

## MEMORANDUM

**To:** Renee Jadusingh, Delray Beach Community Redevelopment Agency Director  
**From:** Neil M. Schiller, Esq., Counsel for BH3 Management, LLC  
**Date:** December 4, 2020  
**RE:** Clarification of my November 25, 2020 correspondence

As a follow up to my last correspondence, which I believe may have inadvertently caused some confusion amongst the CRA Board and the community, this memo is intended to provide greater specificity of the issues that we are requesting the CRA Board provide direction to staff so that we may negotiate an amendment to the Purchase and Sale Agreement (“PSA”) to be brought back to this body in January 2021, for execution.

After spending in excess of a year in search and discussions with all potential grocer tenants in the market, BH3 signed a binding letter of intent on October 12, 2020 with the grocer tenant for the project. Negotiations and responses on design and other tenant requirements were prolonged during the COVID-19 pandemic as a result of the demands and issues that all grocers were dealing with pertaining to supply chain, logistics, employee health and other related factors. As a result, it took BH3 longer than expected to finalize the LOI negotiations and to provide an updated concrete revised design to the CRA Board and the community. The grocer, BH3, CRA Staff and the City’s Development Services Staff met on November 25, 2020, to discuss the grocer’s site plan and obtained feedback from Staff, which was extremely helpful and will require that the grocer look at making some minor revisions. BH3 is confident that this grocer will be a tremendous benefit to the City, CRA and the community.

In my November 25, 2020 correspondence I indicated that my client would like to revise the financing contingency found in Section 18.1 of the PSA. We have reviewed this section again and have confirmed that there is **NO NEED TO ADDRESS** this point and apologize for any confusion. Please disregard that request. In order to proceed with the revised and improved plan, the following amendments to the PSA are required:

- **Project Phasing:** In order to deliver the Project in the most expeditious way possible, we require phasing. The grocer that BH3 has brought forward has their own development team and internal processes and will work in tandem with BH3 to develop the grocery store and related amenities. **BH3 will endeavour to initiate construction of the 700 block within 60 calendar days of all required governmental approvals being issued, as well as start construction of the 800 block within 120 calendar days of all required governmental**

Attn: Renee Jadusingh, Delray Beach Community Redevelopment Agency, Executive Director

approvals being issued.

- **Project:** Based on the revised Fabrik site plan, Section 1.14 and Section 1.20 of the PSA needs to be amended to reflect the following:
  - 69 residential units:
    - 26 – one bedrooms units
    - 30 – two bedroom units
    - 8 – three bedroom units
    - 5 – townhomes
    - Amenity space: 3,189 SF of space including internal green space, club room and fitness center
    - Workforce/Affordable Housing Units: 69 (100%)
  - 19,586 SF of ground floor retail space (does not include 600 block)
  - 26,680 SF of commerical office space with the ability to right size for small, local businesses
  - 30,868 SF of open and green space
    - 8,672 SF – “Frog Alley”
    - 5,446 SF – on 800 block
    - 14,528 SF – open space
    - 2,222 SF – green space
  - 352\* parking spaces
    - 220 parking spaces on 700- and 800-blocks
      - 202 on site
      - 18 on Atlantic Avenue
    - 158 parking spaces anticipated on 600-block
      - 150 on site (\* grocer parking)
      - 8 on Atlantic Avenue
- **Timing:** Based on the the delays incurred as a resut of COVID-19<sup>1</sup> and corresponding necessary design revisions to adjust to the needs of the grocer tenant and resulting reduction in density, the Approval date of January 18, 2021, needs to be amended, which ties to various provisions of the PSA, (Application, Approval, and Termination Dates) to accomplish the following:
  - Site Plan Preparation and Application to the City **(6 months)**
    - Prepare full site plan drawings
    - Prepare - A/E drawings to support the application process
  - Technical Advisory Committee (TAC) and BH3 Responses **(2 months)**
    - Receive and respond to comments from Development Services Staff
    - BH3 will endeavor to respond to the TAC comments within 45 calendar days of receipt of same
  - Site Plan Review Process and Approval **(2 months)**
    - Advisory Board(s)
    - SPRAB
    - City Commission \*if appealed

**10 additional months from the date of execution of the 4<sup>th</sup> Amendment to the PSA**

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<sup>1</sup> BH3 noticed the CRA as to these delays and contemplated further delays in correspondence dated May 11, 2020 at the height of the pandemic articulating that COVID-19 was a Force Majeure event as defined in the PSA, that BH3 “is seeking an extension to the Approval Date pursuant to Force Majeure..”