

Edward M. Pikula
City Solicitor

Law Department
36 Court Street, Room 210
Springfield, MA 01103
Office: (413) 787-6085
Direct Dial: (413) 787-6098
Fax: (413) 787-6173
Email: epikula@springfieldcityhall.com



THE CITY OF SPRINGFIELD, MASSACHUSETTS

November 16, 2018

(Via – FedEx and email)

3 Chestnut LLC
Attn: Aaron J. Popowitz (aaron@silverbrickgroup.com)
307 West 38th St. Ste. 1414
New York, NY 10018

Re: Written Notice of Default – HDIP/TIE Agreement for 122 Chestnut Street.

Dear Mr. Popowitz:

The City of Springfield (“Springfield”), pursuant to the terms and conditions of the Housing Development Incentive Program (HDIP)-Tax Increment Exemption (TIE) Agreement (“Agreement”) signed by 3 Chestnut Street, LLC (hereinafter, “Sponsor”) relating to the property located at 122 Chestnut Street in Springfield (“the property”), provides the Sponsor with this notice of Default pursuant to Section 5 of the Agreement.

Based on the information supplied to this office by the Springfield Code Enforcement Commissioner, an event of default has occurred pursuant to Section 5 A. (1) as a result of Sponsor’s default in the observance or performance of any material covenant, condition or agreement to be performed by Sponsor pursuant to the terms of the Agreement as a material breach of the agreement.

The agreement at issue was entered into to allow Sponsor to perform substantial rehabilitation and new construction at the property. By entering into the agreement Sponsor obtained tax-incentives as outlined in the calculations under the Agreement with Springfield, as well as qualifying benefits under the HDIP through the Department of Housing and Community Development for the Commonwealth of Massachusetts (DHCD). HDIP is governed by M.G.L. c.40V, and regulations promulgated thereunder and located at 760 CMR 66.00 et seq.

In exchange for the substantial consideration Sponsor received as outlined above, the Sponsor agreed, amongst other covenants, to abide by the terms and conditions of the relevant regulations, to obtain all appropriate permits, and to provide to DHCD New Construction or Rehabilitation Plans for approval. Sponsor warranted that the project would comport with statutory and regulatory obligations to be considered a “Certified Housing Development Project” (HD Project) which requires the work “receive permitting.” See 760 CMR 66.02. Moreover, Sponsor applied for an obtained a building permit. In order to comply with the obligations under the statute, regulations, agreement,

building permit, and other applicable codes in the Commonwealth, it was necessary for Sponsor and its agents to obtain all permits as required by law and to proceed in a workmanlike manner.

In spite of these clear and routine obligations, Sponsor has twice been found to have unpermitted plumbing work being conducted at the premises by unlicensed tradesmen. Building, plumbing and other similar codes provide important public safety checks on all construction and rehabilitation work.

A stop work notice was issued for the property on November 7th, 2018. On November 8th, 3 Chestnut, LLC representatives met with city representatives in a comprehensive on-site inspection for purposes of code compliance. On November 9th the stop work notice was lifted. An engineer stamped drawing for a specific scope of work was to be submitted to the City for approval before that work begins. Substantial fines were imposed.

This was the second time that a stop work order had to be issued. Previously, a stop work order was issued after Springfield Inspectors found workers using substandard materials on bathroom and kitchen plumbing and sanding the colors off pipe to hide that fact as to what grade of pipe they were. Inspectors visiting the job site also found other problems, such as a lack of protective sleeves and improper venting of plumbing work. Work had been performed by unlicensed plumbers, and without proper permits.

These facts support the finding of a material breach of covenant, prior to final certification. As such, pursuant to the terms of the Agreement, continuance of such default for thirty (30) days after this written notice from the City is provided to Sponsor under the Agreement to trigger Sponsor's right to cure the Default. If the curing of the Default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable time, not to exceed thirty (30) days, to cure such Default provided the Sponsor shall have commenced to cure such Default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion. This office has been informed that the Sponsor has initiated efforts to cure, but we have not been informed whether the Default has been cured as of this date.

This office will request a written report from the Code Enforcement Commission within 14 days of sending this Notice of Default in order to obtain a status report. In the event, after the period for cure, the event of Default has not been remedied, then the Agreement shall become null and void in accord with Section 5 B. (1) of the Agreement.

In addition, this office has been directed by the Mayor to review the evidence reasonably available, in order to determine whether any representation made under the Agreement, or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement has been false in any material respect in accord with Section 5, A. (3).

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This office has requested documentation submitted to the DHCD by 3 Chestnut LLC as well as other documentation submitted to all Springfield Departments for review in accordance with that Section. Once the documents have been provided, this office will review the materials within thirty (30) days. In the event any information furnished shall prove to be false in any material respect, the Agreement shall be null and void.

Please contact Code Enforcement Commissioner, Steve Desilets, 70 Tapley Street, Springfield, MA 01104, Phone 413.787.6031 with regard to your efforts to cure pursuant to the Agreement.

Sincerely,



Edward M. Pikula, City Solicitor

cc:

Steve Desilets, Code Enforcement Commissioner
70 Tapley Street
Springfield, MA 01104

Kevin Kennedy, Chief Development Officer
City of Springfield Planning and Economic Development
70 Tapley Street
Springfield, MA 01107

HDIP Program Coordinator
Department of Housing & Community Development
100 Cambridge Street, suite 300
Boston, MA 02124