

LAW OFFICES
BARBER EMERSON, L.C.

1211 MASSACHUSETTS STREET

POST OFFICE BOX 667

LAWRENCE, KANSAS 66044

(785) 843-6600

FACSIMILE (785) 843-8405

JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
CALVIN J. KARLIN
JANE M. ELDREDGE
MARK A. ANDERSEN*
TERRENCE J. CAMPBELL*
MATTHEW S. GOUGH*

LINDA K. GUTIERREZ
CATHERINE C. THEISEN
BETHANY J. ROBERTS
G. CLAYTON RANDLE
LAUREN L. OBERZAN

RICHARD A. BARBER
(1911-1998)

*ADMITTED IN KANSAS AND MISSOURI

Mark A. Andersen Email:
mandersen@barberemerson.com

March 24, 2015

Via Email Delivery

Mr. David Corliss
City Manager
City of Lawrence
Six East Sixth Street
Lawrence, Kansas 66044

Re: *Neighborhood Revitalization Area ("NRA")*
705 Massachusetts Street (the "Project")

David:

I am writing on behalf of Eldridge Hotel, L.L.C. (the "**Applicant**") to follow up our discussion regarding the draft Performance Agreement (the "**Agreement**") for the Project. I have revised the City's initial draft of the Agreement, and I attach a redlined Agreement for your review and consideration. The revisions are consistent with other recently approved NRA Performance Agreements, and are limited to matters involving third party conduct, and due process. The proposed revisions do not lower the standard for the Applicant's obligation to comply with matters over which the Applicant has control under the Agreement.

In the absence of these revisions, the City's initial draft of the Agreement would impose a "strict liability" standard upon the Applicant with respect to third-party acts and occurrences, over which the Applicant may be unable to control, and creates an unreasonable risk of losing the NRA benefits without notice or an opportunity to cure. For example, a single citation for a minor in possession, despite the Applicant's diligence in checking identification, creates a technical violation that could potentially divest the entire Project of NRA benefits. As written, no notice of default, and no opportunity to cure, is afforded to the Applicant, before any one of the government participants in the NRA may unilaterally decide to withdraw from the NRA and thereby revoke its approval.

Adopting a "strict compliance" standard for third party conduct, and refusing to provide the Applicant basic, contractual due process rights, sends the wrong message about Lawrence. The precedence created by such a condition may have a chilling effect on the future of capital investment in

Mr. David Corliss
City Manager
March 24, 2015
Page 2

Lawrence (Downtown or otherwise), because it imposes an element of risk that a governmental body may unilaterally decide to eliminate an incentive which, by definition, was critical to (i.e. "but for") a project's ability to proceed. By contrast, the enclosed revisions are reasonable for the following reasons:

1. The revision in Section 3.d is intended to address situations that may arise from third-party behavior beyond the Applicant's reasonable control. The Applicant cannot predict, prevent and/or control the unlawful behavior of third-parties in every instance, even though the Applicant itself is agreeing to act reasonably and operate in accordance with all applicable laws and ordinances. With all due respect, I question whether the City of Lawrence itself, through its Police Department, would be capable of attaining the strict standard, without fail, that the City is contractually imposing on the Applicant.
2. The revisions in Section 8 and 14, which add a cure period for noncompliance, are consistent with the due process provisions requested and received by another, similarly situated NRA project recently approved by the City Commission.
3. Before making a capital investment in the City of Lawrence of this size, the Applicant's investors and lenders have a reasonable expectation that the projected NRA benefits which enable the Project to proceed are reliable, meaning that the Applicant can reasonably expect the approved benefit for the duration of the NRA Plan, subject to the Applicant's obligations under the Performance Agreement.
4. We are unaware of any other project or tax increment-based incentive that may be unilaterally withdrawn by the governing bodies, once approved. Moreover, the strict compliance performance standards set forth in the City's draft of the Agreement, to the extent that they extend to third-party behavior, is unprecedented.

The Project will convert a vacant lot, which has been vacant for approximately forty years, into an attractive new amenity in the heart of downtown, and the revised Agreement (addressing third-party behavior and due process) merits the support of the City Staff, and the approval of the City Commission.

Very truly yours,

BARBER EMERSON, L.C.



Mark A. Andersen

MAA:smo
Enclosure
cc: Lawrence City Commission