

RESOLUTION NO. 2023 - 046

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AUTHORIZING THE ASSIGNMENT OF THE TOWN'S PURCHASE AND SALE AGREEMENT AND PROFIT PARTICIPATION AGREEMENT WITH MG3 SWR INDUSTRIAL, LLC FOR THE VACANT PARCEL OF LAND GENERALLY KNOWN AS THE CCA PROPERTY TO BBX LOGISTICS PROPERTIES, LLC; CLARIFYING CERTAIN PROVISIONS IN THE AGREEMENTS; AUTHORIZING THE EXECUTION OF THE ASSIGNMENT AND AMENDMENT AGREEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 2, 2022, pursuant to Resolution No. 2022-059, the Town entered into a Purchase and Sale Agreement and a Profit Participation Agreement (collectively the "Agreements") with MG3 SWR Industrial, LLC ("MG3") for the purchase of the Town's parcel generally known as the CCA Property; and

WHEREAS, MG3's due diligence revealed substantial work that needed to be performed prior to development, which impacted its development timeline; and

WHEREAS, MG3 and the Town mutually agreed to assign the Agreements to BBX Logistics Properties, LLC ("BBX") as it displayed the ability and resources to bring the development to fruition; and

WHEREAS, as part of the Assignment the parties wish to clarify the purchase price, due diligence period, closing date, stabilization period, and profit share; and

WHEREAS, the Town Council finds that the assignment to BBX to be in the best interest of the health, safety and welfare of the Town and its residents;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA:

Section 1. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution.

Section 2. The Town Council hereby approves an Assignment and Amendment Agreement to assign its Purchase and Sale Agreement and Profit Sharing Agreement with MG3 SWR Industrial, LLC to BBX Logistics Properties, LLC, as specifically attached hereto and incorporated herein as Exhibit "A".

Section 3. The Town Council hereby authorizes the amendments contained within the Assignment and Amendment Agreement concerning price, due diligence period, closing date, stabilization period, and profit share.

Section 4. The Town Council hereby authorizes the Mayor, Town Administrator, and Town Attorney to execute the Assignment and Amendment Agreement and to make any and all changes necessary and proper to effectuate the intent of this Resolution.

Section 5. Conflict. All resolutions or parts of resolutions in conflict herewith are hereby superseded to the extent of such conflict.

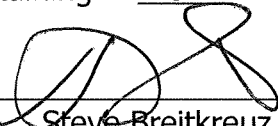
Section 6. Severability. If any clause, section, or other part of this Resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this Resolution.

Section 7. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 27th day of April, 2023 on a motion by Council Member Jablonski and seconded by Council Member Hartmann

Breitkreuz	<u>Yes</u>
Allbritton	<u>Yes</u>
Jablonski	<u>Yes</u>
Hartmann	<u>Yes</u>
Kuczenski	<u>Yes</u>

Ayes	<u>5</u>
Nays	<u>0</u>
Absent	<u>0</u>
Abstaining	<u>0</u>



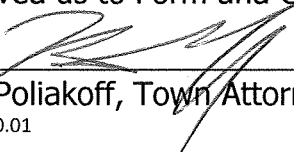
Steve Breitkreuz, Mayor

Attest:



Russell Muñiz, Assistant Town Administrator/Town Clerk

Approved as to Form and Correctness:



Keith Poliakoff, Town Attorney
1001.2370.01

EXHIBIT A

ASSIGNMENT AND AMENDMENT AGREEMENT

ASSIGNMENT AND AMENDMENT AGREEMENT

THIS ASSIGNMENT AND AMENDMENT AGREEMENT (this “Agreement”) is made and entered into as of May 3, 2023 by and among **MG3 SWR INDUSTRIAL, LLC**, a Delaware limited liability company (“Assignor”), **BBX LOGISTICS PROPERTIES LLC**, a Florida limited liability company (“Assignee”), and **THE TOWN OF SOUTHWEST RANCHES**, a municipal corporation of the State of Florida (“Seller”). Assignor, Assignee and Seller may each be referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Assignor and Seller entered into that certain Real Estate Sale and Purchase Agreement dated as of June 2, 2022 (the “Purchase Agreement”) with respect to the purchase and sale of certain real and other property located in Broward County, Florida, as more particularly set forth in the Purchase Agreement (the “Property”), a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, simultaneously with the execution of the Purchase Agreement, Assignor and Seller also entered into that certain Perpetual Profit Sharing and Construction Agreement dated as of June 2, 2022 (the “Profit Sharing Agreement”) with respect to the development of the Property and sharing of profits derived therefrom, a copy of which is attached hereto as Exhibit “B”; and

WHEREAS, Assignor wishes to assign to Assignee, and Assignee wishes to assume from Assignor, all of Assignor’s right, title and interest in, to and under the Purchase Agreement and the Profit Sharing Agreement; and

WHEREAS, Seller and Assignee desire to amend certain provisions of the Purchase Agreement and the Profit Sharing Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the Parties hereby agree as follows:

1. Capitalized Terms. Capitalized terms used and not otherwise defined in this Agreement shall have the meanings given such terms in the Purchase Agreement.

2. Assignment & Assumption; Consent; Deposit.

a. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in, to and under the Purchase Agreement and the Profit Sharing Agreement. Assignee hereby accepts such assignment and assumes from Assignor all of Assignor’s duties, obligations and liabilities under the Purchase Agreement and the Profit Sharing Agreement. Seller hereby consents to such assignment by Assignor and assumption by Assignee of the Purchase Agreement and the Profit Sharing Agreement.

b. Within thirty (30) days after the effective date of this Agreement, Assignee shall deposit the sum of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “Assignee’s Initial Deposit”) with the Escrow Agent. In the event that Assignee elects to proceed to purchase the Property at the end of the Due Diligence Period, Assignee shall, within two (2) business days after expiration of the Due Diligence Period, deposit the sum

of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “Assignee’s Additional Deposit”, and collectively with the Assignee’s Initial Deposit, the “Deposit”) with the Escrow Agent. Assignee’s Initial Deposit and Assignee’s Additional Deposit, to the extent made, shall be deemed to be the “Deposit” under the Purchase Agreement. Upon Escrow Agent’s receipt of the Assignee’s Initial Deposit in escrow, the Parties hereby direct the Escrow Agent to release the Five Hundred Thousand and 00/100 Dollars (\$500,000.00) deposit previously made by Assignor with Escrow Agent to Assignor.

3. Amendments to Purchase Agreement. Effective as of the date of this Agreement, the Purchase Agreement shall be amended as follows:

- a. Purchase Price. The Purchase Price is confirmed as \$16,800,000.00.
- b. Due Diligence Period. The Due Diligence Period is extended to the date which is one hundred twenty (120) days after the date of this Agreement.
- c. Closing Date. The Closing Date is extended to the date which is ninety (90) days after the expiration of the Due Diligence Period.
- d. Notices. The Purchaser’s notice address is updated as follows:

If to Purchaser: c/o BBX Logistics Properties
 201 East Las Olas Blvd., Suite 1900
 Fort Lauderdale, Florida 33301
 Attn: Mark G. Levy, President
 Email: mlevy@bbxlogisticsproperties.com

With a copy to: Greenberg Traurig, P.A.
 333 S.E. 2nd Avenue, 44th Floor
 Miami, Florida 33131
 Attn: Richard J. Giusto
 Email: GiustoR@gtlaw.com
- e. Brokers. Neither Seller nor Purchaser have used the services of a broker or other finder in connection with the Purchase Agreement.

4. Amendments to Profit Sharing Agreement. Effective as of the date of this Agreement, the Profit Sharing Agreement shall be amended as follows:

- a. The fifth (5th) paragraph of Article 1 of the Profit Sharing Agreement is deleted in its entirety and replaced with the following:

“MG3 shall hold and shall retain the Property until the earlier of: (i) the date on which the Project achieves ninety percent (90%) stabilization, and (ii) the date which is thirty-six (36) months following Substantial Completion. Notwithstanding anything in this Agreement to the contrary, (i) MG3 may sell the Property at any time if pursuant to a build-to-suit arrangement or a forward purchase with a take-out buyer provided that the Town’s transfer fee is paid and

such purchaser takes subject to and assumes all of the obligations of MG3 under this Agreement, and (ii) MG3 may transfer the Property to a related entity at any time without payment of the Town's transfer fee."

b. The sixth (6th) paragraph of Article 1 of the Profit Sharing Agreement is amended to convert the right of first refusal to a right of first offer upon terms to be mutually agreed between Seller and Assignee.

c. Paragraph 8.2(B) of the Profit Sharing Agreement is deleted in its entirety and replaced with the following:

"(B) (i) If the Event of Default is the failure of MG3 to have commenced vertical/ground up construction within eighteen (18) months following the issuance of the wetland mitigation permit (subject to force majeure) as required by Section 2.1(c) of this Agreement, SWR may treat this Agreement as terminated and re-purchase the Subject Property for the amount paid, or (ii) if the Event of Default is the failure of MG3 to have timely achieved Substantial Completion within thirty-six (36) months after issuance of the wetland mitigation and building permits (subject to force majeure) as required by Section 2.1(c) of this Agreement, SWR may record a lien against the Subject Property (which lien shall include the power to foreclose) to secure repayment of the liquidated damages SWR is entitled to pursuant to Section 2.1(c) of this Agreement which lien will be subject and subordinate to any then current or future first mortgage lien encumbering the Subject Property."

d. The notice address for MG3 in Section 9.1(a) of the Profit Sharing Agreement is hereby deleted in its entirety and replaced with the following:

"If to MG3: c/o BBX Logistics Properties
201 East Las Olas Blvd., Suite 1900
Fort Lauderdale, Florida 33301
Attn: Mark G. Levy, President

With a copy to: Greenberg Traurig, P.A.
333 S.E. 2nd Avenue, 44th Floor
Miami, Florida 33131
Attn: Richard J. Giusto"

e. The Profit Sharing Agreement shall include a covenant as follows: "MG3 covenants and agrees that it shall not sell the Property to an entity or organization that is exempt from ad valorem taxes."

5. Except as modified hereby, the Purchase Agreement and the Profit Sharing Agreement are and shall remain in full force and effect in accordance with their respective terms. In the event of any conflict between the terms and provisions of the Purchase Agreement or the Profit Sharing Agreement and this Agreement, the terms and provisions of this Agreement shall control and supersede such conflicting provisions.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Execution and delivery of this Agreement by facsimile or email shall be good and valid execution and delivery for all purposes.

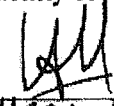
(Remainder of Page Intentionally Left Blank – Signatures Appear on the Following Pages)

[Signature Page to Assignment and Amendment Agreement]

IN WITNESS WHEREOF, Assignor, Assignee and Seller have executed this Agreement under seal as of the date first above written.


ASSIGNOR:

MG3 SWR INDUSTRIAL, LLC, a Delaware limited liability company

By: 
Name: HERMAN LEONOFF
Title: MANAGER

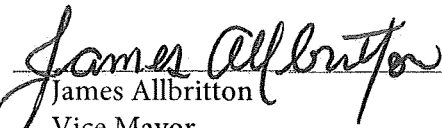
ASSIGNEE:

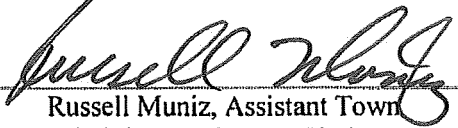
BBX LOGISTICS PROPERTIES LLC, a Florida limited liability company

By: 
Name: Mark G. Levy
Title: President

SELLER:

TOWN OF SOUTHWEST RANCHES, a municipal corporation of the State of Florida

By: 
Name: James Allbritton
Title: Vice Mayor

ATTEST: 
Russell Muniz, Assistant Town Administrator / Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

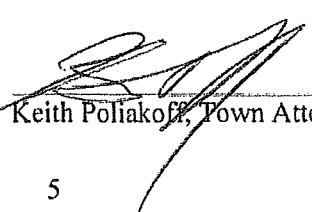

Keith Poliakoff, Town Attorney

Exhibit "A"

Copy of Purchase Agreement

[See attached.]

Exhibit "B"

Copy of Profit Sharing Agreement

[See attached.]