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March 27, 2019

Via Email Andre.Davis@baltimorecity.gov and U.S. Mail

Hon. Andre M. Davis
City Solicitor
City Hall – Room 250
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Mayor and City Council of Baltimore, et al. v. The Stronach Group, et al.
Circuit Court for Baltimore City, Case No. 24-C-19-001776 (“City Action”)

Dear Judge Davis:

We write this letter out of great respect for you and the City. Please treat this letter as safe harbor notice as to the City’s potentially sanctionable conduct with respect to the filing of the City Action and related matters.

Maryland Rule 1-311 requires that every pleading be based on “good ground to support it” and allows for sanctions if there is a willful violation of the Rule. The City Action filed on March 19, 2019, and amended on March 21, 2019, seeks to take by eminent domain the Maryland Jockey Club of Baltimore City, Inc., (the license holder of a Maryland racing license), Pimlico Race Course (a thoroughbred racing facility), the Preakness Stakes® (the middle jewel of the Triple Crown), the Woodlawn Vase (the historic Preakness Stakes® trophy), and other racing-related property, including proprietary intellectual and intangible assets of an ongoing racing enterprise.

As a matter of law, the City Action is completely devoid of “good ground” to support it, as the State of Maryland (“State”) has exclusive authority over all aspects of racing, including as to eminent domain actions, which entirely preempts the condemnation counts in the City Action. Moreover, by the City’s own admissions, the filing of the City Action is a transparent ploy to gain some sort of negotiating leverage over the owners of the Maryland Jockey Club and the Preakness Stakes®.¹

Pursuant to Md. Code Ann. Bus. Reg. Title 11, the State has exclusive administrative and regulatory jurisdiction over racing, including the location of thoroughbred and standardbred

¹ Carley Milligan, “City hopes lawsuit against Stronach Group will yield ‘reasonable adult conversations’ about Pimlico,” Balt. Bus. J., Mar. 20, 2019 (found at digital addition <https://www.bizjournals.com/baltimore/news/2019/03/20/city-hopes-lawsuit-against-stronach-group-will.html>).

racing facilities within the State, the scheduling and approval of stakes and other races, pari-mutuel wagering, off-track and inter-track simulcasting and, significantly, the condemnation of the Preakness Stakes[®] under certain circumstances set forth by statute.

Section 11-102(a) of the Business Regulations Article, which in earlier iterations dates back to 1920,² plainly provides that the State's jurisdiction over racing "*is statewide and exclusive in effect.*" [Emphasis added.] Lest there be any doubt that the State has preempted and precluded any local action of the type brought by the City, subsection (b) of § 11-102 provides:

"A county, municipal corporation, or other political subdivision of the State *may not: (1) make or enforce a local law, ordinance, or regulation about racing*" [Emphasis added.]

It is irrefutable that the condemnation counts in the City Action seek to "make or enforce a local law, ordinance, or regulation about racing." Nothing "about racing" is more bedrock than the thoroughbred races, including the Preakness Stakes[®], the facilities in which those races are held and the funding sources to support Maryland racing.

Not only are material counts in the City Action "about racing" and thus preempted by State law, but those counts directly trample the State's express and exclusive right whether to condemn a racing facility and/or the Preakness Stakes[®] under certain circumstances as set forth by law. For reasons best known to the City, the City Action cites to Title 11, acknowledges its application to these proceedings, but then proceeds to ignore its preclusive effect. Specifically, as set forth in Md. Code Ann., Bus. Reg., § 11-521, the State – not the City – has the stated authority³ to:

"acquire by purchase or condemnation for public use with just compensation some or all of the following real, tangible, and intangible private property, including any contractual interests or intellectual property:

- [i] ***Pimlico Race Course***, a racetrack located in Baltimore City, including any and all property or property rights associated with it wherever located, whether tangible, intangible, real, personal, or mixed, and any business entity that owns it; ...
- [ii] ***the Preakness Stakes trophy that is known as the Woodlawn Vase***, including any and all property or property rights associated with it, whether tangible, intangible, real, personal, or mixed, and any business entity that owns it;
- [iii] the name, common law and statutory copyrights, service marks, trademarks, trade names, contracts, horse racing events, and other intangible and

² The precursor to § 11-102 dates back to 1920. Racing Commission Act of 1920, Ch. 273 of the Acts of 1920.

³ All rights reserved as to whether such stated authority, on its face or as applied, is constitutionally enforceable.

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intellectual property that are associated with *the Preakness Stakes and the Woodlawn Vase*; [and,]

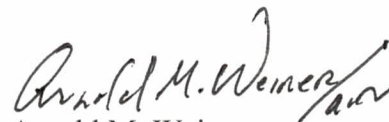
- [iv] all property of *the Maryland Jockey Club of Baltimore City, Inc.*, or its successors and assigns, including stock and equity interests in it, and including any and all property or property rights associated with it, whether tangible, intangible, real, personal, or mixed

Please know that there are other and substantial reasons why the City Action is factually and legally unsupportable, and all rights are reserved in that regard, including the right to advance additional arguments in preliminary or responsive motions or pleadings. For present purposes and in light of the State's preemption, we respectfully demand that the City Action be immediately withdrawn. The failure to do so may result in our clients seeking all available sanctions including costs, expenses, attorneys' fees, punitive damages and any other relief a court may grant.

Sincerely,



Alan M. Rifkin



Arnold M. Weiner

Counsel for The Maryland Jockey Club of Baltimore City, Inc., The Maryland Jockey Club, Inc. and Pimlico Racing Association, Inc.

cc: Robert C. Brennen, Esq., Maryland Economic Development Corp.