

**Intergovernmental Agreement**

**By and Between**

**The Pamunkey Indian Tribe**

**And**

**The City of Norfolk, Virginia**

September [\_\_], 2019

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## **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, 11<sup>th</sup> 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 (2<sup>nd</sup>) 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:**