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June 7, 2021

Via Electronic and U.S. MAIL

Glen H. Waldman, Esq.
Waldman Barnett, P.L.
3250 Mary Street, Suite 102
Coconut Grove, FL 33133

RE: BH3 Management, LLC's ("BH3") May 17, 2021 Default Notice

Dear Mr. Waldman,

This letter shall confirm receipt of your correspondence dated May 17, 2021 sent on behalf of your client, BH3 ("BH3 Letter").

This letter shall serve as Delray Beach Community Redevelopment Agency's (the "CRA") response to BH3's Letter, attempting to put the CRA on notice of a default of the Purchase and Sale Agreement ("PSA"). BH3's Letter attempts to assert that the CRA is in default of the PSA based upon four alleged violations as another attempt to prevent the CRA from exercising its rights under the PSA, including its right to consider termination of the PSA as provided for in Section 10 of the PSA.

BH3 failed to obtain the necessary approvals on or before January 17, 2021 ("Approval Date") constituting a default under the terms of the PSA and the subsequent amendments, including Section 10(b) of the PSA. On January 28, 2021, BH3 was given written notice of the default as required by Section 10 of the PSA and given thirty (30) days to notice to cure by obtaining all necessary approvals required for the development of the Project. On February 23, 2021, the CRA Board of Commissioners considered BH3's request for an extension of the Approval Date by force majeure and approved a ninety (90) calendar day extension of the Approval Date and subsequent dates under the PSA. The CRA's consideration of the ninety (90) day force majeure period was conditioned upon BH3's acceptance and execution of the Fourth Amendment to the PSA no later than Monday, March 1, 2021. Additionally, BH3's efforts to conditionally accept or "protest" the terms of the Fourth Amendment were clearly rejected by the CRA as stated in the March 1, 2021 letter enclosing an executed copy of the Fourth Amendment signed by CRA Chairperson, Shirley E. Johnson.

In light of the aforementioned, including but not limited to, BH3's acceptance and voluntary execution of the Fourth Amendment, the CRA rejects BH3's May 17, 2021 default notice and addresses the purported violations as follows:

First, the CRA rejects outright that it “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 vote,” as BH3 failed to provide the requisite legal basis to support the request for the force majeure extension. Specifically, on May 14, 2020, the CRA responded to the May 11, 2020 letter identifying BH3’s deficiencies and requesting detail as to how the force majeure event prevented BH3 from performing as opposed to failing to adapt and adjust to the conditions imposed by the State of Emergency declared by the City and the Governors Executive Orders as required by Section 1.10 of the PSA. Ultimately, the CRA did not find any justification requiring placing BH3’s force majeure extension on the June 2020 agenda for vote based upon the information provided by BH3 and as BH3 failed to respond to the CRA’s May 14, 2020 letter explaining how the triggering event resulted in its inability to perform.

Next, the CRA rejects it “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,” as the variances proposed by BH3 ultimately resulted in the presentation of a project that was unrecognizable by the Board. As BH3 is aware, upon entering into the PSA, the CRA had particular interest in providing more parking spaces, bringing a national grocer to the Set, providing affordable/workforce housing for the community and having outdoor spaces among other things. BH3’s counsel presentation proposed variances that wholly disregarded BH3’s prior commitment and the expectations of the CRA. For reference:

- The retail space varied by -45.71%;
- The open and green space varied by -23.17%;
- The grocer space varied by -9.01%;
- The residential rental units went from 165 units to 0 proposed units;
- The workforce housing went from 30 units to a proposed 69 units which were labeled “residential units”; and
- The parking spaces went from 334 spaces to a proposed 254 spaces plus 69 street parking.

The CRA vehemently disagrees it violated Section 1.14 of the PSA by voting against the variances given the totality and impact of the changes as BH3’s variances constituted bad faith and would have resulted in the CRA being deprived of the benefit of its bargain. In addition to the significant variances, BH3 presented a substantially different project that was \$25 million less than what was originally proposed, further subverting the CRA’s legitimate and reasonable commercial expectation of the project that BH3 committed to in the PSA.

The CRA also disagrees with BH3’s allegations that it “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.” Additionally, the CRA Board has not yet terminated BH3; however, in light of the BH3 Letter, the board will discuss and consider BH3’s position and any further Board action at the upcoming June 10, 2021 meeting.


The CRA denies it “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 the

parties ultimately agreed upon a 90 day force majeure extension and voluntarily entered into and executed the Fourth Amendment.

Based on the foregoing, it is requested that BH3 withdraw its May 17, 2021 default notice letter. The CRA has at all times and will continue to adhere to the terms and conditions of the PSA and will avail itself of all rights and remedies arising from the PSA and its amendments and as afforded to it at law. Be assured the CRA will continue to exercise its rights and remedies in a lawful manner.

Should you have any additional questions, please feel free to contact my office.

Sincerely,



DONALD J. DOODY

cc: Renee Jadusingh, Executive Director
Sanaz Alempour, Esq, Cole Scott & Kissane, P.A.
Chair Johnson and Members of the CRA Board