



Cover Memorandum/Staff Report

File #: 18-0539 CRA

Agenda Date: 1/28/2020

Item #: 7F.

TO: CRA Board of Commissioners
FROM: Christine Tibbs, Assistant Director
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: January 28, 2020

NOTICE OF DEFAULT - PURCHASE AND SALE AGREEMENT - BH3 MANAGEMENT, LLC - SW 600-800 BLOCKS OF W. ATLANTIC AVENUE

Recommended Action:

Board Direction.

Background:

At the April 9, 2019, CRA Board Meeting, the CRA Board approved the Purchase & Sale Agreement ("Agreement") for the SW 600-800 Blocks West Atlantic Avenue Properties with BH3 Management LLC ("BH3"). A First Amendment to the Agreement was approved by the CRA Board on August 13, 2019, to correct scrivener's errors in the document. A Second Amendment to the Agreement was approved on November 19, 2019, to extend the Application Date, the date by which BH3 needs to submit their applications to the City of Delray Beach ("City") and other applicable governmental entities for approval, by sixty (60) calendar days from November 18, 2019, to January 17, 2020.

Section 10 of the Agreement, entitled "Default by Purchaser", currently states:

"The Purchaser shall be deemed to be in default hereunder only upon the occurrence of any of the following events (and only after written notice has been provided to Purchaser whereby Purchaser has a 30-day period to cure, said cure period had expired, accounting for any Force Majeure extensions), to-wit:

- (a) In the event that Purchaser fails to file an application for government approvals with the necessary documentation required by the governmental entities and an application for conditional use approval necessary for the development, and construction of the Project; with the City or any other governmental entity on or before the Application Date,
- (b) In the event the Purchaser fails to obtain all necessary approvals on or before the Approval Date because of Purchaser's actions or inactions,
- (c) In the event that the Purchaser fails to close the transaction on or before the Closing Date and such failure to close is not otherwise attributable to a default by Seller,
- (d) Failure to provide a financial commitment letter as required by Section 18.1 herein,
- (e) Failure to provide the Letter of Credit or Performance Bond as required by 18.2 herein.

Provided Seller is not in default herein, if Purchaser defaults in the performance of any of the obligations to which reference is made in the immediately preceding subsections (a) through (c), both inclusive, and Purchaser fails to remedy such default within thirty (30) days after written notice by Seller to Purchaser of such default(s) unless the Default is not reasonably curable within 30 days, and Seller and Purchaser fail to agree on a reasonable time to cure (the "Default Notice"), Seller may

terminate this agreement subject to Section 1.21 herein. Upon termination by the Seller, the termination, this Agreement shall become null and void, and neither party shall have any claims of whatsoever kind, type, nature or description against the other party.”

On January 20, 2020, the CRA received a letter from counsel for BH3 that stated that BH3 is still finalizing their site plan application and would not be ready to file their site plan application until March 16, 2020. The letter also noted changes to the site plan for the project.

At this time, per Section 10 of the Agreement, BH3’s failure to file the necessary applications to the City and any other applicable governmental entities for approval, constitutes an event of default.

CRA staff is requesting the CRA Board’s direction on how to proceed.

Attachment(s): Exhibit A - Letter from BH3 received on January 20, 2020; Exhibit B - BH3 Purchase and Sale Agreement; Exhibit C - First Amendment to Purchase and Sale Agreement; Exhibit D - Second Amendment to Purchase and Sale Agreement;

CRA Attorney Review:

N/A

Finance Review:

N/A

Funding Source/Financial Impact:

N/A