered under the terms of this Option Agreement, shall deliver fully executed copies of the following:

- (i) A counterpart signed copy of the Settlement Statement.
- (ii) The Cash Payment to the Title Company which shall in turn make the disbursements provided for herein from funds received by wire transfer.
- (iii) Evidence reasonably satisfactory to the City that GEC is a Delaware limited liability company qualified to do business in the Commonwealth of Virginia and the City of Norfolk and that the Tribe is a federally recognized Indian tribe.
- (iv) Written opinions of counsel to GEC and to the Tribe, each in form commercially reasonably satisfactory to the City (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals) and subject to other customary assumptions and qualifications, including, without limitation: (1) that GEC is a Delaware limited liability company qualified to do business in the Commonwealth of Virginia; (2) that the Tribe is a federally recognized Indian Tribe and is qualified to do business in the Commonwealth of Virginia, (3) that each of GEC and the Tribe has the power to enter into the transactions contemplated by this Option Agreement (including, without limitation, entry into this Option Agreement); (4) that all actions by GEC and the Tribe required to be authorized in the transaction contemplated by this Option Agreement have been duly authorized; and (5) that this Option Agreement and all documents required to effectuate the transactions contemplated hereby which are to be executed by GEC or the Tribe (including, without limitation, all agreements and instruments to be executed by GEC or the Tribe at the Closing) have been duly executed and delivered by, and constitute binding obligations of, GEC and the Tribe, as applicable.
- (v) GEC shall deliver to the City resolutions of GEC's Board of Directors/Managers or similar governing body ("Board"), authorizing GEC to consummate the transactions contemplated herein, such resolutions to be in form and substance reasonably satisfactory to the City, executed by the Board's Manager, President, Vice-President or similar officer in its respective capacity and accompanied by a certificate executed by the Board's secretary, if applicable.
- (vi) The Tribe shall deliver to the City resolutions of its Tribal Council, authorizing the Tribe to consummate the transactions contemplated herein, such resolutions to be in form and substance reasonably satisfactory to the City, executed by the Chief or similar officer and accompanied by a certificate executed by the Tribal Council's secretary, if applicable.
- (vii) A certificate to the effect that each of GEC's and the Tribe's representations and warranties set forth in this Option Agreement are true and correct in all material respects as of the Closing Date or updating the representations and warranties set forth in this Option Agreement to reflect the facts existing as of the Closing Date. If

the certificate reflects facts that are material and adverse to the City's disposition of the Land to GEC and the Tribe for its Intended Use, then the City shall have the right to terminate this Option Agreement by written notice to GEC and the Tribe and the deposit, if any, and any Option Payments, shall be released to GEC.

(viii) The Bill of Sale.

(ix) The General Assignment, if reasonably necessary.

(x) The Construction and Use Covenant.

(xi) The C&REA.

(xii) The Rail Easement Agreement.

(xiii) The Stormwater and Sewer Easement Agreement establishing such easement on, under and through the Land benefiting the City and any applicable utility providers to the extent reasonably necessary for the construction of the Project or reasonably required as a result of the construction of the Project and providing, at a minimum, for a resilient stormwater plan reasonably acceptable to the City that considers drainage and runoff from surrounding areas other than the Land and provides that drainage and runoff from the Project and the Land do not materially add to the drainage and runoff obligations in areas surrounding the Land.

(xiv) The Parking Agreement.

(xv) GEC and the Tribe shall deliver to the City any other document or instrument required hereunder or reasonably requested by the City or the Title Company in order to consummate the transactions contemplated herein consistent with the terms of this Option Agreement, which document or instrument will be in form and substance reasonably acceptable to GEC, the Tribe and the City and provided any such document or instrument does not result in an amendment to the terms of this Option Agreement.

Section 4.9 Proceeds of Sale and Closing Procedures. The Deed shall be recorded upon clearance of funds and evidence of title continued from the effective date of the Title Commitment to show title in the City at the time immediately prior to recording, without any matters other than the Permitted Exceptions. Closing proceeds due to the City shall be disbursed concurrently with such recordation.

Section 4.10 Possession. Possession of the Land shall be delivered to the Tribe or the United States in trust for the Tribe, as applicable, as of the Closing Date, free and clear of all leases, tenancies and rights of occupancy.

Section 4.11 Default by City; GEC- Tribe Remedies. If the City fails to perform any covenant, obligation, condition or requirement of this Option Agreement for any reason other than GEC's or the Tribe's default, GEC and the Tribe may give the City written notice thereof. If the City fails to cure any such failure within thirty (30) days from the date of such notice by GEC and the Tribe is given to the City, or, in the event the time to effect such cure cannot reasonably be

cured within such thirty (30) day period, then such longer period of time as reasonably required to effect such cure, provided the City commences such cure within such initial thirty (30) day period and thereafter continues to use commercially reasonable efforts to complete such cure within a reasonable period given the nature of the default (a “City Default”), then GEC and the Tribe may at any time thereafter: (a) elect to receive a refund of any deposit hereunder (expressly excluding any Option Payments, which shall be retained by the City); or (b) enforce the Option Agreement through an action for specific performance, injunctive relief and/or other equitable remedies, it being acknowledged and agreed by GEC and the Tribe that each hereby waives the right to initiate any action for money damages and in no event shall the City be liable for any direct or indirect damages as a result of a City Default or otherwise under this Option Agreement.

Section 4.12 Default by GEC or the Tribe; City Remedies.

(a) Default by GEC or the Tribe. The failure of GEC or the Tribe to perform or to observe any covenant, obligation, condition or requirement of this Option Agreement not specifically named as a default in this Section 4.12, and the continuation of such failure for thirty (30) days after written notice from the City specifying the nature and extent of any such failure, or, if such failure cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such failure within such thirty (30)-day period and or (ii) to continue to use commercially reasonable efforts thereafter to effect such cure to completion with a reasonable time period given the nature of the default, shall be an event of default by GEC or the Tribe under this Option Agreement (“GEC-Tribe Default”).

(b) City Remedies if GEC-Tribe Default. Upon the occurrence and continuance of any GEC-Tribe Default described in this Section 4.12, the City may elect to (i) terminate this Option Agreement by giving written notice of such termination to GEC and the Tribe, and this Option Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination), in which event the City shall retain any deposit hereunder and all Option Payments theretofore paid by GEC to the City or (ii) exercise any and all other rights and remedies at law or in equity. Remedies under this Option Agreement shall be cumulative and not restrictive of other remedies. Notwithstanding the foregoing to the contrary, if the GEC-Tribe Default (beyond expiration of all applicable cure periods) occurs prior to Closing, the City’s sole and exclusive remedy shall be to terminate this Option Agreement and retain any deposit hereunder and all Option Payments theretofore paid by GEC to the City as liquidated damages, provided this limitation shall not be deemed to extinguish or limit any obligations of GEC or the Tribe to indemnify, defend, and hold the City harmless which are expressly set forth in this Option Agreement.

Section 4.13 Condemnation. If before the Closing all or any portion of the Land (or any other land necessary to development and use of the Land as the Project for the Intended Use) is taken under the power of eminent domain or is transferred in lieu of such taking and such taking or transfer materially interferes with the Tribe's contemplated development of the Project on the Land for the Intended Use, GEC and the Tribe may, at their option, (i) terminate this Option Agreement by notice to the City within thirty (30) days after GEC and the Tribe are notified of such taking or transfer, in which case return of the deposit, if any, and any Option Payments made by GEC hereunder shall be the sole and exclusive remedy or (ii) proceed to Closing with no reduction in the Purchase Price but with an assignment and payment to GEC to any condemnation

proceeds payable by virtue of any condemnation or similar action. The City upon learning of or obtaining notice of any such action, shall immediately notify GEC and the Tribe of such action. The City agrees that in no event will it initiate any eminent domain proceeding against any of the Land.

Section 4.14 Risk of Loss. Prior to Closing, the City shall bear the risk of loss of the Land and any existing improvements. However, any improvements existing on the Land as of the Effective Date or otherwise prior to Closing are acknowledged by the City to be demolished by the Tribe after Closing. Accordingly, notwithstanding any contrary provision contained in this Option Agreement, the City, GEC and the Tribe acknowledge and agree that any damage or destruction of all or any part of improvements on the Land prior to Closing in no way obligates the City to rebuild such improvements and shall not affect GEC's and the Tribe's obligation to close or alter the Purchase Price.

ARTICLE V

General Provisions

Section 5.1 City's Representations. The City represents and warrants to GEC and the Tribe the following as of the date hereof:

(a) The City is the legal and equitable owner of the Land and all improvements thereon, with the full right to convey the same without the joinder of any other person or party, and with all the necessary power and lawful authority and capacity to do so and to consummate the transaction described herein, subject to the terms and conditions of this Option Agreement, and, without limiting the generality of the foregoing, the City has not granted any option contract, right of first refusal or other sales contract pursuant to which any other party has any right to purchase any interest in the Land, its improvements or any part thereof.

(b) There are no leases, tenancies or other rights of occupancy relating to or affecting any portion of the Land or improvements thereon, except for those items set forth in **Exhibit H** attached hereto.

(c) There are no pending or, to the City's actual knowledge, threatened, judicial, municipal or administrative proceedings affecting the City or any portion of the Land or improvements thereon (including condemnation proceedings or proceedings relating to any environmental contamination of any part of the Land) or affecting the City's right to sell any portion of the Land or improvements thereon.

(d) The City has provided copies of all environmental reports and studies relating to the Land in the City's possession or control to GEC and the Tribe.

The City acknowledges that GEC and the Tribe are relying upon such representations in contracting to purchase the Land and improvements thereon. All representations and warranties of the City shall survive Closing and the delivery of the Deed for a period of one (1) year.

Section 5.2 GEC's and the Tribe's Representations. Each of GEC and the Tribe represents and warrants to the City the following as of the date hereof:

(a) The person executing this Option Agreement on behalf of GEC or the Tribe, as applicable, has all the necessary power and lawful authority and capacity to do so and to consummate the transaction described herein, subject to the terms and conditions of this Option Agreement.

(b) GEC and the Tribe are acting and shall act with respect to the proposed purchase of the Land and improvements thereon strictly on account of GEC and the Tribe, in good faith, and not as a broker or on behalf of any other entity which has not been specifically disclosed in writing and identified as such by GEC and the Tribe to the City prior to the date hereof.

GEC and the Tribe acknowledge that the City is relying upon such representations in contracting to sell the Land and improvements thereon. All representations and warranties of GEC and the Tribe shall survive Closing and the delivery of the Deed for a period of one (1) year.

Section 5.3 Assignment. GEC's and the Tribe's rights under this Option Agreement may not be assigned or otherwise transferred without the express written consent of the City, which consent shall be in City's sole and absolute discretion acting in good faith; provided, however, GEC may assign this Agreement to an Affiliate (as defined below) of GEC. For purposes of this Section 5.3, the term "Affiliate" means any legal entity, which controls, is controlled by, or is under common control with GEC. A permitted assignment shall not relieve GEC from its obligations under this Option Agreement. Any purported assignment of this Option Agreement or of any right, title or interest hereunder not complying with this Section 5.3 shall be void and of no force or effect.

Section 5.4 Notices. All notices, requests, and consents under this Option Agreement shall be in writing and shall be delivered either in person (when delivered) or sent by registered or certified mail, return receipt requested, postage prepaid (three (3) business days thereafter), or by overnight mail by a nationally recognized overnight carrier (one (1) business day thereafter) addressed to the respective parties hereto as follows:

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

With a
copy to: City Attorney
City of Norfolk
810 Union Street
900 City Hall Building
Norfolk, VA 23510

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

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

Notices shall be deemed effective upon mailing (whether by overnight mail or registered or certified mail) or, in the case of delivery, upon delivery to the specified address. Addresses may be changed by notice given pursuant to this provision.

Section 5.5 Governing Law; Venue. This Option Agreement shall be governed by, construed and enforced under the laws of the Commonwealth of Virginia. In the event of a dispute between the parties with respect to the subject matter of this Option Agreement, the parties shall first in good faith attempt to resolve such dispute, and if the parties are unable to resolve such dispute within sixty (60) days, then venue shall be in the state courts in the City of Norfolk or the Federal District Court for the Eastern District of Virginia.

Section 5.6 Entire Agreement. This Option Agreement sets forth the entire agreement and understanding between the parties with respect to the contemplated transactions and supersedes all prior agreements, arrangements and understandings.

Section 5.7 Confidentiality. Any covenants, representations or warranties of the City with respect to confidentiality and nondisclosure of GEC's and the Tribe's Confidential Information (hereinafter defined) are subject to disclosures required by a court of competent jurisdiction and/or applicable laws, including, without limitation, the Virginia Freedom of Information Act. "Confidential Information" means all information concerning GEC or the Tribe that either discloses or furnishes, either directly or indirectly in writing, orally or by inspection, to the City; provided, however, that Confidential Information shall not include any information which: (a) is or becomes publicly known and made generally available in the public domain (other than by the wrongful act of the City); (b) is already rightfully in the possession of City at the time of disclosure; (c) is obtained by the City from a third party without a breach of such third party's obligations of confidentiality; (d) is independently developed by the City without use of or reference to GEC's or the Tribe's Confidential Information, as shown by documents and other competent evidence in the City's possession; or (e) is required to be disclosed by a subpoena or order issued by a court of competent jurisdiction.

Section 5.8 Non-Waiver. Failure of any party at any time or times to require performance of any provisions hereof shall in no manner affect the right to enforce the provision at a later time. No waiver by either party of any condition, or the breach of any term, covenant, representation or warranty contained in this Option Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed a further or continuing waiver of any condition or covenant, representation or warranty of this Option Agreement.

Section 5.9 Amendment; Modification. No amendment, modification or alteration of the terms of this Option Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.

Section 5.10 Relationship of Parties. This Option Agreement is not to be construed to create a partnership or joint venture between the parties.

Section 5.11 Negotiated Document. The parties acknowledge that the provisions and language of this Option Agreement have been negotiated and agree that no provision of this Option Agreement shall be construed against any party by reason of such party having drafted such provision of this Option Agreement.

Section 5.12 Headings. The captions and section headings are for convenience only and shall not be used in construing or enforcing any of the provisions of this Option Agreement.

Section 5.13 Execution. This Option Agreement is executed under seal.

Section 5.14 Dates. If any period or date under this Option Agreement would expire or fall on a weekend or holiday, such period or date shall be extended until the first business day thereafter.

Section 5.15 Time is of the Essence. Time is of the essence in the performance of the parties' respective obligations set forth in this Option Agreement.

Section 5.16 Successors; Assigns. This Option Agreement shall inure to the benefit of and be binding upon the parties to this Option Agreement and their respective successors and permitted assigns.

Section 5.17 Severability. If any one or more of the provisions contained in this Option Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Option Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

Section 5.18 Brokers. The City, GEC and the Tribe each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Option Agreement, except that GEC has retained the services of David Wilkins of CBRE, Inc. (the "GEC Broker") and GEC shall be solely responsible for paying the fees and commissions of the GEC Broker. To the extent permitted by applicable law, GEC and the Tribe, on the one hand, and the City, on the other, shall indemnify, defend, and hold the other harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity who alleges having acted or dealt with the indemnifying party in connection with the Land or the transactions contemplated by this Option Agreement. The parties' obligations under this Section 5.18 shall survive the Closing and any termination of this Option Agreement.

Section 5.19 Counterparts; Copies. This Option Agreement may be executed in one or more counterparts and each such counterpart shall be deemed to be an original. All counterparts so executed shall constitute one instrument and shall be binding on all of the parties to this Option Agreement notwithstanding that all of the parties are not signatories to the same counterpart. Facsimile copies and photocopies of this Option Agreement signed by the parties shall be binding and enforceable as if the same were an executed original.

Section 5.20 Duties of Escrow Agent. The Title Company receiving funds (as a clarification, all Option Payments made by GEC shall be directly paid to the City and not held in escrow or otherwise by the Title Company) as Closing agent is authorized and agrees by acceptance thereof to promptly deposit and hold the same (if in the form of cash) in an interest-bearing escrow account and to disburse the same subject to clearance thereof in accordance with the terms hereof. In the event of doubt as to its duties, the escrow agent may in its sole discretion, (a) continue to hold the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, and/or (b) deposit all the monies then held with the Clerk of the Court of and upon notifying all parties concerned of such action, any liability on the part of the Title Company, as Closing agent, shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any lawsuit wherein the Title Company, as Closing agent, is made a party by virtue of acting as such Closing agent hereunder, or in the event of any suit herein the Title Company, as Closing agent,

interpleads the subject matter of this escrow, the Title Company shall be entitled to recover reasonable attorneys' fees and costs incurred, said fees and costs to be charged and assessed as court costs in favor of the prevailing party. All parties agree that the Title Company, as Closing agent, shall not be liable to any party or person whomsoever for misdelivery to GEC, the Tribe or the City of monies or documents held in escrow, unless such misdelivery shall be due to willful breach of this Option Agreement or negligence on the part of the Title Company, as Closing agent.

Section 5.21 Default Rate. In the event of any City Default or GEC-Tribe Default as applicable, the default rate of interest hereunder for any money damages, from the time due and payable until the time actually paid, shall be the "Prime Rate" announced from time-to-time by SunTrust Bank, Inc. plus five percent (5%) per annum.

Section 5.22 Definitions. The following capitalized terms used in this Option Agreement shall have the meanings set forth in this Section 5.22:

(a) "Dispute" means any dispute, claim, or controversy arising under or relating to this Option Agreement, the breach, termination, or validity of this Option Agreement, or the dealings between the parties or with respect to any claim arising by virtue of any representations made by any party hereunder.

(b) "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 under IGRA (hereinafter defined) or by the Commonwealth.

(c) "Gaming" means any Class II or Class III (each as defined in IGRA) gaming, and any other 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 under IGRA or by the Commonwealth.

(d) "IGRA" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C. Section 2701 et seq. and 18 U.S.C. Sections 1166 to 1168.

Section 5.23 Limited Waivers of Sovereign Immunity.

(a) The City hereby waives its immunity, if any, in all state and federal courts of appropriate jurisdiction in favor of GEC and the Tribe for the purpose of resolving all Disputes. This includes arbitration of any Disputes and permitting the Commonwealth state courts to compel such arbitration and to enforce the terms of any award or order resulting from such arbitration.

(b) The Tribe hereby waives its immunity in all state and federal courts of appropriate jurisdiction in favor of the City for the purpose of resolving all Disputes, provided that any monetary judgment or award against the Tribe resulting from any Dispute shall be enforced or collected only from Recourse Assets (as defined in the IGA). This includes

arbitration of any Disputes and permitting the Commonwealth state courts to compel such arbitration and to enforce the terms of any award or order resulting from such arbitration.

Section 5.24 Arbitration.

(a) Upon the request of any party, each of the City, the Tribe and GEC agrees to submit to binding arbitration all 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 Option Agreement.

(b) Any arbitration proceeding will (i) proceed in a location in the Commonwealth selected by the American Arbitration Association (“AAA”); (ii) 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 (iii) 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.

[Signature page follows.]

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

CITY

CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

GEC

GOLDEN EAGLE CONSULTING II, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

TRIBE

PAMUNKEY INDIAN TRIBE, a federally recognized Indian tribe

By: _____
Name: _____
Title: _____

ATTEST:

City Clerk

Approved as to Form and Correctness:

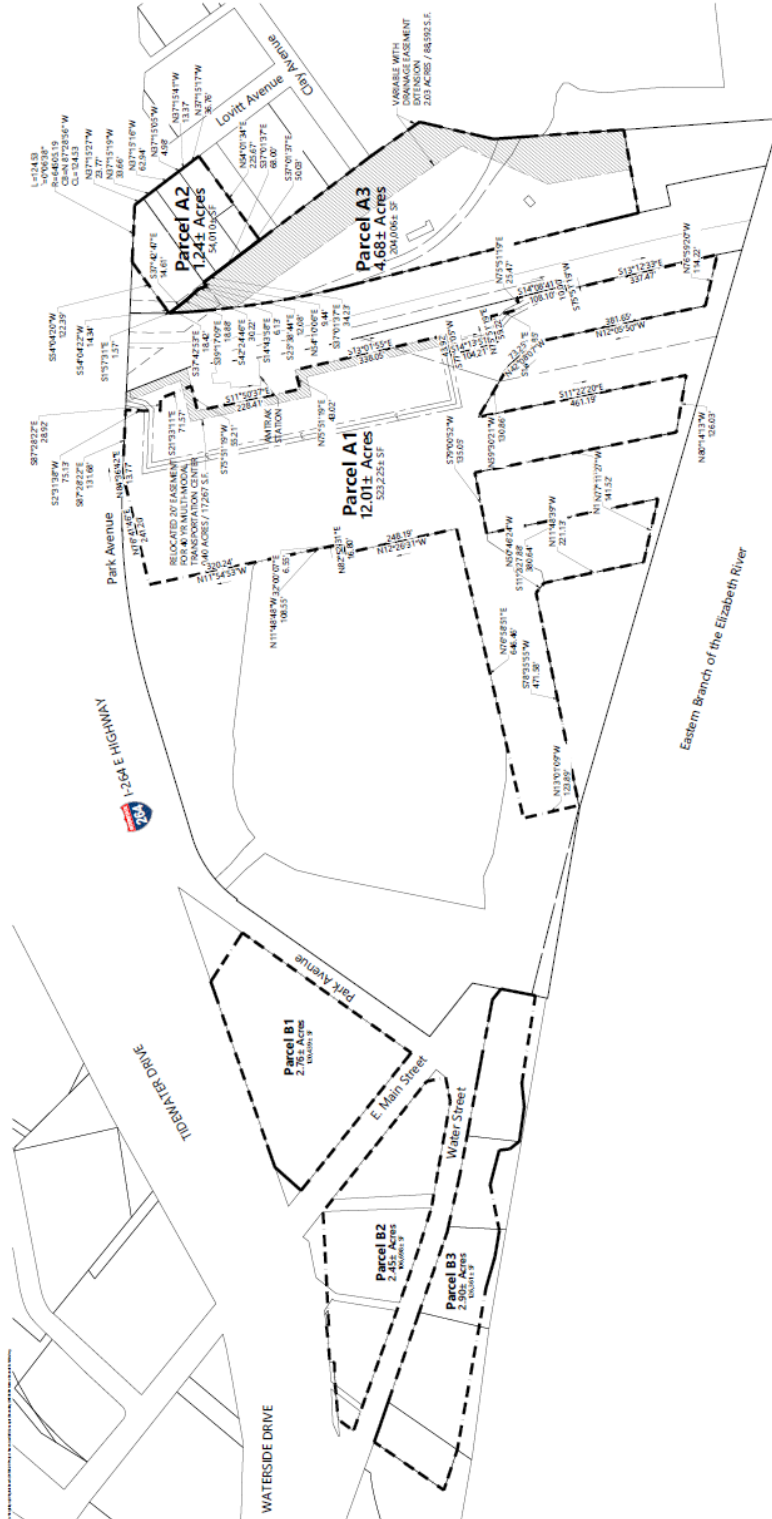
By: _____
Title: City Attorney
Date: _____

List of Exhibits

Land	A
Project	B
Conceptual Plan	C
Minimum Standards	D
Existing Title Matters	E
Memorandum of Option Agreement	F
Termination of Memorandum of Option Agreement	G
Leases	H

EXHIBIT A

DEPICTION AND LEGAL DESCRIPTION OF LAND



- Notes**
1. ALL PROPERTY LINES AND DIMENSIONS SHOWN WERE OBTAINED BY MEASUREMENT AND ADJUSTED BY RECORDS.
 2. ALL DIMENSIONS OF PARCELS SHOWN ARE AS SHOWN ON THE SURVEY RECORDS AND ARE NOT NECESSARILY GUARANTEED BY THE CITY OF NORFOLK.
 3. THIS SURVEY IS A RECONSTRUCTION OF THE ORIGINAL SURVEY AND DOES NOT REPRESENT THE ORIGINAL SURVEY.
 4. THIS SURVEY IS A RECONSTRUCTION OF THE ORIGINAL SURVEY AND DOES NOT REPRESENT THE ORIGINAL SURVEY.

- Legend**
- BOUNDARY OF ADJACENT PROPERTY LINE
 - BOUNDARY OF PROPERTY LINE
 - BOUNDARY OF PROPERTY LINE
 - BOUNDARY OF PROPERTY LINE

Metes & Bounds Exhibit
Property @ Harbor Park
City of Norfolk, Virginia





Metes & Bounds Exhibit

Property @ Harbor Park

City of Norfolk, Virginia

LANCE A. CHRISTENSEN
 PROFESSIONAL SURVEYOR
 LICENSE NO. 21800004

Legend

- DETACHED OR UNAPPROVED BY THE CITY OF NORFOLK
- BOUNDARIES
- BOUNDARIES
- BOUNDARIES
- BOUNDARIES

Notes

1. THE PROPERTY AND CASUALTY INSURANCE POLICIES ARE SHOWN WHERE AVAILABLE AND ARE SUBJECT TO THE POLICIES OF RECORD.
2. THE CITY OF NORFOLK HAS REVIEWED THIS REPORT FOR TECHNICAL ACCURACY AND COMPLIANCE WITH THE METES AND BOUNDS ACT OF VIRGINIA. THIS REPORT IS NOT A GUARANTEE OF ACCURACY AND IS NOT A SUBSTITUTE FOR A PROFESSIONAL SURVEYOR'S SERVICES. THE CITY OF NORFOLK DOES NOT WARRANT THE ACCURACY OF THIS REPORT.
3. THE CITY OF NORFOLK HAS REVIEWED THIS REPORT FOR TECHNICAL ACCURACY AND COMPLIANCE WITH THE METES AND BOUNDS ACT OF VIRGINIA. THIS REPORT IS NOT A GUARANTEE OF ACCURACY AND IS NOT A SUBSTITUTE FOR A PROFESSIONAL SURVEYOR'S SERVICES. THE CITY OF NORFOLK DOES NOT WARRANT THE ACCURACY OF THIS REPORT.
4. SOURCE: PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.



EXHIBIT B

PROJECT

[attach]

EXHIBIT C

CONCEPTUAL PLAN

[attach]

EXHIBIT D

MINIMUM STANDARDS

[attach]

EXHIBIT E

INTENTIONALLY OMITTED

EXHIBIT F

FORM OF MEMORANDUM OF OPTION TO PURCHASE

**This instrument prepared by
and return to:**

Michelle Foy, Esq.
City Attorney
City of Norfolk
810 Union Street
900 City Hall Building
Norfolk, VA 23510

MEMORANDUM OF OPTION TO PURCHASE

THIS MEMORANDUM OF OPTION TO PURCHASE is made this ____ day of September, 2019, by and between **CITY OF NORFOLK** (“City”), a municipal corporation of the Commonwealth of Virginia, **GOLDEN EAGLE CONSULTING II, LLC** (“GEC”), a Delaware limited liability company, and the **PAMUNKEY INDIAN TRIBE** (the “Tribe”), a federally recognized Indian tribe, on the terms and conditions hereinafter set forth.

WHEREAS, pursuant to that certain Option to Purchase dated the same date herewith by and between the City, GEC and the Tribe (the “Option Agreement”), the City has granted to GEC and the Tribe an options to purchase the Land (as defined in the Option Agreement and herein so called) with respect to the tract of land more particularly described on Exhibit A attached hereto and made a part hereof, in accordance with, and subject to, the terms and conditions of the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, GEC and the Tribe hereby provide public notice of the option to purchase the Land granted by the City to GEC and the Tribe pursuant to the Option Agreement. If the Option Agreement terminates or the option to purchase the Land expires or terminates in accordance with the terms of the Option Agreement this Memorandum shall terminate and be null and void as to the terminated or expired option. The City, GEC and the Tribe shall promptly, after a request made by the City, execute a termination of this Memorandum (in recordable form as agreed to in the Option Agreement) if this Memorandum terminates as described above.

(signature pages follow)

Effective as of the day and year set forth above.

CITY:

CITY OF NORFOLK

By: _____ (SEAL)

Name: _____

Title: _____

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by _____, City Manager of the City of Norfolk, and by _____, Clerk of the City of Norfolk, this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Registration No.: _____

Approved as to Form and Correctness:

Deputy City Attorney

GEC:

GOLDEN EAGLE CONSULTING II, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on September _____, 2019 by
_____, _____ of the Golden Eagle Consulting II, LLC, a
limited liability company of the State of Delaware, on behalf of same.

Notary Public
Print Name:
My Commission Expires:

TRIBE:

PAMUNKEY INDIAN TRIBE, a federally recognized
Indian tribe

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA §

§

COUNTY OF _____ §

This instrument was acknowledged before me on September _____, 2019 by
_____, _____ of the Pamunkey Indian Tribe, a federally
recognized Indian tribe, on behalf of same.

Notary Public

Print Name:

My Commission Expires:

EXHIBIT A -- LEGAL DESCRIPTION OF LAND (to be attached)

EXHIBIT G

FORM OF TERMINATION OF MEMORANDUM OF OPTION AGREEMENT

**This instrument prepared by
and return to:**

Michelle Foy, Esq.
City Attorney
City of Norfolk
810 Union Street
900 City Hall Building
Norfolk, VA 23510

TERMINATION OF MEMORANDUM OF OPTION TO PURCHASE

THIS TERMINATION OF MEMORANDUM OF OPTION TO PURCHASE is made this _____ day of _____, 20____, by and between **CITY OF NORFOLK** (“City”), a municipal corporation of the Commonwealth of Virginia, **GOLDEN EAGLE CONSULTING II, LLC** (“GEC”), a Delaware limited liability company, and the **PAMUNKEY INDIAN TRIBE** (the “Tribe”), a federally recognized Indian tribe.

W I T N E S S E T H

WHEREAS, the City, GEC and the Tribe entered into that certain Option to Purchase dated September ____, 2019 (the “Option Agreement”), wherein the City granted to GEC and the Tribe the option to purchase certain land owned by the City and located in the City of Norfolk, Virginia as more particularly described in the Memorandum, as defined below (the “Land”).

WHEREAS, a Memorandum of Option to Purchase was executed by the City, GEC and the Tribe on the same date thereof and recorded on September ____, 2019 among the Land Records of the Clerk’s Office of the Circuit Court of the City of Norfolk, Virginia, in Book _____, Page _____, as Instrument No. _____ (“Memorandum”), relating to the Land.

WHEREAS, the Option Agreement has expired or otherwise been terminated in accordance with the terms and provisions therein, and, as evidence of same, the parties hereto wish to terminate the Option Agreement and Memorandum on record and fully release the Land from the Option Agreement and the Memorandum.

NOW THEREFORE, for valuable consideration received at the time of execution of this Termination, the receipt and sufficiency of which is hereby acknowledged, the City, GEC and the Tribe do hereby discharge and terminate the Option Agreement and the Memorandum.

TO HAVE AND TO HOLD, the same with the appurtenances unto the owner thereof, its successors and assigns forever, free, exonerated and discharged from any terms and conditions of the Option Agreement and the Memorandum.

(signature pages follow)

IN WITNESS WHEREOF, the City, GEC and the Tribe have executed this Termination on the date first above written.

CITY:

CITY OF NORFOLK

By: _____ (SEAL)
Name: _____
Title: _____

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

Sworn to and subscribed before me, a Notary Public in and for the City and Commonwealth aforesaid, by _____, City Manager of the City of Norfolk, and by _____, Clerk of the City of Norfolk, this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

Registration No.: _____

Approved as to Form and Correctness:

Deputy City Attorney

GEC:

GOLDEN EAGLE CONSULTING II, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____, _____ of the Golden Eagle Consulting II, LLC, a
limited liability company of the State of Delaware, on behalf of same.

Notary Public
Print Name:
My Commission Expires:

TRIBE:

PAMUNKEY INDIAN TRIBE, a federally recognized
Indian tribe

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA §

§

COUNTY OF _____ §

This instrument was acknowledged before me on _____, 20__ by
_____, _____ of the Pamunkey Indian Tribe, a federally
recognized Indian tribe, on behalf of same.

Notary Public

Print Name:

My Commission Expires:

EXHIBIT A -- LEGAL DESCRIPTION OF LAND (to be attached)

EXHIBIT H

LEASES

Stadium Lease Agreement between the City of Norfolk, as lessor, and Tides Baseball Club, LP, as lessee, dated February 11, 2014, as amended, if at all (the “Tides Lease”)

Lease Agreement between the City of Norfolk, as lessor, and National Railroad Passenger Corporation, dated February 25, 2014, as amended, if at all (the “Amtrak Lease”)

EXHIBIT I

NO CONSTRUCTION ZONE AREA

