

May 17, 2021

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED AND EMAIL

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Delray Beach Redevelopment Agency
20 North Swinton Avenue
Delray Beach, FL 33444
Attn: Renee Jadusingh, Esq., Executive Director
jadusinghr@mydelraybeach.com

Re: Default notice

Dear Mr. Doody and Ms. Jadusingh:

As you know, we represent BH3 Management, LLC (“BH3”). This letter shall serve as written notice that the Delray Beach Community Redevelopment Agency (“CRA”) is in default of the Purchase and Sale Agreement (“PSA”). Among other things:

- The CRA violated Section 1.10 of the PSA when it failed to put BH3’s May 11, 2020 Force Majeure extension on the CRA Board agenda for a vote;
- The CRA violated Section 1.14 of the PSA when it unreasonably withheld approval of the variances to BH3’s project at the January 26, 2021 CRA Board meeting;
- The CRA violated Section 10 of the PSA when it placed BH3 on notice of default on January 28, 2021, and only provided a 30-day cure period when it knew the default was not reasonably curable in 30 days, and the CRA did not discuss a reasonable time to cure with BH3; and
- The CRA violated Section 1.10 of the PSA when it unreasonably withheld approval of BH3’s Force Majeure extension request at the February 23, 2021 CRA Board meeting.

As such, this letter also serves as a **demand that the CRA take no action to terminate the PSA should BH3 not timely cure its default.** The CRA is prohibited from terminating the PSA pursuant to Section 1.21 and Section 10, which state that the CRA may only terminate the PSA “provided SELLER is not in default herein” and “provided SELLER has fully complied with its contractual obligations.” As set forth above, the CRA is in default and has not complied with its obligations under the PSA. Any effort to terminate the PSA will be considered further acts of bad faith by the CRA, and as set forth below, subject it to very significant damages.

Specifically, as another consequence of the CRA’s bad faith conduct and breach of the implied covenant of good faith and fair dealing, which caused BH3 to not perform under the PSA, the damages limitation in Section 11 is not enforceable and BH3 will be seeking all actual

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and consequential damages, which based on the pro formas prepared, exceeds \$20 million in damages.

Finally, be advised that BH3 will be appealing the order entered this morning denying its motion for injunctive relief as the CRA put forward no competent evidence to show that the 90-day Force Majeure extension was reasonable. On the contrary, all of the evidence is that, at the very least, five months was necessary to cure the alleged default, and that was only if every submission by BH3 was “flawless”.¹

This letter is not a waiver of any of BH3’s rights and remedies under the PSA, and BH3 expressly reserves all of its rights under the PSA, and to pursue any and all legal remedies.

PLEASE GOVERN YOURSELVES ACCORDINGLY

Very truly yours,

Glen H. Waldman

cc: George R. Truitt, Jr., Esq.
Clients

¹ By stating this, BH3 does not agree that five months was reasonable, and reserves all of its rights to assert that it was not a reasonable time period. In any event, it is clear 90-days was unreasonable.