Legislation Details (With Text)

File #:	18-0738 CRA **Version:** 1	**Name:**	
Type:	CRA Contract	**Status:**	Agenda Ready
File created:	1/19/2021	**In control:**	Community Redevelopment Agency
On agenda:	1/26/2021	**Final action:**	
Title:	FOURTH AMENDMENT TO THE PURCHASE & SALE AGREEMENT WITH BH3 MANAGEMENT, LLC - DEVELOPMENT OF SW 600-800 BLOCKS OF WEST ATLANTIC AVENUE		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Agenda Cover Report, 2. Exhibit A - 1.22.21 Draft CRA Staff 4th Amendment to PSA_with Exhibits, 3. Exhibit B - BH3 Request Letter, 4. Exhibit C - BH3 Clarification Memo, 5. Exhibit D - FABRIK Proposed Renderings and Site Plan, 6. Exhibit E - Critical Dates Timeline, 7. Exhibit F - Purchase and Sale Agreement and Amendments, 8. Exhibit G - Aerial View of Properties, 9. Exhibit H - FABRIK_SPRAB_Submitted Renderings and Site Plan, 10. Exhibit I – AtlaWest Renderings and Site Plan		

Date	Ver.	Action By	Action	Result

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

FOURTH AMENDMENT TO THE PURCHASE & SALE AGREEMENT WITH BH3 MANAGEMENT, LLC - DEVELOPMENT OF SW 600-800 BLOCKS OF WEST ATLANTIC AVENUE

Recommended Action:

Discuss and approve or disapprove the Fourth Amendment to the Purchase & Sale Agreement, in substantially the attached form, by and between Delray Beach Community Redevelopment Agency and BH3 Management, LLC, dated April 22, 2019, related to the development of SW 600-800 blocks of West Atlantic Avenue.

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.

Future Land Use Map (FLUM) and Rezoning Amendments Approval:
On October 15, 2019, BH3 received final approval from the City amending the FLUM designation from Multiple Family Residential - Medium Density District to Central Business District and Zoning designation from Medium Density to Commercial Core for the properties located at 36 SW 6th Avenue, 40 SW 6th Avenue, 46 SW 6th Avenue, 48 SW 6th Avenue, 41 SW 7th Avenue, and 37 SW 7th Avenue.

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.

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. The current Approval Date is **January 18, 2021**.

June 18, 2020 CRA Workshop:
On June 18, 2020, a CRA Board Workshop was held for BH3 to present any updates on the submitted Applications, any proposed redesign and/or revision to the development program for the SW 600 - 800 blocks of West Atlantic Avenue; and to solicit feedback from the CRA Board regarding any proposed redesign and/or revision; and for the CRA Board to have the opportunity to raise any concerns related to the Applications and/or any proposed redesign and/or revision to the development program. At the Workshop, BH3 stated that any proposed redesign and/or revision to the development program for the SW 600 - 800 blocks of West Atlantic Avenue would be brought before the CRA Board for their consideration and approval. At the conclusion of the Workshop, BH3 was tasked with coordinating a date on which any proposed redesign and/or revision would be presented to the CRA Board.

BH3 Request Letter:
On November 25, 2020, the CRA received a letter ("Request Letter") from BH3 requesting consideration of an amendment to the Agreement; a supplemental clarification memo was received on December 3, 2020 ("Clarification Memo"). Based on the correspondence, BH3 is seeking amendments to the project phasing, project composition, and timing.

December 10, 2020, CRA Board Meeting:
At the December 10, 2020, CRA Board Meeting, BH3 presented the resigned and revised development program for the SW 600 - 800 blocks of West Atlantic Avenue. The CRA Board provided direction to CRA staff

to enter into preliminary discussions and negotiations with BH3 regarding the terms of a potential Fourth Amendment to the Agreement to be submitted prior to the special set meeting on December 17, 2020.

December 17, 2020, Special CRA Board Meeting:
At the December 17, 2020, Special CRA Board Meeting, the CRA Board approved CRA Staff to enter negotiations with BH3 for the preparation and drafting of a Fourth Amendment to the Agreement. The negotiated Fourth Amendment will be presented to the CRA Board for discussion, and approval or disapproval, at the January 26, 2021, CRA Board Meeting.

Fourth Amendment to the Agreement:
Exhibit A contains the Fourth Amendment to the Agreement.

At this time, the Fourth Amendment to the Agreement is before the CRA Board for discussion, and approval or disapproval, in substantially the attached form.

Attachment(s): Exhibit A - Fourth Amendment to the Agreement; Exhibit B - BH3 Request Letter; Exhibit C - Clarification Memo; Exhibit D - FABRIK Proposed Renderings and Site Plan; Exhibit E - Critical Dates Timeline; Exhibit F - Purchase and Sale Agreement and Amendments; Exhibit G - Aerial View of Properties of the SW 600 - 800 blocks of West Atlantic Avenue; Exhibit H - FABRIK Current SPRAB Submitted Renderings and Site Plan; Exhibit I - AtlaWest Renderings and Site Plan

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