



TOURISM, ARTS AND HERITAGE CABINET

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DON PARKINSON
SECRETARY

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July 18, 2017

VIA U.S. POST CERTIFIED MAIL

Mr. James E. Parsons
Keating, Muething, & Klekamp, PLL
One East 4th Street, Suite 1400
Cincinnati, Ohio 45202

RE: NOTICE OF BREACH OF TAX INCENTIVE AGREEMENT

Dear Mr. Parsons:

It has come to our attention that your client, Ark Encounter, LLC, is in breach of its Tourism Development Agreement (the "Agreement") with the Commonwealth. On July 10, 2017 the Tourism, Arts, and Heritage Cabinet (the "Cabinet") became aware of a quit claim deed transferring the Ark Project land, with all the privileges and appurtenances to the same, from Ark Encounter, LLC, a for profit company, to Crosswater Canyon, Inc. a non-profit company.

The Ark Encounter, LLC is currently in breach of its Agreement, and became so upon execution of the quit claim deed on June 28, 2017. The company is in violation of the following covenants and legal requirements:

- (1.) Provide notice to KTFDA "if any change in ownership of the tourism attraction is contemplated" pursuant to KRS 148.859(1)(h);
- (2.) Obtain the "express prior written consent of KTDFDA" in the event that Ark Encounter, LLC assigns or transfers its rights, including (but not limited to) the Inducements, or has its obligations assumed under the Agreement, pursuant to the Agreement, Provision V and KRS 148.859(2); and
- (3.) Covenant that the owner of the Ark Project, upon which the tax incentives is based, is an "eligible company" within the meaning of KRS 148.851(7). If Crosswater Canyon, LLC, a non-profit legal entity, is now the owner of the Ark Project, then the owner of the project has not been established as an "eligible company." Please note, a non-profit entity may qualify for a Tourism Development tax incentive; however, they must go through the process like every other entity.

We believe that your client is aware that they may not be eligible for state tax incentives if the Ark Project is owned by a non-profit legal entity. Answers in Genesis, the parent company of Crosswater Canyon, Inc., and Ark Encounter, LLC clearly states on its website:

"The for-profit LLC structure also allows the Ark Encounter to be eligible for various economic development incentives that would not have been available with a non-profit structure." www.arkencounter.com

Furthermore, as the Tourism Development Agreement is between the Commonwealth and Ark Encounter, LLC, not Crosswater Canyon, LLC, the current owner, **please be advised that no further incentives may accrue from sales tax imposed on sales generated by or arising at the tourism development project, as of the date of transfer of the property, June 28, 2017.**

Pursuant to the Agreement, Section VI (A), should Ark Encounter, LLC fail to comply with any or all of the Company's covenants, agreements, duties, or obligations set forth in the Agreement, the company has thirty (30) days from receipt of this letter to cure the deficiency.

Please cure the aforementioned violations and contact me once they are remedied. Should you need an extension on the thirty (30) day time period, with good cause, or you have any questions, please contact me.

Best Regards,



B. Leigh Powers
General Counsel

cc: Scott Brinkman, Secretary, Executive Cabinet, Office of the Governor
Steve Pitt, General Counsel, Executive Cabinet, Office of the Governor
Don Parkinson, Secretary, Tourism, Arts, and Heritage Cabinet