



Cover Memorandum/Staff Report

File #: 18-0578 CRA

Agenda Date: 5/26/2020

Item #:

TO: CRA Board of Commissioners
FROM: Christine Tibbs, Assistant Director
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: May 26, 2020

UPDATE - BH3 MANAGEMENT, LLC - SW 600-800 BLOCKS OF W. ATLANTIC AVENUE

Recommended Action:

Review and File.

Background:

By way of this item, CRA staff is providing an overview of the history of this item and an update on the BH3 Management, LLC ("BH3") development project, now known as Fabrik, located on the Southwest 600 - 800 blocks of West Atlantic Avenue.

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. 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. A Third Amendment to the Agreement was approved on January 28, 2020, to allow the CRA to enter into a new one-year lease agreement with the Emanuel Jackson, Sr. Project, Inc.

At the January 28, 2020, CRA Board Meeting, the CRA Board approved the issuance of a Notice of Default to BH3 for its failure to "file an application for government approvals with the necessary documentation required by 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 entities on or before the Application Date," pursuant to Section 10 of the Agreement, as amended, "Default by Purchaser."

The Notice of Default was formally sent to BH3 on January 29, 2020. Under the Agreement, as amended, BH3 was given a 30-day period to cure the Default.

On *February 27, 2020*, BH3 submitted its *Class V Site Plan Application and Conditional Use Application* ("Applications") for the Fabrik Development Project to the City and said Applications were accepted by the City.

Subsequently, CRA staff contracted Chen Moore and Associates ("Chen Moore") to review the submitted Applications, along with the City's first round of technical comments provided after their review of the same. On April 3, 2020, the City sent the last of its first round of technical comments to the CRA and BH3. On April 29, 2020, Chen Moore finalized its review of the Applications and the resulting Technical Review Memorandum was provided to both BH3 and the City; the Technical Review Memorandum is available upon request.

On May 11, 2020, the CRA was copied on an email from BH3 to the City in which BH3 stated it was currently reviewing the technical comments received from the City and would like to set a virtual meeting to go over the comments.

Also, on May 11, 2020, the CRA received a letter from BH3's Legal Counsel stating their intention to seek an extension to the Approval Date as stated in the Agreement, as amended, pursuant to Force Majeure. On May 14, 2020, CRA Legal Counsel formally responded and stated that BH3 would need to obtain the CRA Board's approval for any extension to the Approval Date.

Section 1.2 of the Agreement, as amended, defines the Approval Date as:

"...that date which is no later than 365 calendar days subsequent to the Application Date on which all governmental approvals including but not limited to the Site Plan approval and Conditional Use approval, necessary for the development and construction of the Project, are issued to the PURCHASER by the applicable governmental authorities and any appeal period (which shall run if no appeal is filed within thirty (30) days) after the date of issuance with respect to such issuance has expired or, if appealed, such issuance to the PURCHASER is confirmed on appeal such that the Site Plan approval, Conditional Use approval, and any other approval excluding building permits necessary for the development and construction of the Project are final and not appealable. Provided no Force Majeure occurrence."

The current Approval Date is January 18, 2021.

At this time, BH3 is working on their response to the first round of technical comments received from the City regarding its submitted Applications.

The purpose of this item is to update the CRA Board on the Fabrik Development Project and no action is required from the CRA Board.

Exhibit A: Submitted Site Plan and Architectural Renderings for Fabrik; Exhibit B: Critical Dates Timeline

CRA Attorney Review:

N/A

Finance Review:

N/A

Funding Source/Financial Impact:

N/A