



Cover Memorandum/Staff Report

File #: 18-0739 CRA

Agenda Date: 1/26/2021

Item #: 8D.

TO: CRA Board of Commissioners
FROM: Christine Tibbs, Assistant Director
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: January 26, 2021

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

Recommended Action:

Board Direction.

Background:

Following the April 9, 2019, CRA Board Meeting, where the CRA Board approved the Purchase & Sale Agreement ("Agreement") for the SW 600-800 blocks West Atlantic Avenue Properties with BH3, the Delray Beach Community Redevelopment Agency ("CRA") and BH3 Management, LLC ("BH3") entered into the Agreement on April 22, 2019.

A First Amendment to the Agreement was approved by the CRA Board on August 13, 2019, to address additional information in the Purchase and Sale Agreement.

A Second Amendment to the Agreement was approved on November 19, 2019, to extend the Application Date, the date BH3 needed 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 lease agreement with the Emanuel Jackson, Sr. Project, Inc. The Agreement and all Amendments are included within Exhibit C.

Application Date & Application Submittal:

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.

On April 3, 2020, after completing its review of the Applications, the City sent the first round of technical comments to BH3 to address. To date, the City comments have not been addressed by BH3.

Approval Date:

Based on the terms of the Agreement, the Approval Date is no later than 365 calendar days after the Application Date on which all governmental approvals are obtained, including but not limited to the Site Plan approval and Conditional Use approval, necessary for the development and construction of the Project (Project Approvals). The current Approval Date is **January 18, 2021**.

Default by Purchaser:

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."

To date, the CRA has not received confirmation that BH3 obtained the Project Approvals by the Approval Date for the development and construction of the Project.

At this time, per Section 10 of the Agreement, BH3's failure to obtain all necessary approvals on or before the Approval Date because of its actions or inactions constitutes an event of default.

Attachment(s): Exhibit A -BH3 Purchase and Sale Agreement and Amendments; Exhibit B - Critical Dates Timeline