



Cover Memorandum/Staff Report

File #: 18-0821 CRA

Agenda Date: 6/10/2021

Item #: 7A.

TO: CRA Board of Commissioners
FROM: Kim N. Phan, Legal Advisor
THROUGH: Renée A. Jadusingh, Esq., Executive Director
DATE: June 10, 2021

POSSIBLE ACTION REGARDING THE ALLEGATIONS OF BH3 SET FORTH IN THE CORRESPONDENCE FROM COUNSEL FOR BH3 DATED MAY 17, 2021

Recommended Action:

Board consideration and possible action regarding the allegations of BH3 set forth in the correspondence from counsel for BH3 dated May 17, 2021.

Background:

On April 22, 2019, the CRA and BH3 Management, LLC ("BH3") entered into a Purchase and Sale Agreement ("Agreement") for the SW 600-800 blocks West Atlantic Avenue Properties.

On August 13, 2019, the CRA and BH3 entered into the First Amendment to the Agreement extending the commencement date for the workforce housing units being restricted to eligible tenants. At the request of BH3, on November 19, 2019, the CRA and BH3 entered into a Second Amendment to the Agreement in order to extend the Application Date by which BH3 had to submit for all government approvals from two hundred ten (210) calendar days to two hundred seventy (270) calendar days. The CRA and BH3 entered into the Third Amendment to the Agreement in order to allow the CRA to enter a new commercial lease with Emmanuel Jackson Sr. Project, Inc.

On May 11, 2020, BH3's Legal Counsel sent a letter to the CRA, placing the CRA on notice of BH3's intent to seek Force Majeure related extensions to the Approval Date in the Agreement due to COVID-19.

On November 25, 2020, BH3 notified the CRA of a design change and sought extension of the Approval Date, and to address project phasing and removal of the financing contingency.

At the January 26, 2021 CRA Board Meeting, the CRA Board declared BH3 in default of the Agreement for failure to meet the required Approval Date.

On or around February 8, 2021, BH3 sent the CRA a letter intending to seek an extension of the Approval Date in the Agreement based on the Florida Governor's Declarations of Emergency and Section 252.363, F.S. On February 23, 2021, the CRA Board considered BH3's Force Majeure letter and approved a ninety (90) day extension of certain deadlines in the Agreement. The extension was memorialized in the Fourth Amendment to the Agreement. The ninety (90) day extension for Force Majeure commenced on March 1, 2021 and expired on June 1, 2021.

On March 5, 2021, BH3 filed a lawsuit against the CRA seeking declaratory and injunctive relief. BH3 also filed an emergency motion to stay deadlines in the PSA, or in the alternative, for injunctive relief for temporary injunction. After a court hearing on the matter on May 10, 2021, the judge denied BH3's emergency motion to stay the deadlines in the PSA, or in the alternative, for injunctive relief for temporary injunction and rendered an order on May 17, 2021. BH3 has appealed the May 17, 2021 order, and on June 1, 2021, BH3 filed an amended complaint seeking monetary damages for breach of contract, breach of the covenant of good faith and fair dealing, and declaratory relief as to the exclusive remedy provision in the PSA.

On May 17, 2021, BH3 through its counsel sent the CRA a correspondence claiming the CRA is in default of the PSA and demanding that the CRA take no action to terminate the PSA should BH3 not timely cure its default.

At this time, CRA Staff is seeking Board consideration and possible action regarding the allegations of BH3 set forth in the correspondence from counsel for BH3 dated May 17, 2021.

Attachment(s): Exhibit A - Fourth Amendment to the Purchase and Sale Agreement; Exhibit B - BH3-Delray. Letter to Donald J. Doody and Delray Beach Redevelopment Agency Re. Default Notice; Exhibit C - CRA Response to May 17 2021 Letter