

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND**

NORFOLK DISTRICT ASSOCIATES, LLC,

*Plaintiff,*

v.

THE CITY OF NORFOLK,

SERVE:

City of Norfolk  
c/o Bernard Pishko, City Attorney  
810 Union Street, Suite 900  
Norfolk, VA 23510

NORFOLK REDEVELOPMENT AND  
HOUSING AUTHORITY,

SERVE:

Norfolk Redevelopment and Housing Authority  
c/o Virginia Mack, Chief Administrative Officer  
555 E. Main St.  
Norfolk, VA 23510

and

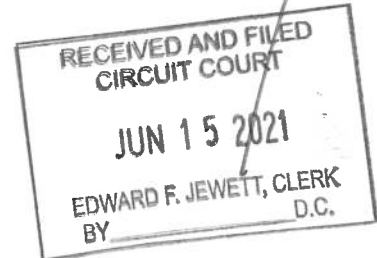
BERNARD A. PISHKO,  
in his individual capacity,

Serve:

Bernard Pishko  
1332 Cornwall Place  
Norfolk, VA 23508

*Defendants.*

Case No. \_\_\_\_\_



**COMPLAINT**

Plaintiff, Norfolk District Associates, LLC, by counsel, files this Complaint against Defendants, the City of Norfolk, the Norfolk Redevelopment and Housing Authority, and Bernard A. Pishko, Norfolk City Attorney (collectively, "Defendants") for damages and declaratory relief.

## Introduction

1. The Cordish Company (“Cordish”) is a 110-year old, family-owned business that has developed tens of millions of square feet of commercial real estate properties nationwide. Four generations of the Cordish family have led the company to earn wide recognition for its award-winning expertise in public-private partnership that has revitalized cities throughout the United States. Cordish is the only developer in the world to have won the prestigious global Urban Land Institute Award for Excellence for seven separate projects it has developed.

2. Norfolk District Associates, LLC (“ND”) is the name of the separate limited liability company Cordish created to redevelop a failed retail-entertainment project (“the Project”) in the City of Norfolk (“City”), in partnership with the City. The Project was formerly known as The Waterside.

3. Originally opened in 1983, The Waterside in its heyday was the heart and soul of downtown Norfolk, critical to its downtown revitalization. However, beginning in the mid-1990s, the Project suffered significant economic setbacks, including massive tenant vacancies, and its management defaulted on its loans. In a last-ditch effort to salvage the Project, the City (through the Norfolk Redevelopment and Housing Authority (“NRHA”)) took over ownership and operations of the Project in 1999. The results of the City’s stewardship were economically and operationally disastrous. The City incurred millions of dollars in losses and The Waterside was reduced to a nearly empty shell. In 2008 alone, the City lost over \$1 million operating The Waterside. In 2010, the deficit ballooned to \$3.3 million. By 2013, over 90% of The Waterside’s square footage was vacant.

4. In 2013, the City and NRHA contracted with ND to redevelop the failed Project. See the City and NRHA’s October 31, 2013 Deed of Lease and Development Agreement with ND, Section 17.8 (“Lease Agreement”) (attached as **Exhibit A**). This partnership was based on

Cordish's decades-long track record of successfully tackling similarly difficult urban revitalization projects.

5. In the Lease Agreement, the City and NRHA promised to support ND in developing a casino at Waterside if the Commonwealth of Virginia legalized commercial gaming. ND and its redevelopment contract were crystal clear: without the City's commitment to make Cordish its exclusive developer for casino gaming, ND would not undertake the herculean task and significant economic risks of redeveloping The Waterside. Norfolk City Attorney Bernard "Bernie" Pishko ("Pishko") personally negotiated the Lease Agreement with ND.

6. Since at least 2018, the City, NRHA, and Pishko individually, in direct contradiction of their legal obligations to ND, conspired with the Pamunkey Indian Tribe ("Tribe") and its sponsor, Golden Eagle Consulting II, LLC ("Golden Eagle") for an exclusive casino development near Harbor Park ("Tribal Casino"). Upon information and belief, Golden Eagle is a single-purpose entity that exists to finance a casino development in Norfolk with the City and the Tribe. Golden Eagle is owned and controlled by Jon Yarbrough ("Yarbrough") and John Thompson ("Thompson"), wealthy investors who are not part of the Tribe. In 2018, Pishko negotiated a Tribal Casino contract with the Tribe, Golden Eagle, Yarbrough, and Thompson.

7. The City, NRHA, and Pishko's casino deal with the Tribe and Golden Eagle violated ND's contract rights. Defendants spent over two years and millions of taxpayer dollars covering up their unlawful conduct against ND through the illegal manipulation of state legislators, local officials, and the public. At the center of the unlawful conspiracy against ND is City Attorney Pishko, **who considers himself the "real mayor" of Norfolk** and has a personal agenda in favor of the Tribe, Golden Eagle, and Yarbrough, and against ND and Cordish. Weaponizing the City's treasury and legal arsenal against ND, Pishko, the City, and NRHA have pushed the Tribal Casino

deal exclusively in direct violation of their obligations to ND since at least 2018.<sup>1</sup>

### **The Parties**

8. Norfolk District Associates, LLC is a limited liability company organized under the laws of Maryland and consisting of Maryland and Virginia members. Created in 2013, ND was created to develop, own, and manage real property in Norfolk, Virginia. The managing member of ND is Cordish Enterprises, LLLP, an affiliate of The Cordish Companies (“Cordish”). Cordish is a fourth-generation family-owned business nationally recognized for its highly successful commercial real estate developments, including the development and operation of destination resort casinos, and the owning and operation of entertainment venues.

9. As one example, a Cordish developed, from the ground up, two of the most profitable casinos in the history of the United States: the Seminole Hard Rock Hotel & Casinos in Hollywood, Florida and Tampa, Florida. Cordish was responsible for the design, architecture, engineering, construction, and arranging and participating in the financing for these casinos. In addition, another Cordish affiliate developed and operates Live! Hotel & Casino Maryland, a destination resort casino and hotel that includes a conference center, concert hall, and one of the largest commercial casinos in the United States. Cordish also has opened two additional major casinos in Pennsylvania, one in Pittsburgh and one in Philadelphia that includes a hotel.

10. The City of Norfolk is a municipal corporation and political subdivision of the Commonwealth of Virginia with projected general fund revenues for 2021 in excess of \$880 million.

11. The Norfolk Redevelopment and Housing Authority is a political subdivision of the Commonwealth of Virginia, created under Virginia Code § 36-1, *et seq.* NRHA is the largest

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<sup>1</sup> A timeline of the factual allegations below is attached as **Appendix 1**. A list of the exhibits is attached as **Appendix 2**.

redevelopment and housing authority in Virginia and emphasizes “accountability” as a primary value governing “the way in which we do business.”<sup>2</sup>

12. Bernard Pishko has been the Norfolk City Attorney since 1997. He served as Deputy City Attorney from 1989 to 1997 and as an Assistant City Attorney from 1984 to 1989. In his role as City Attorney, Pishko regularly negotiates contracts that bind the City, including contracts to lease, buy, sell, and develop real property. Pishko claims to be the “real mayor” of Norfolk. Pishko has engaged in a pattern of fraudulent concealment and deception for years, abusing his authority, grossly exceeding his official capacity, and targeting ND and Cordish with malicious intent to harm. Pishko’s actions against Cordish and ND followed a pattern of conduct in conspiring with favored private interests for his own personal agenda, at the expense of other private legitimate interests and the City’s interests.

#### **Jurisdiction and Venue**

13. This Court has jurisdiction over this matter pursuant to Virginia Code § 17.1-513 and § 8.01-328.1.

14. Venue is proper in Richmond, Virginia because the parties expressly consented to venue in Richmond state courts in the forum selection clause of the Lease Agreement. *See* Ex. A, Section 17.8; *see also Paul Bus. Sys., Inc. v. Canon U.S.A., Inc.*, 240 Va. 337 (1990). In the absence of diversity jurisdiction, the parties agreed to this Court as “the appropriate venue.” Ex. A, § 17.8.

15. This Court is also a proper venue for this suit under Virginia Code § 8.01-262(4) because a significant portion of Defendants’ unlawful conduct occurred in Richmond, Virginia. The City and Pishko lobbied at the General Assembly in Richmond to enact legislation designating

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<sup>2</sup> *About NRHA*, Norfolk Redevelopment and Housing Authority, <http://www.nrha.us/about> (last visited June 3, 2021).

the Tribe as the exclusive licensee for the City of Norfolk in derogation of their obligation to deal exclusively with ND. It was also Richmond where, among other things, the City and Pishko conspired with various individuals to enact a law in 2020 barring the development of a casino on the Waterside property.

**The City Induces Cordish to Develop Waterside with Promises of a Future Casino**

16. In 2013, after lengthy negotiations, the City and NRHA induced Cordish to redevelop the failed Project with the promise of future potential expansion of the Project to include a casino on the Waterside property.

17. Although Virginia law did not permit the operation of a commercial casino in 2013, the parties anticipated that Virginia law would change to allow it during the pendency of the Lease Agreement. Given the ongoing expansion of commercial casinos along the East Coast, it was inevitable that in due course Virginia would follow suit and legalize gaming. Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, and West Virginia have in recent years legalized gambling and state-licensed casinos. The parties to the Lease Agreement considered it inevitable that Virginia would follow suit, and given Cordish's extensive and successful track record in developing casinos, it was logical for Cordish and its Waterside redevelopment to receive exclusive casino development rights if gambling were legalized in Virginia and permitted in Norfolk. Said casino rights were critical in inducing Cordish to undertake the arduous and risky redevelopment of the failed Waterside Project.

18. To memorialize this agreement, NRHA and ND executed the Lease Agreement on October 31, 2013.

19. In the Lease Agreement, NRHA agreed to lease the Waterside land to ND. In exchange, ND would leverage Cordish's extensive development expertise to accomplish a

“renovation and retrofit of an existing structure (i.e., Waterside), into an entertainment, retail, nightclub, bar and/or restaurant complex” of similar caliber as Cordish’s other successful Live! branded properties. Ex. A, Sections 1, 2.

20. To further induce Cordish to rescue the disastrous Waterside complex, the City and NRHA guaranteed Cordish the exclusive right to develop a casino on the Waterside property.

21. First, the City and NRHA guaranteed that they would not subsidize any other entertainment project in Norfolk before 2023. They included the following “Exclusive” provision in the Lease Agreement for ND’s benefit:

**Exclusive.** As of the Effective Date, neither the City nor NRHA will subsidize or provide a performance based grant for a restaurant and entertainment development of over 75,000 square feet similar to the Project for a period of ten (10) years from the Effective Date.

Ex. A, Section 8.1.

22. Second, the City and NRHA promised to cooperate with and support ND in the event the Virginia General Assembly contemplated legalizing the development of a casino in Norfolk. *See* Ex. A, Section 10.2. In that event, they agreed to amend the Lease Agreement to allow ND to develop a casino at Waterside and help ND obtain the necessary government approvals to do so:

Lessee shall have the right to develop and operate the Leased Premises for the Permitted Use. The Permitted Use includes the installation and operation of one or more Virginia Lottery terminals, but does not currently include the operation of the Premises as a casino or other gaming establishment, which is a use to which the City does not object but is a use that is not reflected within the financial terms of this Lease Agreement. ***In the event that the law of the Commonwealth of Virginia is changed to permit the possibility of developing and operating all or part of the Premises as a casino or other gaming establishment, at the request of Lessee, Lessor and Lessee shall enter an amendment to this Lease Agreement if terms including but not limited to agreeing to a modified rent reasonably satisfactory to Lessee and Lessor, both parties acting reasonably, are agreed upon. Moreover, at the request of Lessee, Lessor and the City shall cooperate with Lessee in obtaining any Government Approvals necessary to enable the Premise [sic] to be utilized as casino [sic] or other gaming establishment.***

Ex. A, Section 10.2.1 (emphases added).

23. The City and NRHA further promised to “cooperate with and support [ND] in modifying, as necessary in [ND]’s sole discretion, or complying with Virginia law to authorize the Permitted Use with regard to [ND] and its Subtenants.” Ex. A, Section 10.2.2.

24. In these promises, the City and NRHA agreed to expand the use of the Waterside property to include ND’s development and operation of a casino if the law changed to allow commercial casinos in the Commonwealth of Virginia.

25. From 2013 to 2017, ND invested over \$43 million in the Waterside Project to completely redevelop and rehabilitate the local landmark.

26. In 2017, ND reopened the newly rebranded Waterside District, which now offers regional and national restaurants, a mixed-use space for dining and private events, and a world-class entertainment facility, among other attractive options. ND’s redevelopment created hundreds of new jobs.

27. Today, the City touts the newly redeveloped Waterside District on its website, boasting that Waterside “again shines bright on the river after a \$40-million-dollar facelift. It provides unique waterfront dining and entertainment to a new generation of Norfolk’s visitors and residents.”<sup>3</sup>

28. ND kept its end of the bargain, but the City and NRHA did not.

**The City, NRHA, and Pishko Conspire Against ND in Favor of Outsiders**

29. Instead of keeping their contractual promises to ND, Defendants, motivated by a personal agenda, conspired with the Pamunkey Tribe, Yarbrough, and Golden Eagle to deprive ND of its rights to develop a casino at Waterside.

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<sup>3</sup> *Waterside District*, The City of Norfolk, <https://www.norfolk.gov/3072/Waterside-District> (last visited June 3, 2021).



30. Pishko exceeded the power of his office and authority to execute his personal agenda against ND and to favor the Tribe and Yarbrough. Pishko conspired with the City and NRHA to ensure that the City selected the Tribe and Golden Eagle to develop a casino near Norfolk's Harbor Park. Acting in his personal capacity and placing the interests of the Tribe and Yarbrough above those of the City and the citizens of Norfolk, Pishko actively and surreptitiously violated ND's contractual rights.

31. In January 2020, Cordish learned for the first time that Defendants had entered into an exclusive casino development agreement with the Tribe, and that the City's and NRHA's commitments to the Tribe and Yarbrough dated back to 2018.

32. The Pamunkeys are a Native American tribe with a reservation along the Pamunkey River in King William, Virginia, over eighty miles from downtown Norfolk. The Pamunkeys have no history or connection with Norfolk. The Tribe has a documented history of racial discrimination, which persists to this day (*see, e.g.*, February 18, 2020 Email from Pishko to McClellan, attached as **Exhibit B**, which outlines the allegations of Jasmine Anderson against the Tribe for ongoing racial discrimination).<sup>4</sup>

33. The City and the Tribe were discussing an exclusive casino development deal by at least June 2018. Pishko was personally involved in negotiating the City's exclusivity with the Tribe and Golden Eagle in 2018, beginning in June and continuing through December (*see* June and November 2018 Emails between City and Tribe with draft casino agreements, attached as **Exhibit C**). None of this was disclosed to ND.

34. Golden Eagle initially designed a deal with the City to develop a tribal casino via a transfer of land into federal trust for the Tribe. This arrangement would invoke the Tribe's

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<sup>4</sup> *Past Ban on Marrying Blacks May Mar Tribe's Future*, AP News (Nov. 28, 2014), <https://apnews.com/article/87eabf0f148c48cda7433f20d94ab340>.

sovereign nation status and exempt the casino operation from all taxes and any civil or criminal liability.

35. All of these discussions were initially kept secret because the City and the Tribe had executed a non-disclosure agreement on June 4, 2018 (*see* June 4, 2018 Non-Disclosure Agreement, attached as **Exhibit D**).

36. On December 19, 2018, when the City was fully committed to pursuing a casino development project with the Tribe, the City announced its partnership with the Tribe and Golden Eagle. It then proceeded to spend a fortune on a team of attorneys and lobbyists to support the Tribe's casino deal in the Virginia General Assembly and throughout the Commonwealth.

37. Pishko and the City utilized Kemper Consulting, Inc. ("Kemper") to lobby for the Tribe's casino in Norfolk (*see* February 2018, January 8, 2019, and March 20, 2019 Kemper Consulting, Inc. agreements, attached as **Exhibit E**). Kemper actively promoted, at Defendants' direction, the idea that the exclusive casino developer for Norfolk should be the Tribe and Golden Eagle. Kemper never promoted the idea that ND or Waterside should be the preferred casino developer or location.

38. In early 2019, Pishko and the City hired another lobbying group, Principle Advantage Government Relations Group, LLC ("Principle Advantage"), to lobby the Virginia General Assembly for the Tribe's casino in Norfolk (*see* January 1, 2019 Lobbying and Consulting Agreement, attached as **Exhibit F**). Principle Advantage never promoted the idea that ND or Waterside should be the preferred casino developer or location.

39. In late 2019, Pishko and the City hired a third public relations group, Access Point Public Affairs, LLC ("Access Point"), to provide a public affairs strategy for the City in favor of the Tribe's casino in Norfolk (*see* October 7, 2019 Strategic Public Affairs Agreement, attached

as **Exhibit G**). Access Point never promoted the idea that ND or Waterside should be the preferred casino developer or location.

40. On September 24, 2019, the Norfolk City Council adopted an ordinance authorizing a deal between the City and the Tribe which contemplated the transfer of land into trust for the Tribe's development of a tribal casino (*see* Ordinance No. 47,773, attached as **Exhibit H**).

41. In early November 2019, Golden Eagle pushed the City to execute an Intergovernmental Agreement and Option to Purchase with the Tribe, which gave the Tribe exclusive rights to develop a casino in the City of Norfolk, either as a tribal *or* commercial operation (*see* November 2019 Email chain regarding Intergovernmental Agreement, attached as **Exhibit I**) ("Chief ready to sign. Let's get this done."). Defendants granted their requested option to purchase approximately thirteen acres of valuable City-owned land, at a below-market price, without competitive bidding, and without allowing any other party to bid on the property.

42. Despite their contractual obligations to ND, the current tenant at Waterside, the City and NRHA, with Pishko at the helm, obtained a highly-subsidized tribal casino "preferred" designation from the Commonwealth of Virginia for the City's designated casino developer and location. Not only did the City option land for sale to the Tribe and Golden Eagle at a fraction of its fair market value, but the City also agreed to give the Tribe a further subsidy in lieu of normal real estate tax assessments.<sup>5</sup> Pishko engaged in a pattern of fraudulent concealment and deception, outside the scope of his employment, to grant preferred status to the Tribe and the Tribe's sponsor, to the detriment of ND and all competitors.

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<sup>5</sup> *See, e.g.*, January 10, 2020 Recorded Memorandum of Option to Purchase, with assessed land value of \$39.6 million (attached as **Exhibit J**); November 2019 execution version of Intergovernmental Agreement between the City and the Tribe at Sections 4 and 5(A) regarding payments in lieu of taxes (attached as **Exhibit K**). Upon information and belief, the City did none of its own due diligence but instead relied on an appraisal procured by Golden Eagle, and agreed to sell the land to the Tribe and Golden Eagle for about \$10 million, which is below the actual fair market value.

### The General Assembly Clears the Way for a Casino in Norfolk

43. The Defendants' extensive, backhanded lobbying efforts ultimately paid off.

44. In 2019, the Virginia General Assembly passed legislation directing the Joint Legislative Audit and Review Commission ("JLARC") to conduct a comprehensive casino regulation study. On November 25, 2019, JLARC recommended adopting legislation allowing commercial casinos in the Commonwealth of Virginia.

45. On January 8, 2020, legislation was offered for the first time in the General Assembly, in the form of S.B. 36, that would permit commercial entities to develop casinos in Virginia.<sup>6</sup>

46. If enacted, the sovereign Tribe would be the only possible developer of a casino in Norfolk. The gaming legislation, from inception to passage, made it crystal clear that in every instance, the Commonwealth would defer to the City's choice of developer and casino location.

47. The City and NRHA never contacted ND for consideration or cooperation in developing a casino, despite their promises in the 2013 Lease Agreement to assist ND in developing a casino.

48. The reason is obvious: the City and Pishko had already chosen the Tribe and Golden Eagle as their exclusive partners for the development of a casino in Norfolk.

49. In fact, anticipating the proposed legislation, Golden Eagle conspired with Pishko and the City to finalize and execute a new development contract in early January 2020 (*see* January 8, 2020 Emails from Thompson to Pishko regarding Intergovernmental Agreement, attached as **Exhibit L**) (Thompson repeatedly asking Defendants for draft agreements, saying, "we were told this would be executed in August" and "time is of the essence").

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<sup>6</sup> S.B. 36, Va. 2020 Reg. Sess. (Va. 2020), available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB36> (last visited June 3, 2021).

### The City Cements Its Duplicitous Deal with the Tribe

50. Immediately after S.B. 36 was introduced in the General Assembly, the City hastily finalized its second partnership with the Tribe and Golden Eagle in two agreements: an Option to Purchase Agreement executed on January 10, 2020 (“Option Agreement”) (attached as **Exhibit M**), and a Development Agreement executed on January 13, 2020 (“Tribal Development Agreement”) (attached as **Exhibit N**). The Tribal Development Agreement was fully executed just five days after S.B. 36. was introduced.

51. The 2020 Tribal Development Agreement directly contradicts the City’s 2013 Lease Agreement with ND.

52. In the Tribal Development Agreement, the City expressly agreed to help the Tribe and Golden Eagle gain the right to develop a casino—to the exclusion of “*any other party*”:

The Tribe and GEC shall each use their respective reasonable efforts to promptly apply for, pursue and obtain the Approvals necessary to design, develop, construct and operate the Project, and the City shall use its reasonable efforts to assist and support the Tribe and GEC in obtaining such Approvals. To the extent permitted by law, ***the City will work exclusively with the Tribe and GEC*** in their efforts to obtain approval from the Commonwealth to conduct Gaming in the City, and ***will not, directly or indirectly, assist or support any other party in its efforts to obtain such approval.*** If legislation is enacted by the Commonwealth in a manner which permits commercial Gaming to be conducted by the Tribe on the Subject Property, (a) the Tribe and GEC will use best efforts to obtain the Licensing Approval for the development of a commercial Casino on the Subject Property, and (b) the Tribe and GEC will pursue the development of and financing for a commercial Casino on the Subject Property, (c) the Tribe and/or GEC shall execute a guaranteed maximum price construction contract for the Casino and (d) the Tribe shall not seek to place the Subject Property into trust with the United States Government on behalf of the Tribe.

Ex. N, Section 2.A (emphases added).

53. Further, the City promised the Tribe it would “not authorize, permit or fail to prohibit the operation of any additional commercial gaming establishments within the City other than the [Tribe’s] 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 . . . .” Ex. N, Section 9.C.

54. The Option Agreement, in turn, gave the Tribe the right to exercise an option to purchase approximately thirteen acres of land near Harbor Park in Norfolk, under a mile from the Waterside District, to develop a casino and entertainment destination on the site. *See* Ex. M, Section 2.2.

55. The City’s newly-public agreements revealed that not only had the City and Pishko been discussing a casino with the Tribe *for years* in violation of the City’s promises to ND in the Lease Agreement, but the City had also guaranteed the Tribe exclusivity for the casino—a right the City had already contractually granted to ND in 2013.

56. The City clearly and intentionally breached its promises to ND when it executed the Tribal Development Agreement and the Option Agreement with the Tribe. Pishko negotiated both deals, knew of the breach, and conspired with the City, NRHA, the Tribe, and Golden Eagle to undermine ND and its contractual rights.

57. The City’s contracts with the Tribe and Golden Eagle are illegal, violative of public policy, and void as a matter of law. The City cannot simultaneously give two separate legal entities exclusive rights to build and operate a casino.

**The City Rebuffs ND’s Attempts to Exercise Its Exclusive Casino Development Rights**

58. When ND learned of the January 8, 2020 introduction of S.B. 36 in the General Assembly, it promptly sought to exercise its exclusive casino development rights under the 2013 Lease Agreement.

59. Only then did ND discover the City’s duplicitous casino deal and lobbying efforts

to advance its deal with the Tribe and Golden Eagle.

60. On January 13, 2020, ND contacted the City and NRHA requesting their cooperation in developing a casino at Waterside pursuant to the Lease Agreement (*see* January 13, 2020 Letter from Weinberg to NRHA, City Manager, and Pishko, attached as **Exhibit O**).

61. Between January 13 and 14, 2020, ND learned about the Tribal Development Agreement. ND immediately notified the City and NRHA of their clear breach of the Lease Agreement (*see* January 14, 2020 Letter from DiGrazia to NRHA, City Manager, and Pishko, attached as **Exhibit P**).

62. In a January 22, 2020 letter to ND, Pishko declined ND's polite request to "meet to strategize mutual efforts with the General Assembly," Ex. O at 2, regarding casino legislation (*see* January 22, 2020 Letter from Pishko to Weinberg, attached as **Exhibit Q**).

63. Instead, Pishko, despite having signed the Lease Agreement and knowing full well that ND sought the City's follow-through on the Lease Agreement in light of the General Assembly's consideration of S.B. 36, responded to ND with sarcasm, seemingly in an attempt to humiliate ND and undermine its good-faith outreach. Pishko wrote:

For the current session, I understand that the time to introduce legislation has passed. Has Norfolk District Associates requested legislation? Please share whatever you have prepared and if you have not proposed anything, what does Norfolk District Associates plan to seek?

Ex. Q.

64. ND entreated the City again (*see* February 10, 2020 Letter from Jacobs to Pishko, attached as **Exhibit R**).

65. In response, Pishko flippantly responded that the City was "not legally obligated to assist ND to help shape this legislation to locate a casino at Waterside," nor was the City willing to agree to assist ND until such legislation was passed: "While the City is not currently legally

obligated to negotiate an amendment to the Agreement to permit gaming at Waterside, it does not seem feasible to attempt to agree to an amendment without such gaming being legal” (see February 21, 2020 Letter from Pishko to Jacobs, attached as Exhibit S). Despite the City’s promise in the Lease Agreement to cooperate with ND and consider an amendment to permit a casino, Pishko argued that “amendment of the Lease is not legally required at this time and appears not feasible.” Ex. S at 1.

66. Throughout ND and the City’s exchange of letters, Pishko and the City represented that the City might consider ND’s proposal for a casino deal. These were empty promises, and in fact, blatant falsehoods. Pishko and the City knew that the City could not honor the casino agreements of both ND and the Tribe, both of which promised exclusivity and the City’s cooperation.

67. Documents the City produced pursuant to ND’s Virginia Freedom of Information Act (“FOIA”) request detail the City’s extensive discussions with the Tribe, Yarbrough, and Thompson.

68. In a January 7, 2020 email Pishko sent to Golden Eagle (attached as Exhibit T) prior to the execution of the agreements with the Tribe, Pishko assured Thompson that the City would guarantee the Tribe’s interest in developing a casino, saying, “[W]e are not now and will not later negotiate with another developer unless there is a mandatory RFP process resulting in another development selected. We have turned down all requests to meet with other developers and instructed our lobbyist to oppose an RFP process for Norfolk.” Ex. T at 1 (emphasis added).

69. The City and the lobbyists Pishko hired pushed for the City to have sole authority to award the lucrative casino contract to its preferred developer (see January 20, 2020 Email from



Bezick to City officials, attached as Exhibit U).

70. Indeed, Thompson admitted the Tribe had always understood its casino deal with the City would be exclusive. In a May 27, 2020 email to the City with the subject line “Exclusivity” (attached as Exhibit V), Thompson reminded City officials that their “conversations” (which included Pishko) had begun in at least June 2018 and contemplated exclusivity even then. *See* Ex. V at 1. Thompson provided a December 2018 draft term sheet of the deal with the Tribe, which included an exclusivity term, and he explained, “**As anyone who knows anything about this business knows, exclusivity is always one of the first topics of conversation in any potential gaming project, and it was here as well.**” *Id.* (emphasis added).

71. From January through April 2020, ND sent the City a series of letters seeking the City’s compliance with the Lease Agreement and the cure of the City’s breach with the Tribe, but the City refused (*see, e.g.*, March 19, 2020 Letter from Pishko and Carnes to Gilmore, attached as Exhibit W).

#### The City Interferes at the General Assembly

72. Knowing they had breached the Lease Agreement with ND, having been put on notice by ND of the breach, and anticipating ND would take legal action, Defendants used their political leverage to attempt to sanitize their double-dealing and breach of contract with ND.

73. Literally at the eleventh hour and fifty-ninth minute before final passage, Defendants conspired to amend the legislation during a “closed door session” on March 7, 2020. After two years of working on the gaming legislation, studies by groups appointed by the Governor and General Assembly, and multiple committee hearings, suddenly and completely out of the blue, an amendment prohibiting a casino from being built on any land owned or subsidized by a housing authority was suddenly introduced. Of course, none of the other host cities involved in the gaming

legislation contemplated building a casino on housing authority land—just Norfolk. The amendment, orchestrated by Defendants and their lobbyists, had no public policy purpose, but was solely done in a pathetic attempt to “fix” the City and NRHA’s breach of ND’s Lease Agreement.

74. The bill with the amendment passed on March 8, 2020, the last day of the legislative session.

75. As passed, the legislation states: “No portion of any facility developed with the assistance of any grants or loans provided by a redevelopment and housing authority created pursuant to § 36-4 shall be used as a casino gaming establishment.” Va. Code § 58.1-4110(G). Because NRHA owns the land on which the Waterside District is situated, the amendment attempts to prohibit ND from developing a casino at Waterside. **The City’s breach of the Lease Agreement with ND for exclusivity, and the City’s violation of the exclusivity clause, predates the amendment by at least two years.**

76. The legislation also contemplated the selection of a “preferred casino gaming operator,” *see* Va. Code §§ 58.1-4107, 58.1-4109, 58.1-4110, also at Defendants’ urging.

77. Defendants directly and indirectly lobbied the General Assembly to amend S.B. 36 to eliminate ND’s contractual right to develop a casino at the Waterside District, and to name the Tribe and Yarbrough as Norfolk’s “preferred” casino operators.

#### **The City Tries to Cover Itself by Amending the Tribal Development Agreement**

78. Anticipating that ND would sue the City to hold it accountable for its unlawful actions, the City also hastily amended the Tribal Development Agreement.

79. In June 2020, the City executed the First Amendment to the Development Agreement and retracted the “exclusive” casino development rights it had promised to the Tribe and Golden Eagle (“Amendment”) (attached as **Exhibit X**).

80. In Paragraph 4 of the Amendment, the City, the Tribe, and Golden Eagle agreed that the exclusivity provisions in Sections 2.A. and 9.C. of the Tribal Development Agreement would not apply “to the extent otherwise agreed to by the City in that certain Deed of Lease and Development Agreement dated as of October 31, 2013, between the Norfolk District Associates, LLC, the Norfolk Redevelopment Housing Authority and the City.” *See* Ex. X at 3.

81. The offensive legislation was not, however, retroactive, and no matter the impropriety of the City’s and Pishko’s actions in 2020, it was too little, too late.

82. In other words, after the City *thought* the enacted legislation would prohibit ND from developing a casino at the Waterside District, the City made a cosmetic attempt to cure its blatant breach of the Lease Agreement by exempting ND’s right to a cure.

83. Documents the City produced pursuant to ND’s FOIA request reveal that Pishko originated this Amendment to exclude the Waterside District from the Tribal Development Agreement (*see* May 13, 2020 Email from Foy to Pishko, attached as **Exhibit Y**) (providing draft of Amendment). Pishko directed his subordinates to draft the exclusivity amendment with just “enough information in the ordinance to make it clear without getting into detail” that the Amendment was intended to protect the City from being liable to ND. *See* Ex. Y.

84. In addition, the Amendment was obviously a sham that Pishko designed to cover up the City’s double-dealing because it was irrelevant to the casino legislation. Acting upon his belief that he was the “real Mayor” of Norfolk, outside the scope of his employment, and in furtherance of his personal agenda against ND, Pishko determined not to brief the Norfolk Mayor or City Council prior to including the Amendment on the agenda for a public hearing (*see* May 24, 2020 Memorandum from Filer to Norfolk Mayor and City Council, attached as **Exhibit Z**).

85. Nor did Pishko explain the Amendment during the public meeting on May 26, 2020,

which was held electronically during the COVID-19 pandemic (*see generally* May 26, 2020 Docket for the Council, attached as **Exhibit AA**).

86. The Amendment was not designed to benefit Norfolk residents or the citizens of the Commonwealth of Virginia.

87. Instead, it was obviously designed by Pishko as a futile attempt to cure the City's breach of its Lease Agreement with ND. Unfortunately for Defendants, they could not make this amendment retroactive. Upon information and belief, Pishko was motivated to slip in the exclusivity amendment without notice or explanation to the City Council or the Mayor to advance his personal agenda, and to protect himself from personal liability given his key role in negotiating ***two*** mutually exclusive casino development contracts.

88. The City amended the Tribal Development Agreement in direct response to ND's identification of the breach of the Lease Agreement in ND's letters to the City in early 2020 (*see* March 17, 2020 Letter from Gilmore to Pishko and Carnes, attached as **Exhibit BB**).

89. The City also passed resolutions to revoke the Tribe's land trust under the Intergovernmental Agreement, to approve a commercial casino in favor of the Tribe under the new legislation, and to officially recognize the Tribe and Golden Eagle as the City's "preferred casino gaming operator[s]" (*see* May 22, 2020 Email from Markowski to Hiser with resolutions, attached as **Exhibit CC**).

90. Golden Eagle objected to the City's draft amendment to limit the Tribe's exclusive casino rights. In his "Exclusivity" email, Thompson emphasized that the Tribe's exclusive rights had been discussed and expected since June 2018 and those negotiations included the City Attorney, Pishko: "**As anyone who knows anything about this business knows, exclusivity is always one of the first topics of conversation in any potential gaming project, and it was here**

as well.” Ex. X at 1 (emphasis added).

91. But Pishko and the City prevailed upon the Tribe and Golden Eagle, convincing them to execute the exclusivity amendment now that the deal was done, and using them to create a sham defense of the City’s and Pishko’s unlawful actions.

92. Golden Eagle simultaneously obtained a resolution from the Tribe and passed a tribal ordinance through an “emergency exception” in advance of the Norfolk Council meeting held May 26, 2020 (*see* May 25, 2020 Email from Thompson to Chalk regarding the Gaming Authority Ordinance, attached as **Exhibit DD**) (declaring, “[a]s an instrumentality of the Tribe, the Gaming Authority shall be clothed by federal and Tribal law with all the privileges and immunities of the Tribe . . . including sovereign immunity from suit in any state, federal or Tribal court”).

93. The City not only failed to cooperate with ND, in violation of the Lease Agreement, but it actively worked against ND in favor of the Tribe and Yarbrough (*see* April 6, 2020 Letter from ND to Pishko, attached as **Exhibit EE**). For example, in October 2019 Cordish advocated for the industry-standard open bidding process to be included in the casino legislation. However, the City consistently rebuffed Cordish’s efforts: “[T]he City had made its intention to have the casino in Norfolk go to the Pamunkey Tribe ‘crystal clear,’ and the City’s preference was being honored in the Legislation.” Ex. EE at 2.

94. The Tribe did not reach out to the City to locate a casino in Norfolk; the City approached the Tribe in direct violation of ND’s contractual rights.

95. Pishko bragged to Cordish about his control over Norfolk, saying that “**Mayors and Council persons come and go, and in reality ‘[I am] the Mayor.’**” *Id.* at 2 (bolding added). Upon information and belief, Pishko’s actions evidence that he believes he is the “real Mayor” of

Norfolk and can act outside the scope of his employment and contrary to the interests of the citizens of Norfolk with impunity.

96. The City, NRHA, and Pishko acted deliberately and intentionally as part of a conspiracy to harm ND, and the Tribe and Golden Eagle were used to further that unlawful conspiracy. The City knows its acts against ND were illegal; it sought to cover them up through further unlawful actions. The City has created a reserve in its official accounting reports of a legal liability and exposure to ND in excess of \$5 million, in apparent anticipation of this lawsuit and the City's eventual loss (*see* February 27, 2020 Email from Mullen to Garczynski, attached as **Exhibit FF**).

#### **The City Lays the Foundation for Economic Disaster**

97. In contrast with Cordish and ND, the Pamunkey Tribe has no experience developing or operating a casino.

98. Kevin Brown, Chief of the Tribe for seven years, candidly admitted, "We have no experience in casinos. We never even ran a bingo game."<sup>7</sup>

99. Nor does the Tribe, based over eighty miles away from the City of Norfolk, have any ties to the City. On that point, too, former Chief Brown conceded, "[W]e researched Norfolk, and found that we virtually have no history or connection with that area."<sup>8</sup>

100. The City made no effort to demonstrate that Golden Eagle has casino development expertise.

101. The City chose the Tribe and the Tribe's sponsors (Yarbrough and Golden Eagle) as its preferred casino partners, and made no effort whatsoever to honor its obligations to ND. In

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<sup>7</sup> *Former Pamunkey Chief Slams Tribe's Virginia Casino Push, Claims Billionaire Using Group*, Casino.org (last updated Sept. 16, 2020 at 8:39 a.m.), <https://www.casino.org/news/former-pamunkey-indian-chief-slams-tribes-casino-efforts-in-virginia/>.

<sup>8</sup> *Id.*

its application for a casino gaming license from the Virginia Lottery, the Tribe emphasized that the “most important designation[ ] for the Applicant is its selection by the City of Norfolk as its preferred casino gaming operator” (see June 1, 2020 Business Entity Disclosure Form, attached as **Exhibit GG**, at 15). But that “designation” was unlawful and is void as a matter of law.

102. The Tribe’s Virginia Lottery license application confirms that it has no business experience, let alone casino gaming experience, and that it is wholly dependent on Yarbrough. See generally Ex. GG. The Tribe already owes over \$7.5 million at 7% interest to Yarbrough, *id.* at 47, and the terms of the Tribe’s contracts with Yarbrough have been withheld, *see id.* at 66.

103. Concerned Norfolk residents have voiced and continue to voice these exact concerns, but the City refuses to listen (see Citizen Letters attached as **Exhibit HH**). This is because the die was cast in 2018 when the City negotiated exclusivity with the Tribe and Golden Eagle. From that point on, the City had no intention of cooperating further with ND for the development of a casino. As a result, the City has excluded the only casino expert with contractual rights, proven experience, and local ties to Norfolk.

104. Pishko’s and the City’s disregard for the well-being of its citizens in sponsoring the Tribe as the exclusive developer mirrors the Tribe’s disregard for the economic well-being of its members. The Yarbrough deal rewarded all members of the Tribe’s Council Leadership with personal salaries, and, upon information and belief, the leadership of the City was economically motivated to disregard the best interests of its citizens (see, e.g., letter from Informed Norfolk to several State officials outlining political contribution irregularities, included in Ex. HH).

105. The City leadership irrationally chose a tribal casino site with a myriad of environmental problems, such as its designation as a Brownfield contaminated site. In addition, the site floods constantly, and a host of environmental protections for the Elizabeth River must be

applied under both federal and state environmental regulations before any building or development will be allowed (*see, e.g.*, June 26, 2020 Email from Jones to Virginia Lottery, attached as **Exhibit II**).

106. The City blithely disregarded its knowledge of the Tribe's racial discrimination when partnering with the Tribe (*see, e.g.*, Ex. B, and October 30, 2020 *Amsterdam News* article, "A black mark for Norfolk," attached as **Exhibit JJ**).

107. As a result, ND has suffered significant damages, including lost opportunities and lost profits, and brings this Complaint to obtain justice from the Court and to publicly bring the truth to light.

**COUNT I**  
**Breach of Contract**  
**(The City and NRHA)**

108. ND incorporates the allegations in each of the preceding paragraphs.

109. ND had a valid contract with the City and NRHA in the Lease Agreement.

110. The City and NRHA breached the Lease Agreement and failed to act in good faith and fair dealing by, among other things:

- a. Violating the exclusivity clause, Section 8.1, of the Lease Agreement, and instead subsidizing or providing performance-based grants to the Tribe and Golden Eagle in their effort to open a casino in Norfolk;
- b. Failing to honor Section 10.2.1 of the Lease Agreement, which required "Lessor and the City [to] cooperate with Lessee in obtaining any Government Approvals necessary to enable the Premise[s] to be utilized as [a] casino or other gaming establishment;" and
- c. Acting in bad faith by lobbying against ND's contractual right to take the necessary steps to enable the premises to be utilized as a casino, lobbying



against an open bid process, and working with the Tribe and Golden Eagle to ensure that they would be the only entities allowed to operate a casino in Norfolk.

111. The City and NRHA's breach of the Lease Agreement damaged ND.

112. ND is entitled to damages.

113. ND is entitled to attorneys' fees and costs. Ex. A, Section 17.6.

**COUNT II**  
**Tortious Interference with Contract**  
**(Bernard A. Pishko)**

114. ND incorporates the allegations in each of the preceding paragraphs.

115. ND had a valid contractual relationship with the City and NRHA under the Lease Agreement.

116. Pishko knew about the contents of the Lease Agreement, including the exclusivity and cooperation provisions in favor of ND. Pishko knew about the Tribal Development Agreement, including the exclusivity and cooperation provisions in favor of the Tribe and Golden Eagle. Pishko negotiated both agreements, which are in direct conflict with each other, and intentionally interfered with ND's contract rights while acting outside the scope of his employment with the City of Norfolk.

117. Pishko has a long history of taking duplicitous and secretive actions which exceed his authority as City Attorney and participating in a pattern of conduct to enrich his own interests, including acting in secret with favored private interests.

118. Pishko intentionally interfered with the City, NRHA, and ND's contractual relationship and caused the City and NRHA to breach the Lease Agreement by, among other things:

a. Engaging in a pattern of fraudulent concealment and deception, outside the

scope of his employment, to grant the City, the Tribe, and the Tribe's sponsor preferred status to the detriment of ND and all competitors;

- b. Refusing to contact or cooperate with ND, and rejecting ND's requests that the City and NRHA comply with the Lease Agreement;
- c. Directing the lobbying and legal efforts for legislation to prevent ND from realizing the benefits of the Lease Agreement;
- d. Directing the City and NRHA to ensure that the Waterside District could not be chosen as the location for the Norfolk Casino Project and that there would not be an open bid process;
- e. Causing the City to amend the Tribal Development Agreement in an attempt to weaken the applicability and enforceability of ND's Lease Agreement, and/or to strip ND of a valid cause of action for the breach thereof; and
- f. Concealing from the Mayor and City Council material aspects of the First Amendment to the Tribal Development Agreement that he designed to advance his personal agenda.

119. Pishko's tortious interference with the Lease Agreement damaged ND.

120. ND is entitled to compensatory and punitive damages.

121. ND is entitled to attorneys' fees and costs.

### **COUNT III**

#### **Tortious Interference with Business Expectancy (Bernard A. Pishko)**

122. ND incorporates the allegations in each of the preceding paragraphs.

123. ND had a valid business expectancy with the City and NRHA under the Lease Agreement.

124. Pishko knew about ND's business expectancy under the Lease Agreement.

125. Pishko intentionally interfered with ND's business expectancy under the Lease Agreement by, among other things:

- a. Engaging in a pattern of fraudulent concealment and deception, outside the scope of his employment, to grant the City, the Tribe, and the Tribe's sponsor preferred status to the detriment of ND and all competitors;
- b. Directing the lobbying efforts of the City and NRHA to ensure ND would be unable to open—or even meaningfully compete for the right to open—a casino in Norfolk; and
- c. Directing the lobbying and legal efforts for legislation that specifically targeted ND's real estate in Norfolk in an effort to diminish ND's business expectancy under the Lease Agreement.

126. Pishko used improper means or methods to interfere with ND's business expectancy under the Lease Agreement, including, among other things, concealing from the Mayor and City Council material aspects of the First Amendment to the Tribal Development Agreement that he designed to advance his personal agenda.

127. Pishko disrupted ND's business expectancy under the Lease Agreement.

128. Pishko's conduct damaged ND.

129. ND is entitled to compensatory and punitive damages.

130. ND is entitled to attorneys' fees and costs.

#### **COUNT IV**

#### **Statutory Business Conspiracy under Virginia Code §§ 18.2-499, 18.2-500 (All Defendants)**

131. ND incorporates the allegations in each of the preceding paragraphs.

132. The City, NRHA, and Pishko concertedly used the Tribe and Golden Eagle to willfully and maliciously injure ND in its business by, among other things:

- a. Unilaterally choosing the Tribe and Golden Eagle for the City's exclusive casino, supporting them to the exclusion of all others, lobbying to obtain legislation in their favor, and working together to prevent ND from realizing the benefits of its contract with the City and NRHA;
- b. Lobbying with the Tribe and Golden Eagle for casino legislation in favor of the Tribe casino and against ND and Waterside, lobbying for the last-minute casino legislation amendment to disqualify Waterside from having a casino, and refusing to lobby the Governor to revise the amendment despite knowing it disqualified Waterside for a casino; and
- c. Amending the Tribe's Development Agreement in a deliberate and futile attempt to retroactively cure the City and NRHA's breach of ND's Lease Agreement and to support the City's Tribe casino deal.

133. The City, NRHA, and Pishko acted with legal malice towards ND's business in that their wrongful actions in this matter were committed without just cause or excuse. Pishko acted outside the scope of his employment with the City, motivated by his ill-founded belief that he is the Mayor and his personal agenda against ND and Cordish, and out of a secret motive for personal enrichment.

134. Defendants' conduct damaged ND.

135. ND is entitled to compensatory and punitive damages.

136. ND is entitled to injunctive relief.

137. ND is entitled to treble damages.

138. ND is entitled to attorneys' fees and costs.

**COUNT V**  
**Common Law Conspiracy**  
**(All Defendants)**

139. ND incorporates the allegations in each of the preceding paragraphs.

140. The City, NRHA, and Pishko concertedly used the Tribe and Golden Eagle to interfere with and violate ND's contractual rights by, among other things:

- a. Unilaterally choosing the Tribe and Golden Eagle for the City's exclusive casino, supporting them to the exclusion of all others, lobbying to obtain legislation in their favor and in opposition of all others, and working together to prevent ND from realizing the benefits of its contract with the City and NRHA;
- b. Lobbying with the Tribe and Golden Eagle for casino legislation in favor of the Tribe casino and against ND and Waterside, lobbying for the last-minute casino legislation amendment to disqualify Waterside from having a casino, and refusing to lobby the Governor to revise the amendment despite knowing it disqualified Waterside for a casino; and
- c. Amending the Tribe's Development Agreement in a deliberate and futile attempt to retroactively cure the City and NRHA's breach of ND's Lease Agreement and to support the City's Tribe casino deal.

141. Pishko acted outside the scope of his employment with the City, motivated by his ill-founded belief that he is the Mayor and by his personal agenda against ND and Cordish, and out of a secret motive for personal enrichment.

142. Defendants' conduct damaged ND.

143. ND is entitled to compensatory and punitive damages.

144. ND is entitled to injunctive relief.

**COUNT VI**  
**Declaratory Judgment**  
**(All Defendants)**

145. ND incorporates the allegations in each of the preceding paragraphs.

146. The City's casino contracts with the Tribe and Golden Eagle violate ND's contract with the City. The City's contractual promises to ND directly contradict and irreconcilably conflict with the City's contractual promises to the Tribe and Golden Eagle.

147. The City's casino contracts with the Tribe and Golden Eagle originated in secrecy, the City advanced its interests in the Tribal Casino through concealment and misrepresentations to the detriment of ND, and the City engaged in a pattern of unlawful conduct in an attempt to undermine and invalidate ND's contractual rights to protect itself from liability.

148. The City's contracts with the Tribe and Golden Eagle for a Tribal Casino violate the laws of the Commonwealth of Virginia and violate public policy.

149. An actual, genuine, justiciable controversy exists between ND and the City that is appropriate for resolution pursuant to the Virginia Declaratory Judgment Act, Va. Code § 8.01-184, *et seq.*

150. ND is entitled to a judgment of the Court declaring that the City breached its contract with ND, that the City's contracts with the Tribe and Golden Eagle are void, and enjoining development of the Tribal Casino.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 3:21 of the Rules of the Supreme Court of Virginia and Virginia Code § 8.01-336, Plaintiff hereby demands a trial by jury on any and all issues triable to a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Norfolk District Associates, LLC, respectfully prays for judgment in its favor awarding it:

- a. \$100 million in damages suffered as a result of Defendants' actions;
- b. Punitive damages;
- c. Treble damages;
- d. Attorneys' fees and costs incurred in this action;
- e. Pre- and post-judgment interest on all monetary awards;
- f. Declaratory and injunctive relief; and
- g. All other just and appropriate relief.

Dated: June 15, 2021

By: /s/ John Lynch

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## Appendix 1 - Timeline of Events

Date	Event
<b>2000 to 2012</b>	The City of Norfolk operates Waterside Festival Marketplace, situated on land owned by the Norfolk Redevelopment and Housing Authority (“NRHA”). The City lets the site deteriorate and incurs large deficits in its operation.
<b>2001 to present</b>	The Cordish Companies, Inc. (“Cordish”) develops wildly successful Live! branded properties and several successful casinos in the United States.
<b>October 31, 2013</b>	The City and NRHA bring in Norfolk District Associates, LLC (“ND”), a Cordish entity, to rescue Waterside. They execute a Deed of Lease and Development Agreement (“Lease Agreement”), which the City and NRHA induce ND to sign with the promise of an exclusive casino deal in Norfolk and guarantees of cooperation and support to obtain it.
<b>2013 to 2017</b>	ND invests \$43 million to redevelop the failing Waterside property into the thriving, rebranded Waterside District. By 2017, the Waterside District brings regional and national restaurants, a mixed-use space for dining and private events, a world-class entertainment facility, and hundreds new jobs to Norfolk.
<b>By early 2018</b>	The City begins discussions with the Pamunkey Indian Tribe (“Tribe”) to develop a casino in Norfolk.
<b>June 4, 2018</b>	The City and Tribe execute a Non-Disclosure Agreement.



Date	Event
<b>June to December 2018</b>	The City, led by City Attorney Bernard “Bernie” A. Pishko (“Pishko”), negotiates a secret and exclusive casino deal with the Tribe and a property development company owned by Jon Yarbrough and John Thompson known as Golden Eagle Consulting II, LLC (“Golden Eagle”). The exclusive deal allows the Tribe to develop and operate the only casino in Norfolk at a site near Harbor Park.
<b>December 19, 2018</b>	The City publicly announces its partnership with the Tribe and Golden Eagle for a casino in Norfolk. The partnership deal flies in the face of ND’s exclusive right to build a casino in Norfolk.
<b>January to December 2019</b>	The City hires multiple teams of lobbyists and attorneys to support the exclusive Tribal deal in the General Assembly and among Virginia citizens. Upon information and belief, the lobbyists and attorneys also work to block all other possible casino deals, including ND’s.
<b>September 24, 2019</b>	The City Council adopts an ordinance authorizing an Intergovernmental Agreement between the City and the Tribe which contemplates transferring land near Harbor Park into trust for the Tribe to develop a casino.
<b>November 25, 2019</b>	The Joint Legislative Audit and Review Commission completes a comprehensive casino study and recommends moving forward with legislation allowing commercial casinos in Virginia.
<b>January 7, 2020</b>	The City assures Golden Eagle and the Tribe that it is “not now and will not later negotiate with another developer unless there is a mandatory RFP process . . . . We have turned down all requests to meet with other developers and instructed our lobbyist to oppose an RFP process for Norfolk.”

<b>Date</b>	<b>Event</b>
<b>January 8, 2020</b>	Legislation in S.B. 36 is proposed in the Virginia General Assembly which would allow commercial entities to build casinos in “host cities,” including Norfolk.
<b>January 10, 2020</b>	In light of the proposed legislation, the City hastily executes and records an Option to Purchase Agreement with the Tribe and Golden Eagle.
<b>January 13, 2020</b>	The City executes a Development Agreement with the Tribe and Golden Eagle. The City, through Pishko, expressly promises the Tribe the exclusive right to build a casino in Norfolk, a right the City had already promised to ND in 2013.
<b>January 13, 2020</b>	ND notifies the City, NRHA, the Tribe, and Golden Eagle of the City’s breach and interference with ND’s 2013 Lease Agreement.
<b>January to April 2020</b>	ND continues to ask the City to fulfill its promises in the Lease Agreement. The City disingenuously suggests that it might consider ND’s proposal for a casino deal but outright denies any obligation under the Lease Agreement to cooperate with or assist ND.
<b>March 2020</b>	Seeking to cover its double-dealing with the Tribe and ND, the City lobbies in the General Assembly for an amendment to the proposed casino legislation which would prohibit casino development on any land owned by a housing authority. Upon information and belief, the City lobbied for the amendment against Cordish because Cordish’s exclusive right to build a casino in Norfolk as contemplated in the Lease Agreement depends on the ability to develop a casino on the Waterside property owned by NRHA.

Date	Event
<b>March 7, 2020</b>	An amendment to the legislation originates during a “closed door” session prohibiting a casino from being built on housing authority land.
<b>March 8, 2020</b>	The legislation passes on the last day of the legislative session and is presented to the Governor.
<b>March 31, 2020</b>	Cordish entreats Governor Northam to reject the proposed legislation, which, in unprecedented fashion, did not allow for an open bidding process for a casino developer or delay passage of the bill until after the COVID-19 crisis is over.
<b>April 22, 2020</b>	The casino legislation, including the housing authority ownership amendment and no open bidding process, is enacted.
<b>May 2020</b>	ND serves Virginia Freedom of Information Act requests on the City to discover the extent of its attempted cover-up of the Tribe’s exclusive casino deal.
<b>May 2020</b>	Seeking to cover its double-dealing in another way, the City conspires with the Tribe and Golden Eagle to amend their Development Agreement to “allow” a casino to be built at Waterside, now that the casino development legislation has been enacted prohibiting development on housing authority land.
<b>May 26, 2020</b>	The City revokes the Intergovernmental Agreement with the Tribe but approves a commercial casino deal with the Tribe and recognizes the Tribe as Norfolk’s “preferred casino gaming operator.”
<b>May 28, 2020</b>	Yarbrough commits \$650 million to Golden Eagle to back the Tribe’s casino development.

<b>Date</b>	<b>Event</b>
<b>June 2020</b>	The City and the Tribe execute the First Amendment to the Development Agreement to retract the Tribe's "exclusive" casino development rights.
<b>June 1, 2020</b>	The Tribe submits its Business Entity Disclosure Form to the Virginia Lottery to become Norfolk's "preferred casino gaming operator."

## Appendix 2 – List of Exhibits

<b>Exhibit</b>	<b>Date</b>	<b>Document</b>
A	October 31, 2013	Deed of Lease and Development Agreement between NDA, NRHA, and City
B	February 18, 2020	Email from Pishko to McClellan
C	June 2018 November 2018	Emails between City and Tribe re: draft casino agreements
D	June 4, 2018	Non-Disclosure Agreement between City and Tribe
E	February 2018 January 8, 2019 March 20, 2019	Kemper Consulting Agreements
F	January 1, 2019	Principle Advantage Lobbying and Consulting Agreement
G	October 7, 2019	Strategic Public Affairs Agreement
H	September 24, 2019	Ordinance No. 47,773
I	November 2019	Email chain including Thompson and City re: Intergovernmental Agreement
J	January 10, 2020	Recorded Memorandum of Option to Purchase
K	November 2019	Execution version of Intergovernmental Agreement between City and Tribe
L	January 8, 2020	Emails from Thompson to Pishko re: Intergovernmental Agreement
M	January 10, 2020	Option Agreement
N	January 13, 2020	Tribal Development Agreement

<b>Exhibit</b>	<b>Date</b>	<b>Document</b>
O	January 13, 2020	Letter from Weinberg to NRHA, City Manager, and Pishko
P	January 14, 2020	Letter from DiGrazia to NRHA, City Manager, and Pishko
Q	January 22, 2020	Letter from Pishko to Weinberg
R	February 10, 2020	Letter from Jacobs to Pishko
S	February 21, 2020	Letter from Pishko to Jacobs
T	January 7, 2020	Email from Pishko to Thompson
U	January 20, 2020	Email from Bezik to Norfolk City officials
V	May 27, 2020	Email from Thompson to the City re: "Exclusivity"
W	March 19, 2020	Letter from Pishko and Carnes to Gilmore
X	June 2020	First Amendment to Tribe's Development Agreement
Y	May 13, 2020	Email from Foy to Pishko re: draft of First Amendment
Z	May 24, 2020	Memorandum from Filer to Norfolk Mayor and City Council
AA	May 26, 2020	Docket for the Council
BB	March 17, 2020	Letter from Gilmore to Pishko and Carnes
CC	May 22, 2020	Email from Markowski to Hiser re: resolutions
DD	May 25, 2020	Email from Thompson to Chalk re: Gaming Authority Ordinance
EE	April 6, 2020	Letter from ND to Pishko

<b>Exhibit</b>	<b>Date</b>	<b>Document</b>
FF	February 27, 2020	Email from Mullen to Garczynski
GG	June 1, 2020	Business Entity Disclosure Form
HH	September 20, 2020	Citizen Letters
II	June 26, 2020	Email from Jones to Virginia Lottery
JJ	October 30, 2020	<i>Amsterdam News</i> , "A black mark for Norfolk"