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July 5, 2022

To: Mayor and Councilmembers
City of Ketchum

From: Matthew Johnson, City Attorney

Legal/Staff Report for Harriman – Mutual Waiver of Condition

Background:

On June 23, the Council approved and authorized the City to enter into a Settlement Agreement with Harriman Hotel, LLC. Provision 4 of the Agreement includes a condition as follows:

The obligations of each of the Parties hereunder are expressly conditioned upon . . .
(iii) the Ketchum Urban Renewal Agency (KURA), at its sole discretion, entering into an Owner Participation Agreement with Owner for reimbursement of certain costs substantially similar to those approved in the OPA dated February 21, 2017.

This condition was requested by Harriman Hotel in negotiations and primarily included for the benefit of Harriman Hotel. The City did not have major concerns regarding the KURA OPA, and the City's reasons for entering into the Settlement Agreement were not tied to this condition.

As described in the attached document, Harriman Hotel is now requesting the parties mutually waive this condition. A mutual waiver would mean that in the event the KURA were not to approve an OPA, neither party would be able to back out of the Settlement Agreement for that reason as the condition would have been mutually waived.

Analysis and Recommendation:

Since the City has no major concern about whether the KURA OPA is or is not approved, the mutual waiver of this condition is of little impact to the City's interests. Instead it removes a condition that primarily allowed an opportunity for Harriman Hotel to opt out of the Settlement Agreement if the condition failed. This waiver of condition evidences a further commitment by Harriman Hotel to proceeding on the Project.

Based upon this, the staff recommendation is this Mutual Waiver be approved and the Mayor authorized to sign the Mutual Waiver Letter offered and signed by Harriman Hotel.

Recommended Motion:

I move to approve and authorize the Mayor to sign the Mutual Waiver Letter as presented.

June 29, 2022

Jack E. Bariteau, Jr.
Managing Member
Harriman Hotel, LLC
P. O. Box 84
Sun Valley, Idaho 83353

Honorable Neil Bradshaw
Mayor
City of Ketchum
Post Office Box 2115
Ketchum, ID 83340

Re: Waiver of Condition of Settlement Agreement

Dear Mayor Bradshaw:

As discussed through our respective counsel, provided that the City of Ketchum ("City") does the same, the Harriman Hotel ("HH") desires to and hereby does expressly waive its right under paragraph 4(iii) of the June 23, 2022 Settlement Agreement with the City of Ketchum ("Agreement") to terminate the Agreement and its obligations thereunder in the event the Ketchum Urban Renewal Agency does not agree to an Owner's Participation Agreement with HH. If the City is willing to reciprocate and waive its rights under said paragraph 4(iii) please so indicate by signing this letter where indicated and returning a copy to the undersigned. Other than this mutual waiver with respect to paragraph 4(iii), all other provisions of paragraph 4 of the Agreement remain in full force and effect.

Sincerely,

Harriman Hotel, LLC

Jack E. Bariteau, Jr.
Managing Member

The undersigned agrees to and does hereby expressly and unconditionally waive its right under paragraph 4(iii) of the Agreement to terminate the Agreement and its obligations thereunder.

Dated: June _____, 2022

City of Ketchum, Idaho

Neil Bradshaw, Mayor

CC: Edward Lawson
Justin Jones
Andy Blank