

Eric E. Tomaszewski, Esq.
ETomaszewski@MSBNJ.com
(973) 622-5162

January 3, 2022

Via Federal Express

Ms. June Jones, President
Morris Canal Community Development Corporation
317 Pacific Avenue
Jersey City, New Jersey, 07304

**Re: Notice of Default – Coles Street Park Escrow Agreement
Block 20001, Lots 16, 18-22, Jersey City, New Jersey**

Dear Ms. Jones:

Our office represents the Jersey City Redevelopment Agency (the “Agency”) with respect to the Morris Canal Redevelopment Area and the redevelopment of Block 20001, Lots 16, 18-22. Please be advised that Morris Canal Community Development Corporation (“Redeveloper”) is in default of the Redevelopment Agreement (the “Agreement”), dated May 1, 2018, between the Agency and Redeveloper. In particular, Redeveloper is in default of the following provisions of the Agreement:

- Construction of the Project. Pursuant to Section 2.11 and Schedule C of the Agreement, Redeveloper had an obligation to complete certain construction activities consistent with a specified timetable and has failed to complete any of the activities.
- Prohibition Against Transfers. Sections 7.02 and 7.03 of the Agreement prohibit transfers of the Project Premises or any interest therein without the prior written approval of the Agency, unless Redeveloper meets one of the limited exceptions provided by Section 7.03. Redeveloper has recently proposed assigning the Agreement to a proposed joint venture between Redeveloper and Mr. Phillip Gesue (collectively the “Proposed JV”), including the draft Operating Agreement and additional information you have provided to the Agency and our office. Of the specified exemptions in Section 7.03, only exemption 7.03(d), which permits transfers where all obligations of the Redeveloper are assumed by the assignee would appear to be at issue. Assignment of the Agreement to the Proposed JV clearly does not meet this exemption, however, because the transfer is premised on material changes to the existing obligations of Redeveloper and not a complete assumption thereof by the Proposed JV. In particular, Mr. Gesue has previously represented that he can only provide the ten (10) affordable housing units required by the current Agreement, if the Proposed JV receives a \$2.8 million subsidy. Currently, Redeveloper only has a

June Jones
January 3, 2022
Page 2

conditional AHTF grant award from the Division of Community Development (DCD) in the amount of \$2 million. Moreover, Redeveloper's conditional award of the AHTF grant was premised, in part, on the fact that the project was a non-profit community development, "for home or condominium ownership" project. The DCD is not willing to assign the conditional AHTF grant from Redeveloper to the Proposed JV where the project has been changed to a for-profit rental venture. Further, there are several additional terms of the existing Agreement, which were extended to Redeveloper specifically because the intent of the project was to maximize opportunities for affordable home ownership, including, but not necessarily limited to a reduction in purchase price to below fair market value. The Agency would not have made such a concession to a for-profit rental venture and, therefore, assigning this benefit to the Proposed JV is impermissible. The Agency previously informed Redeveloper on October 14, 2021 that the proposed assignment was unacceptable and offered a counter-offer, which the Proposed JV rejected on November 12, 2021.

- Grant Commitment. Section 2.03 of the Agreement obligates Redeveloper to "provide the Agency with written proof of having obtained unconditional grant commitments and/or grant commitments with acceptable conditions sufficient to complete the Project." As stated above, although the Redeveloper currently has a conditional AHTF grant award from the DCD in the amount of \$2 million, the DCD is not willing to assign the conditional AHTF grant from Redeveloper to the Proposed JV where the project has been changed to a for-profit rental venture.
- Uses Specified in Redevelopment Plan. Pursuant to Section 6.02(a) of the Agreement, all uses of the Project Premises must be as specified in the Redevelopment Plan, which does not include a for-profit rental venture.

Pursuant to Section 8.02 of the Agreement, if Redeveloper does not cure or remedy the default identified above within thirty (30) day, it will be in breach of the Agreement and the Agency reserves all legal and equitable remedies at its disposal to enforce its rights under the Agreement.

Regards,

/s/ Eric E. Tomaszewski

Eric E. Tomaszewski

cc: Nicholas J. Cherami, Esq. (via email)
Diana Jeffrey (via email)
Joseph P. Baumann, Jr., Esq. (via email)