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April 20, 2022

Mr. Kyle Benda, Assistant County Attorney
County Attorney's Office
20 North Main St., Suite 462
Brooksville, FL 34601

RE: Response to Notice to Cure Breach of Lease Agreement Between Hernando County Water & Sewer District and Hernando Beach Marine Group, Inc., dated March 17, 2022.

Dear Mr. Benda:

The Hogan Law Firm has been retained by Hernando Beach Marine Group, Inc. (HBMG) to respond to the above-captioned matter.

The notice alleges two breaches. One for non-payment of the county's portion of the communications tower sublease rent. The other for non-payment of the 2021 assessed property tax for Key #: 01758850. Furthermore, the notice requires cure of these within 120 days.

Taking the second issue first, please be advised that the assessed property tax bill was paid in full on March 31, 2022. Consequently, this alleged breach issue has been cured. Furthermore, HBMG informs the county that it is a not-for-profit charitable corporation which enjoys tax-exempt status pursuant to IRS Code Sec. 501 (3) c. As such, HBMG will file for the appropriate exemption pursuant to Fla. Stat. Sec. 196.195 and .196 and will request a refund through the appropriate process for any prior property taxes paid in an amount in excess of the communications tower property taxes.

In regard to the alleged breach of the communications tower sublease rent, HBMG contends that the county's portion of rent is not payable based on an agreement with the county negotiated in late 2016. The history of this agreement and the reason for this position is described below.

Prior to Hurricane Hermine's August, 2016 damage to the Coast Guard Auxiliary Building, the lease agreement required HBMG to pay one-half of the communications tower rent to the county and the county paid the insurance costs and building repair costs for the property. Due to the difficulties regarding the insurance payout for the loss due to Hurricane Hermine, later that year negotiations occurred regarding how HBMG would be paid for the repairs to the building resulting from the damage caused by Hermine. It was during this time that Commissioner Dukes proposed that the county would amend the lease and/or convey the building to HBMG such that the storm damage payments could be made to the corporation (eventually they were). HBMG assented to this proposal at that time. The parties further agreed that

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HBMG would pay for the insurances; repairs; and property tax liability (for the communications tower). In exchange, the county agreed that it would forgo collecting its portion of the communications tower rent.

After a few months, and in order to verify that the agreement was acted upon by the county, Bill Ferriera, then president of HBMG, visited the county attorney's office on Friday, March 3, 2017. While there was no one present to assist him, Assistant County Attorney Jon Jouben emailed Mr. Ferriera on Monday, March 6, 2017 to inform him that following their (where Mr. Ferreira, Commissioner Dukes, and county staff were present) prior meeting of February 13, 2017 regarding the agreement's implementation that "the reason the County cannot identify who will be in charge of 'the next step' is that a different set of County employees would handle the title transfer as opposed to amending the lease."

In reliance on the county's verbal assurances, correspondence, and affirmative actions taken regarding the parties' agreement, HBMG stopped paying to the county the county's portion of the communications tower rent as of the date of the February 13, 2017 meeting. In addition, HBMG paid the insurances and the subsequent newly billed property taxes to date. As such, HBMG has performed under the agreement's terms, albeit now to its detriment based on the county's recent lease cure notice.

Furthermore, HBMG questions why it took the county nearly 61 months to send this notice when the county has not been paid for that period of time unless the county has also performed based on the 2016-7 agreement, as described above.

Therefore, HBMG contends that the County is not entitled to its portion of the communication tower sublease rent and there is no breach of the lease to be cured for this claim. In the alternative, HBMG contends that the county has not performed pursuant to the earlier lease in effect as it has not paid for the insurances to which HBMG has paid \$50,001.82 to date. Moreover, HBMG contends that any property tax paid in excess of the taxes on the cell tower site be reimbursed by the county (estimated at \$17,300.00 from the 2017 tax year forward).

In conclusion, HBMG desires to resolve this issue through a negotiated settlement with the county to the benefit of both parties with the goal/end result being that HBMG remain in the building and the monetary issues nullify. Lastly, HBMG desires that a new long-term lease agreement also be negotiated.

Please respond to the undersigned within 15 days of receipt of this letter such that this matter can be amicably resolved by the parties.

Sincerely,


Michael Lamberti, Esq.

Cc: J.P. Reeve, President HBMG
Ryan D. Lepene, President of K2 Towers II, LLC