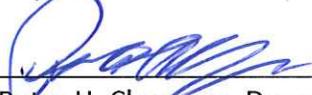


To the Honorable Council
City of Norfolk, Virginia

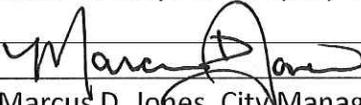
April 12, 2016

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

Subject: An ordinance to amend the
Waterside Lease and Grant Agreement

Reviewed: 
Peter H. Chapman, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Marcus D. Jones, City Manager

Item Number: **R-24**

- I. **Recommendation** Adopt Ordinance
- II. **Applicant** City of Norfolk

III. **Description**

This agenda item is an ordinance to amend the Deed of Lease and Development Agreement dated October 31, 2013 ("Lease Agreement") and the Performance Based Grant and Memorandum of Agreement dated October 31, 2013 ("Grant Agreement"). The amendments to the Lease and Grant Agreement permit the demolition of the 1990 expansion portion of Waterside, the use of a portion of the expansion site for limited parking, and the addition of real estate as part of the basis to earn and fund the Performance Grant. The sole source of funds for the Grant shall be revenue generated by the Development that is directly or indirectly collected or received by the City.

IV. **Analysis**

The planned renovations to the Waterside structure, at no cost to the City, will reposition the Waterside Festival and Marketplace to the Waterside District. The amendments memorialize the evolution of the project from the Waterside Live! concept adopted in October 2013 to the current Waterside District concept. The evolution of the project is based on the developers' due diligence in securing the proper tenant mix and have accordingly right-sized the facility to support a marketplace and brew house concept rather than a live entertainment concept. Approval of this ordinance will enable the developer to finalize designs, proceed with exterior demolition plans and construct the project. Targeted opening of Waterside District is spring of 2017.

V. **Financial Impact**

The City and Cordish entered into a financial arrangement whereby selected revenues generated from Waterside District will be shared by both entities. This revenue sharing model is most accurately referred to as "but for", if it were not for this project, the City would not

benefit from any of the associated revenues. The amendment to the Grant Agreement adds 0.917 percent of the assessed value of the real estate at the Development each year during the Grant Term in addition to the existing Sales, Food and Beverage and Admissions. The maximum amount of the grant remains capped at \$32 million or 80% of eligible costs over a 20-year period and funds will only be provided when and if collected by the City.

VI. Environmental

N/A

VII. Community Outreach/Notification

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

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

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

Supporting Material from the City Attorney's Office:

- Ordinance
- First Amendment to Deed of Lease and Development Agreement
- First Amendment to Performance Based Grant and Memorandum of Agreement

Form and Correctness Approved:

By 
Office of the City Attorney

Contents Approved:

By 
DEPT. _____

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE TO AMEND THE WATERSIDE LEASE AND GRANT AGREEMENT.

- - -

WHEREAS, the NRHA, (Lessor and Grantor) and Norfolk District Associates, LLC ("Cordish") entered into the Deed of Lease and Development Agreement dated October 31, 2013 ("Lease Agreement") and the Performance Based Grant and Memorandum of Agreement dated October 31, 2013 ("Grant Agreement");

WHEREAS, the City of Norfolk ("City") has executed the Lease to acknowledge its rights and obligations under the Lease;

WHEREAS, the City and Cordish desire that the Lease and Grant Agreement be amended to permit the demolition of the expansion portion for the Waterside, the use of a portion of the expansion site for limited parking, and the addition of Waterside real estate as part of the basis to earn and fund the \$32,000,000 "but for" performance grant heretofore appropriated to fund the City's obligations under the Cooperation Agreement with NRHA;

WHEREAS, the City requests that NRHA as owner and Lessor agree to the amendments; now, therefore,

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

Section 1:- That the City requests that NRHA as Lessor and Grantor enter into the attached amendments.

Section 2:- That the City Manager is authorized to take such steps as are necessary to facilitate the amendments and the City Attorney is authorized to give the requested opinions which are activities covered by City Code Section 2-155.

Section 3:- That this ordinance shall be in effect from and after its adoption.

**FIRST AMENDMENT TO
DEED OF LEASE AND DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEED OF LEASE AND DEVELOPMENT AGREEMENT (this "**First Amendment**") is made and entered as of this ___ day of March, 2016 (the "**First Amendment Effective Date**"), by and between the **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia (the "**Lessor**"), and **NORFOLK DISTRICT ASSOCIATES, LLC**, a Maryland limited liability company ("**Lessee**"). Lessor and Lessee are each hereinafter individually called a "**Party**" and collectively called the "**Parties**").

RECITALS

A. On October 31, 2013, the Parties entered into a certain Deed of Lease and Development Agreement (the "**Lease Agreement**").

B. The Parties desire to amend the Lease Agreement.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties hereto, it is hereby agreed as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein by reference as if set forth in the body of this First Amendment.

2. **Defined Terms.** Each capitalized term used herein and not otherwise defined herein shall have the meanings ascribed to it in the Lease Agreement.

3. **Amendments to the Lease Agreement.** The Lease Agreement is hereby amended as follows:

(i) **Project Plan and "Expansion" Site.** **Exhibit "I-1"** of the Lease is hereby deleted and replaced with **Exhibit "I-1"** attached hereto. Notwithstanding anything to the contrary contained in the Lease Agreement, as part of the Project, Lessee shall have the right to demolish the "Waterside Expansion" and create a future development site (the "**Expansion Site**") with appropriate landscaping, as generally depicted on the Project Plan. The Lessee shall have the right to utilize the Expansion Site as a landscaped parking area for the use of Lessee and its invitees and as an area for temporary events and other ancillary uses that complement the overall development. In addition, Lessee shall have the right to construct and operate an expansion of the Project on the Expansion Site. Notwithstanding any provision to the contrary in the Lease Agreement as amended or the Performance Based Grant Memorandum of Agreement as amended, the height of any expansion of the Project on the Expansion Site shall not exceed the approximate height of the Waterside. The number of parking spaces to be located on the Expansion Site shall be subject to the approval of the City Manager of the City, which approval shall not be unreasonably withheld or delayed.

(ii) **Initial Minimum Size of Project.** Initially, the Project will contain at least fifty thousand (50,000) square feet of space, including Improvements and space intended to be leased to one or more Subtenants (however, Lessee shall not be obligated to construct improvements for Subtenants).

4. **Approval of Schematic Plans.** Lessor hereby acknowledges that prior to the date hereof Lessor has approved the Schematic Plans.

5. **Representations and Warranties.** All of the representations and warranties contained in Section 18 of the Lease Agreement are hereby ratified and confirmed and deemed made as of the First Amendment Effective Date. In addition, all references to the Lease Agreement contained in Section 18 of the Lease Agreement shall be deemed to mean the Lease Agreement, as modified and amended by this First Amendment.

6. **Opinion of Counsel.** On the First Amendment Effective Date the Lessor shall furnish to Lessee an opinion of counsel, in form and substance reasonably acceptable to Lessee and customary in like transactions, as to the due authorization of the execution of the Agreement and the First Amendment and the enforceability of the Agreement and this First Amendment against the Lessor.

7. **Governing Law.** This First Amendment shall be construed under and shall be governed by the laws of the Commonwealth of Virginia.

8. **Authorization.** Each of the parties to this First Amendment represents and warrants to the other that such party is authorized to enter into this First Amendment and have taken all necessary action to approve the execution of this First Amendment.

9. **Ratification.** Except as specifically set forth in this First Amendment, all provisions of the Lease Agreement shall remain in full force and effect. The Lease Agreement as amended by this First Amendment is hereby ratified and confirmed. In the event of any conflict between the terms and provisions of the Lease Agreement and the terms of this First Amendment, the terms and provisions of this First Amendment shall control. All references herein or in the Lease Agreement shall mean and refer to the Lease Agreement as amended by this First Amendment.

10. **Counterparts.** This First Amendment may be executed in two (2) or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first above written below.

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY

By: _____
John Kownack
Executive Director

APPROVED AS TO FORM:

Counsel to the Norfolk Redevelopment
And Housing Authority

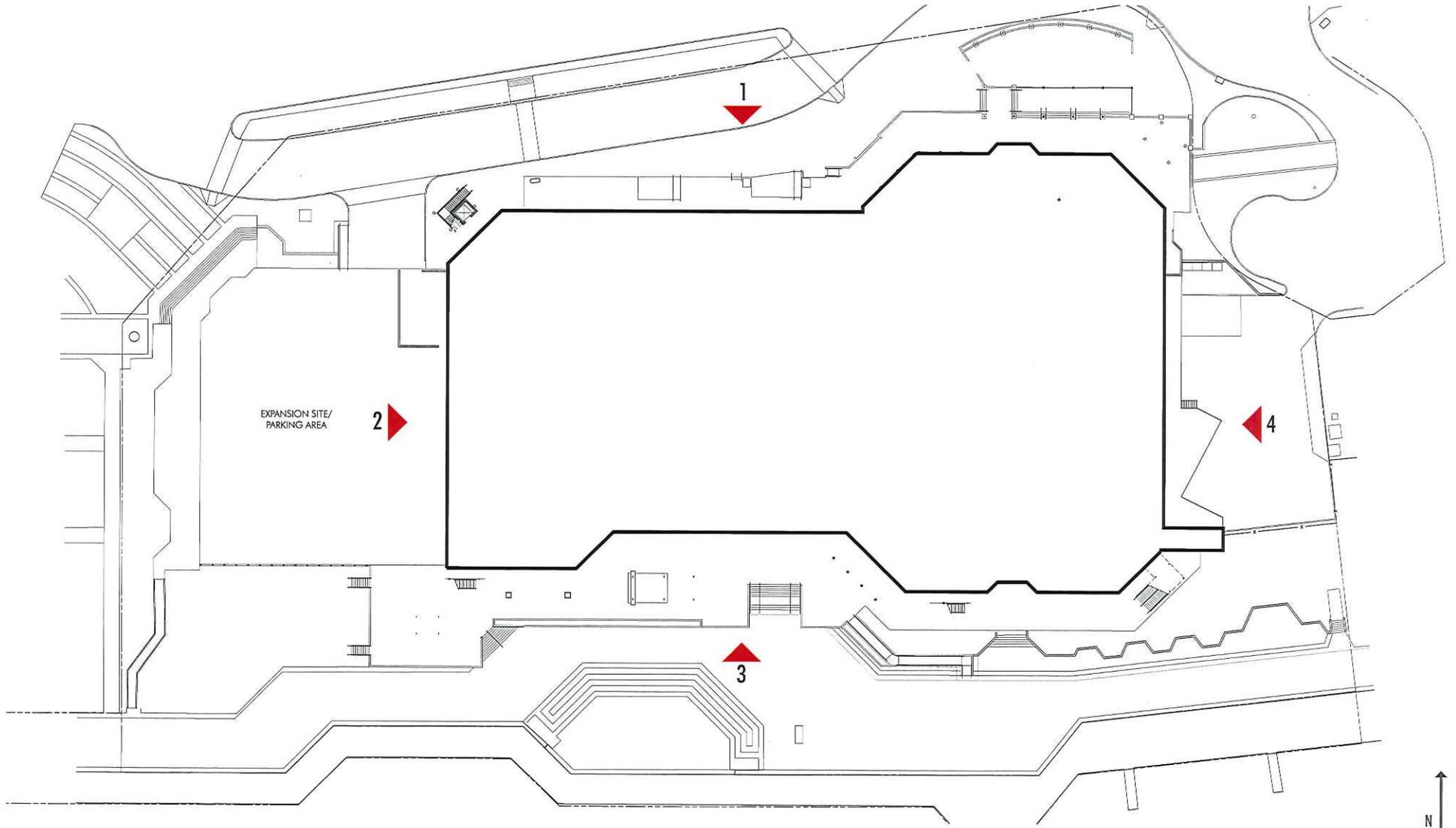
NORFOLK DISTRICT ASSOCIATES, LLC, a Maryland limited liability company

By: Cordish Enterprises, LLLP,
Its Managing Member

By: _____
Name: Jonathan A. Cordish
Title: General Partner

EXHIBIT "I-1"

Project Plan



WATERSIDE DISTRICT - SITE PLAN

03-09-2016

THE CORDISH COMPANIES
601 east pratt street | 6th floor
baltimore, maryland 21202
t 410.752.5444



BCT ARCHITECTS
one charles center
100 n charles street | 18th floor
baltimore, maryland 21201
t 410.837.2727
www.bctarchitects.com





2 - WEST ELEVATION



1 - NORTH ELEVATION

WATERSIDE DISTRICT - ELEVATIONS

03-09-2016

THE CORDISH COMPANIES
601 east pratt street | 6th floor
baltimore, maryland 21202
+ 410.752.5444



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4 - EAST ELEVATION



3 - SOUTH ELEVATION

WATERSIDE DISTRICT - ELEVATIONS

03-09-2016

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**FIRST AMENDMENT TO
PERFORMANCE BASED GRANT & MEMORANDUM OF AGREEMENT**

THIS FIRST AMENDMENT TO PERFORMANCE BASED GRANT & MEMORANDUM OF AGREEMENT (this "**First Amendment**") is made and entered as of this ___ day of March, 2016 (the "**First Amendment Effective Date**"), by and among the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia ("**City**"), **NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY**, a duly organized and existing political subdivision of the Commonwealth of Virginia (the "**Authority**"), and **NORFOLK DISTRICT ASSOCIATES, LLC**, a Maryland limited liability company ("**NDA**"). The Authority, the City and NDA are each individually called herein a "**Party**" and collectively called herein the "**Parties**".)

RECITALS

A. On or about October 31, 2013, the Parties entered into a certain Performance Based Grant & Memorandum of Agreement (the "**Grant Agreement**").

B. The Parties desire to amend the Grant Agreement to include as part of the Grant 0.917% of the assessed value of the real estate at the Development each year during the Grant Term.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements of the Parties hereto, it is hereby agreed as follows:

1. Recitals. The recitals set forth above are hereby incorporated herein by reference as if set forth in the body of this First Amendment.

2. Defined Terms. Each capitalized term used herein and not otherwise defined herein shall have the meanings ascribed to it in the Grant Agreement.

3. Definition of Eligible Costs. The following sentence is hereby inserted to the end of Section 1.2 of the Grant Agreement: "Notwithstanding the above, Eligible Costs shall not include any costs incurred in connection with developing and construction of any residential units as part of an Expansion Project (as that term is defined in the Lease, as amended).

4. Amendment to Section 2.1 of the Grant Agreement. Section 2.1 of the Grant Agreement is hereby deleted in its entirety and the following is hereby substituted in lieu thereof:

2.1 The "*Grant*" consists of annual periodic payments from the City to the Authority, calculated in the following manner: (a) 0.7% of all retail sales at the Development (rent and similar payments under subleases with the Authority are excluded) during the Grant Term, (b) 4.55% of all sales of food and beverages at the Development during the Grant Term, (c) 7% of all admissions charges at the Development during the Grant Term, and (d) 0.917% of the assessed value of real estate at the Development during the Grant

Term. The foregoing formula shall be referred to hereafter as the "*Waterside Revenue Share Formula*". The Grant shall not exceed the lesser of: (a) Maximum Aggregate Cap or (b) eighty percent (80%) of the Eligible Costs. The sole source of funds for the Grant shall be the revenue generated at the Development that is directly or indirectly collected or received by the City.

5. **Effective Date.** The Parties agree that the Effective Date of the Grant Agreement was and is October 31, 2013.

6. **Representations and Warranties.** All of the representations and warranties contained in Section VIII of the Grant Agreement, including Section 8.4 of the Grant Agreement, are hereby ratified and confirmed and deemed made as of the First Amendment Effective Date. In addition, all references to the Grant Agreement contained in Section VIII of the Grant Agreement shall be deemed to mean the Grant Agreement, as modified and amended by this First Amendment.

7. **Opinion of Counsel.** On the First Amendment Effective Date the City and the Authority shall furnish to NDA an opinion of counsel, in form and substance reasonably acceptable to NDA and customary in like transactions, as to the due authorization of the execution of the Agreement and the First Amendment and the enforceability of the Agreement and this First Amendment against the City and the Authority.

8. **Governing Law.** This First Amendment shall be construed under and shall be governed by the laws of the Commonwealth of Virginia.

9. **Authorization.** Each of the parties to this First Amendment represents and warrants to the other that such party is authorized to enter into this First Amendment and have taken all necessary action to approve the execution of this First Amendment.

10. **Ratification.** Except as specifically set forth in this First Amendment, all provisions of the Grant Agreement shall remain in full force and effect. The Grant Agreement as amended by this First Amendment is hereby ratified and confirmed. In the event of any conflict between the terms and provisions of the Grant Agreement and the terms of this First Amendment, the terms and provisions of this First Amendment shall control. All references herein or in the Grant Agreement shall mean and refer to the Grant Agreement as amended by this First Amendment.

11. **Counterparts.** This First Amendment may be executed in two (2) or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first above written below.

CITY OF NORFOLK

By: _____
Marcus D. Jones
City Manager

ATTEST:

City Clerk

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY

By: _____
John Kownack
Executive Director

APPROVED AS TO FORM:

Counsel to the Norfolk Redevelopment
And Housing Authority

APPROVED AS TO CONTENTS:

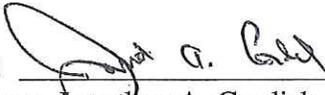
Assistant City Manager

APPROVED AS TO FORM & CORRECTNESS:

City Attorney

**NORFOLK DISTRICT ASSOCIATES,
LLC, a Maryland limited liability company**

By: Cordish Enterprises, LLLP,
Its Managing Member

By: 
Name: Jonathan A. Cordish
Title: General Partner