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SENT VIA EMAIL, REGULAR & CERTIFIED MAIL: npopick@margatefl.com

November 28, 2018

City of Margate &
Margate Community Redevelopment Authority
5790 Margate Boulevard
Margate, FL 33063
Attn: Nancy L. Popick, Paralegal

Re: Member: City of Margate
Claimant: New Urban Communities, LLC
File: GO-1436/321600

Dear Ms. Popick:

As you are aware from prior correspondence, Summit Risk Services has partnered with Preferred Governmental Claim Services (PGCS) as Third Party Administrators on behalf of the Preferred Governmental Insurance Trust (Preferred).

We previously acknowledged receipt of correspondence dated March 6, 2018 from attorney Michael W. Moskowitz on behalf of New Urban Communities, LLC ("Plaintiff"). The letter is addressed to the Mayor and Members of the City Commission of the City of Margate as well as the Chairman and Members of the Board of the City of Margate Community Redevelopment Agency ("CRA"). Mr. Moskowitz attached a proposed Amended Complaint for Specific Performance and Damages. We received the letter and proposed Amended Complaint on March 8, 2018 from PGCS.

We now acknowledge receipt of Plaintiff's Motion for Leave to File Amended Complaint. The action was filed on October 3, 2017 in the Circuit Court of the 17th Judicial Circuit in Broward County, Florida. Plaintiff names as Defendant the Margate Community Redevelopment Agency ("CRA"). We also received Plaintiff's Amended Complaint for Specific Performance and Damages. Plaintiff names the Margate Community Redevelopment Agency and the City of Margate as Defendants.

Plaintiff avers that the CRA owns eleven parcels of property located at the intersection of State Road 7 and Margate Boulevard in the City of Margate. Plaintiff asserts that CRA issued a request for proposal ("RF") for development of the CRA property as a mixed-use project including residential, commercial retail, office, medical, governmental facility or other appropriate uses. Plaintiff alleges that it was selected for the development of the project to be called "Margate City Center." Plaintiff alleges that the CRA Board conditionally awarded Plaintiff, subject to the negotiation of a development agreement for review and approval by the CRA Board, as well as evaluating and negotiating a Pre-Development Plan.

Plaintiff avers that on July 19, 2016 it entered into a Development Agreement with Defendant CRA. Plaintiff asserts that the Development Agreement provided the terms and conditions to which Plaintiff shall develop the CRA Property. Plaintiff asserts that on March 16, 2017 it timely submitted a site plan package to the CRA. Plaintiff alleges that on February 7, 2017 it held a workshop where members of the CRA voiced opposition to the project and that Plaintiff and the CRA Board discussed a possible compromise plan for the project.

Plaintiff alleges that shortly after this meeting, members of the CRA Board, acting as the City Commission, took actions with the specific intent to scuttle the project.

Plaintiff asserts that on February 15, 2017 the City Commission voted to reject an amendment which prevented residential additional units from becoming available for the project. Plaintiff further asserts that on May 9, 2017 it submitted a Site Plan which was substantially consistent with the Pre-Development Plan. Plaintiff alleges that notwithstanding its obligations under the Development Agreement, the CRA refused to sign the site plan application causing delay in breach of the Development Agreement. Plaintiff alleges that the CRA refused to review and approve (or even consider) its Site Plan for more than sixty (60) days and thereby breached the Development Agreement. Plaintiff avers that Defendant CRA indicated to Plaintiff that it intended to attempt to terminate the Development Agreement and that it directed its attorney to negotiate for the termination of the agreement, and that these actions constituted an anticipatory breach of the Development Agreement. Plaintiff intends to sue Defendants for Specific Performance, Tortious Interference with Contract and for Conspiracy.

We are evaluating a tender for coverage to Preferred on behalf of the individual and or entity to whom this letter is addressed. Unless we hear from you to the contrary we will assume that coverage is being tendered to Preferred only under the under referenced Coverage Agreement and is being tendered on behalf of only those to whom our coverage letter is addressed. The City of Margate is the Covered Party with Public Officials and Employment Practices Liability insurance coverage under Coverage Agreement Number PK2FL1006250817-09 (the "Coverage Agreement"), issued by Preferred with a Coverage Agreement Period from October 1, 2017 to October 1, 2019. The Coverage Agreement carries a per claim Limit of Liability of \$1,000,000 subject to a Coverage Agreement Aggregate Limit of \$1,000,000. The Coverage Agreement also includes a \$50,000 deductible or self-Member retention.

We have determined that there is no coverage for this loss under the Public Officials & Employment Practices Coverage. Please refer to the following sections of this Agreement:

**PUBLIC ENTITY
PUBLIC OFFICIALS LIABILITY AND
EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM
(Claims Made and Reported)**

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Coverage Agreement**, the **Covered Parties** and the **Trust** agree as follows:

SECTION I - COVERAGE AGREEMENTS

A. Political Officials' Liability

The **Trust** will pay on behalf of the **Covered Party** all sums in excess of the Deductible that the **Covered Party** shall become legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** first made against the **Covered Party** and reported to the **Trust** during the **Agreement Period** or, if exercised, the **Extended Reporting Period**, by reason of a **Wrongful Act** in the performance of or failure to perform duties for the **Public Entity**. The **Wrongful Act** must have been committed on or subsequent to the **Retroactive Date** specified in the Declarations and before the end of the **Agreement Period**.

* * *

SECTION II – SUPPLEMENTAL PAYMENTS

B. Non-Monetary claims

The **Trust** shall defend a claim seeking relief or redress in any form other than monetary damages provided said claim is not otherwise excluded, or **Claims Expenses** for a Claim seeking such non-monetary relief, subject to the following conditions:

1. Defense costs under this section have an annual aggregate limit of liability of \$100,000;
2. The Trust defends the Claim from first notice to **Covered Party**.

SECTION III - DEFINITIONS

F. Claim means:

1. a civil proceeding against any **Covered Party** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading; and
2. an administrative proceeding including but not limited to EEOC or other regulatory proceeding against any **Covered Party**, commenced by the filing of a notice of charges, investigative order or similar document.

D. Bodily Injury means injury to the body, sickness, or disease, including death resulting from such injuries. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.

K. Personal Injury means injury arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. libel, slander or other defamatory or disparaging material;
4. publication or an utterance in violation of an individual's right to privacy;
5. and wrongful entry or eviction, or other invasion of the right to private occupancy.

M. Property Damage means:

1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
2. loss of use of tangible property which has not been physically injured, damaged or destroyed.

I. Damages means compensatory damages which the **Covered Party** becomes legally obligated to pay on account of a covered **Wrongful Act**, by way of judgment, award or, with the prior written consent of the **Trust**, settlement.

Damages shall not include:

1. taxes, fines, penalties, or sanctions;
2. punitive or exemplary damages or the multiple portion of any multiplied damages award;
3. matters uninsurable under the laws pursuant to which this **Coverage Agreement** is construed;
or
4. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief.

T. Wrongful Act means:

1. With respect to Public Officials Liability, any actual or alleged act, error or omission, neglect or breach of duty committed by the **Public Entity**, or by any other **Covered Party** solely in the performance of duties for the **Public Entity**;
2. With respect to Employment Practices Liability, a **Wrongful Employment Practice** committed by the Public Entity, or by any other **Covered Party** solely in the performance of duties for the **Public Entity**.

SECTION IX -DEFENSE AND SETTLEMENT

- A. The Trust shall have the right and duty to defend any covered Claim brought against the Covered Party even if such Claim is groundless, false or fraudulent. The Covered Party shall not admit or assume liability or settle or negotiate to settle any Claim or incur any Claims Expenses without the prior written consent of the Trust, and the Trust shall have the right to appoint counsel and to make such investigation and defense of a covered Claim as it deems necessary.

SECTION VIII - NOTICE

- A. The **Covered Party** shall, as a condition precedent to the obligations of the **Trust** under this **Coverage Agreement**, give immediate written notice to the **Trust** of any **Claim**, but in no event later than 30 days after the end of the **Agreement Period**, the Automatic Extended Reporting Period, or, if elected, the Optional Extended
- B. The **Covered Party** shall immediately forward to the **Trust**, every demand, notice, summons, or other process or pleadings received by the **Covered Party** or its representatives.
- C. If, during the **Agreement Period**, any **Covered Party** becomes aware of any **Wrongful Act** which may reasonably be expected to give rise to a **Claim** against the **Covered Party**, and during the **Agreement Period** gives written notice thereof to the **Trust** with all available particulars, including but not limited to:
 1. the specific **Wrongful Act**;
 2. the dates and persons involved;
 3. the identity of anticipated or possible claimants;

4. the circumstances by which the **Covered Party** first became aware of the possible **Claim**, and a **Claim** is subsequently made against the **Covered Party** arising from such **Wrongful Act** and properly reported to the **Trust**, the **Claim** shall be deemed to have been first made at the time such written notice was received by the **Trust**.
- D. All notices under any provision of this **Coverage Agreement** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Covered Parties** may be given to the **Public Entity** at the address shown in the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee

SECTION IV - EXCLUSIONS

The **Trust** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. based upon, arising out or attributable to any actual dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by a **Covered Party**.
- B. seeking relief or redress in any form other than monetary damages, or Claims Expenses for a Claim seeking such non-monetary relief, including any attorney fees arising there-from, except as provided in the Supplementary Payments above.
- C. alleging, based upon, arising out or attributable to any:
 1. **Bodily Injury;**
 2. **Property Damage;**
 3. **Personal Injury;**
 4. **Advertising Injury;**
 5. any allegation that a **Covered Party** negligently employed, investigated, supervised or retained any person who is liable or responsible for such injury or damage, as it relates to items C 1, 2, 3 and 4 above; or
 6. any willful violation of any statute, ordinance or regulation committed by you or with your knowledge or consent as it relates to items C 1, 2, 3 and 4 above.
- D. alleging, based upon, arising out or attributable to inverse condemnation, eminent domain, temporary or permanent taking, adverse possession, dedication by adverse use, condemnation proceedings, or claims brought under Florida Statute 70.001, the "Bert J. Harris, Jr., Private Property Rights Protection Act," or any similar claim by whatever name called.
- G. alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which the Covered Part was not legally entitled.
- M. alleging, based upon, arising out or attributable to breach of contract, warranty, guarantee or promise unless such liability would have attached to the **Covered Party** even in the absence of such contract, warranty, guarantee or promise. However, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practices**.
- N. alleging, based upon, arising out or attributable to any actual or alleged liability assumed by the **Covered Party** under any contract or agreement, unless such liability would have attached to the

Covered Party even in the absence of such contract.

Pursuant to Exclusions "M" and "N" there is no coverage for claims arising out of breach of contract. Since this claim arises directly out of a breach of contract between the Plaintiff and the Defendants there is no coverage for this matter under your Public Officials and Employment Liability coverage part.

Please also note that Exclusion "D" excludes coverage for condemnation, eminent domain and the taking of property. Additionally, pursuant to Exclusion C.1 there is no coverage for claims alleging, based upon, arising out or attributable to property damage. The Coverage Agreement defines property damage to include physical injury to, or loss or destruction of, tangible property, including the loss of use thereof.

Pursuant to Exclusion "B" there is no coverage for claims seeking relief or redress in any form other than monetary damages.

Pursuant to Exclusion "A" there is no coverage for claims based upon or arising out of any actual or alleged dishonest, fraudulent, unlawful, criminal, malicious or willful and wanton act, error or omission, or any knowing violation of the law by a Covered Party. As such, there is no coverage for conspiracy under this exclusion.

Pursuant to Exclusion "G" there is no coverage for claims alleging, arising out or attributable to the gaining in fact of any profit or financial advantage to which the Covered Party was not legally entitled.

We are denying coverage for this claim pursuant to these exclusions as well.

If you have any facts or additional information in your possession which would change or alter the facts on which we have based our decision, please forward it to my attention immediately.

Preferred reserves its rights to further supplement or alter our coverage position due to any new or additional information.

If you have or receive in the future a Complaint, Amended Complaint or similar pleading, please immediately forward the same to my attention we will review to determine the Trust's duties under the Coverage Agreement, and we will further supplement the Trust's coverage position vis-à-vis a duty to provide a defense and/or indemnification. If you have or receive in the future any facts or additional information which could change or alter the basis upon which our coverage position is determined, please forward same to our attention immediately.

Preferred reserves its rights to further supplement or alter our coverage position due to any new or additional information.

Very truly yours,

Summit Risk Services

By: 
/s/Edward A. Kron
(215) 443-3597
kron@summitrisk.com

Copy: Tammy Savage
PGCS Claim Services