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ATTORNEYS AT LAW

October 30, 2020

Via Email & US Mail

Mr. Matthew A. Johnson
White Peterson
5700 E. Franklin Road, Suite 200
Nampa, ID 83687-7901
mjohnson@whitepeterson.com

Re: NOTICE TO SHOW CAUSE – Alleged Breach of Development Agreement
Our File No. 70357-024

Dear Matt:

As you know I and my firm represent the Harriman Hotel, LLC ("Owner") the successor in interest to Trail Creek Fund, LLC on whose behalf I have been requested to respond to your October 22, 2020 notice of breach and notice to show cause ("Notices") regarding the Amended And Restated Development Agreement dated October 5, 2015, as amended, between the City of Ketchum ("City") and Owner ("Agreement"). For the reasons outlined below, Owner disputes the asserted breach, rejects the Notices and demands the immediate and unconditional retraction of the Notices.

Initially it should be observed the City has no statutory or contractual power or authority to issue a notice to show cause to Owner. Further, if the City had such power or authority it would only be exercisable by the City Council which has not acted upon this matter. In addition, the Notices are to Trail Creek Fund, LLC and me as its counsel despite the fact that Trail Creek Fund, LLC no longer exists and assigned its interest in the Agreement to Harriman Hotel, LLC by written Assignment Agreement 20441, dated December 5, 2019 to which the City gave it's express written consent. In any event, the long course of transparent conduct by Owner would have warranted a less arrogant and contentious attempt to gather information about the hotel project if that is the City's goal.

Most important is the fact that the Agreement does not contain any requirement that there be proof of adequate financing except as of September 30, 2019. In other words, there is no obligation under the Agreement for Owner to maintain or provide proof of adequate financing on an ongoing basis. The sole obligation relating to financing is contained in subparagraph (2) of paragraph 1A of the June 4, 2018 First Amended and Restated Development Agreement recorded on June 5, 2018 in the records of Blaine County, Idaho as Instrument No. 652281 states:

"Owner shall provide and show sufficient evidence to the City of full

> financing and funding for completing the Hotel Project to the satisfaction of City by September 30, 2019. Owner shall evidence such financing by recording on the Property a deed to trust to secure a construction loan on or before September 30, 2019 and by such other proof of financing reasonably necessary for the satisfaction of the City Council that this condition is met. Owner will not commence additional excavation work on the Property until acceptance and approval of such financing evidence by the City. . . "

The City declared a default of the proof of financing provision by letter from you dated October 9, 2019 and Owner cured the default within the bargained for 60 day period on December 5, 2019 by recording the required deed of trust on December 5, 2019 in the records of Blaine County, Idaho as Instrument No. 665453. In fact, you authored a letter entitled Notice of Determination of Cure of Material Breach dated December 18, 2019 in which you acknowledged the City Council met on December 9, 2019 and determined that the information provided by Owner was "sufficient and timely to cure the noticed breach," and that as a result of the cure, the ". . . Development Agreement is reinstated to full status as if such breach had not occurred."

Prior to satisfying the financing requirement under the Agreement the City issued and Owner received a building permit in 2016 for the hotel project and has ever since followed the building permit requirements and met all required subsequent building inspection requirements including the most recent inspection conducted on August 27, 2020 despite the unprecedented development and investment challenges associated with and created by the coronavirus pandemic. The severity of the pandemic related challenges resulted in the May 12, 2020 letter from me to Suzanne Frick informing the City of the hinderance, delay and prevention of Owner's performance obligations including those relating to an active building permit.

In view of the fact Owner is in total compliance with the Agreement and building permit, the Notices constitute an anticipatory repudiation of the Agreement by the City and a breach of its obligation to Owner of good faith and fair dealing. Accordingly, demand is hereby made for the immediate and unconditional retraction of the Notices and for written assurance the City will abide by its obligations under the Agreement.

Finally, the timing of the Notices following the recent meeting between Jack Bariteau, Jade Riley and Suzanne Frick is suspicious. As you noted during the meeting, Mr. Bariteau candidly shared the fact he was involved in efforts to replace investors who had withdrawn their commitments to finance the hotel project because of the coronavirus. In response, the City issues the Notices knowing that Owner has a disclosure obligation to its lenders, investors and prospective replacement investors. Such deliberate action by the City constitutes tortious interference with Owner's contractual relations and prospective economic interests.

Hopefully the foregoing response to the Notices will result in the requested retraction and written assurance and return to normal relations. Owner is acutely aware the City desires a more rapid pace of construction. Rest assured Owner has done and will continue to undertake every possible measure to bring that outcome about despite interference by the City, the ongoing pandemic and national, regional and local economic damage that has resulted.

Sincerely,

LAWSON LASKI CLARK, PLLC

Edward A. Lawson

cc: N. Bradshaw
J. Riley
S. Frick
M. David
A. Breen
J. Slanetz
C. Hamilton