

From: Tilly Hatcher <tilly.hatcher@gmail.com>

Date: Mon, Sep 3, 2012 at 9:25 PM

Subject: Solving the 360 State Tax Problem

To: ward1@newhavenct.net, ward2@newhavenct.net, ward3@newhavenct.net, ward4@newhavenct.net, ward5@newhavenct.net, ward6@newhavenct.net, ward7@newhavenct.net, ward8@newhavenct.net, ward9@newhavenct.net, ward10@newhavenct.net, ward11@newhavenct.net, ward12@newhavenct.net, ward13@newhavenct.net, ward14@newhavenct.net, ward15@newhavenct.net, ward16@newhavenct.net, ward17@newhavenct.net, ward18@newhavenct.net, ward19@newhavenct.net, ward20@newhavenct.net, ward21@newhavenct.net, ward22@newhavenct.net, ward23@newhavenct.net, ward24@newhavenct.net, ward25@newhavenct.net, ward26@newhavenct.net, ward27@newhavenct.net, ward28@newhavenct.net, ward29@newhavenct.net, ward30@newhavenct.net

Dear Honorable Alderpersons of New Haven,

Yesterday the *New Haven Register* published an August 17<sup>th</sup> letter from the City attorney to Jorge Perez, President of the Board of Aldermen, expressing concerns about the proposed resolution for a tax agreement for 360 State Street. MEPT is pleased to address the perceived obstacles to solving the 360 State tax problem raised in the letter.

As the owner of 360 State Street, MEPT wants to work cooperatively with the City to solve the assessment problem that began when the former assessor unexpectedly quadrupled the projected 2007 assessment. The primary concern raised by the City attorney with the current draft resolution under consideration by the Aldermen is its reliance on the Connecticut City and Town Development Act to authorize fixed tax payments. In the two weeks since the City attorney expressed this concern, MEPT has put before the Mayor an alternate resolution which removes the concept of fixing the tax payments but retains the concept of fixing the tax assessed value of the property. In other words, the revised resolution addresses not the tax, but the root of the problem: the assessment itself. Fixing the assessed value eliminates the need for fixing the amount of tax to be paid, allowing taxes to rise with the mill rate, and is expressly permitted by statute for a period of fifteen years.

Above and beyond these specifics, we want to stress our eagerness for all parties to work together to solve this problem. The City attorney refers to the provision in the Development Agreement stipulating that the City and the building's owners "shall endeavor to resolve any dispute that may arise under this Agreement through good faith negotiations." This remains our fervent hope -- to resolve this problem precisely through good-faith processes *before* it becomes a legal dispute that could expose the City to tens of millions of dollars in damages for unlawfully diminishing in the value of MEPT's property.

It's important to note that this isn't just a run-of-the mill property tax complaint. 360 State is the result of a carefully planned partnership between the City and MEPT, the details of which the Board of Aldermen debated, refined and ultimately approved themselves. One of the foundations of this collaboration was the City's express written approval of the expected tax contributions from the completed project -- an approval MEPT relied upon before investing its union pension funds. MEPT wants to solve this problem as partners with the City. If, however,

the City ultimately decides to repudiate its prior commitments, the union pension funds that invest in MEPT stand to lose tens of millions of dollars. Inevitably MEPT would be compelled by its fiduciary duties to recover these losses from the City. Such litigation would be public, protracted and costly for all concerned and would inevitably discourage others from investing and creating jobs in New Haven.

We will continue to be flexible in looking for ways to resolve this problem before it ever comes to that. We want to keep focused on the goals we all share – such as furthering investment and job creation in the New Haven. Working together with the Mayor and the City we have already accomplished a great deal and overcome multiple obstacles. We are convinced it is possible to solve the current problem in that spirit.

We have a chance to solve this through an open, good faith discussion of the type called for in the Development Agreement that the Board of Aldermen helped to forge. We are asking the Board of Aldermen not to kill this resolution on Tuesday night, but rather to keep it on its agenda while all parties continue to work for a harmonious resolution.

Sincerely,

Tilly

Tilly Hatcher  
Consultant to MEPT

I've attached a document with the alternate resolution that MEPT put before the Mayor. It is followed by a memo and a letter that both address the appropriateness of the Board of Aldermen resolving this issue.

I hope you will visit the website [www.360StateTaxProblem.com](http://www.360StateTaxProblem.com), which includes a link to a petition: <http://www.thepetitionsite.com/takeaction/375/687/961/>. Over a hundred people signed it in the last day and many of them included comments addressed to you.

**TAX AGREEMENT CONCERNING REAL PROPERTY TAXES  
FOR 360 STATE STREET**

This Tax Agreement Concerning Real Property Taxes for 360 State Street (the "Agreement") made and entered into as of \_\_\_\_\_, 2012 (the "Effective Date") is by and among the City of New Haven, a municipal corporation organized and existing under the laws of the State of Connecticut (the "City"), MEPT Chapel Street LLC, a Delaware limited liability company ("MEPT Chapel") and MEPT Chapel Street QALICB LLC, a Delaware limited liability company ("MEPT Chapel QALICB," together with MEPT Chapel, the "Owner").

**WITNESSETH:**

WHEREAS, MEPT Chapel owns that certain residential condominium unit located at 360 State Street in New Haven, Connecticut and MEPT Chapel QALICB owns that certain commercial condominium unit and parking condominium unit located at 360 State Street in New Haven, Connecticut, which are legally described in Exhibit A, attached hereto (collectively, the "Property");

WHEREAS, Owner and the City entered into that certain Development Agreement by and between the City and Becker Development Associates, LLC, a Connecticut limited liability company on October 4, 2007 (the "Development Agreement"), which was assigned to MEPT Chapel pursuant to that certain Assignment and Assumption Agreement for Development Agreement and Land Disposition Agreement dated September 10, 2008 (the "Assignment"), and thereafter, partially assigned and assumed by MEPT Chapel QALICB pursuant to that certain Memorandum of Agreement Regarding Creation of the 360 State Street Condominiums dated September 2, 2010, by and between the City, MEPT Chapel and MEPT Chapel QALICB (the "Condo Approval Agreement");

WHEREAS, the Development Agreement, the City's land use laws and the land use approvals for the Property, including the City Plan Commission Site Plan Review Approval dated November 18, 2009, the City Plan Commission Site Plan Review Approval dated September 19, 2007 and the City Board of Zoning Appeals Approval dated July 31, 2007 (such approvals being referred to herein as "Land Use Approvals") authorize and anticipate the plan of redevelopment for the Property which included the new construction of certain improvements on the Property (the "Project");

WHEREAS, the City estimated that upon the completion of the construction of the Project as contemplated by the Development Agreement and the Land Use Approvals, the City's total tax assessment value of the Project would be approximately \$34,230,000 and the annual real estate taxes due to the City from the Property and the Project would be approximately \$1,400,000 ("Original Tax Estimate"), and Owner relied on the Original Tax Estimate when it decided to invest retirement funds from its union pension plans to construct the Project;

WHEREAS, the City and MEPT Chapel entered into that certain Agreement by and between the City of New Haven and MEPT Chapel Street LLC for Deferral of Tax Assessment Increase on 360 State Street (f/k/a 745 Chapel Street) New Haven, Connecticut CC No. A08-1316 dated November 18, 2008 and effective February 1, 2009,

which was partially assigned and assumed by MEPT Chapel QALICB pursuant to the Condo Approval Agreement (the "Tax Deferral Agreement"), whereby the City of New Haven, which was designated as a rehabilitation area, pursuant to C.G.S. §§12-65(c) to 12-65(e), provided Owner with a fixed property assessment during the period of time Owner was constructing key features of the Project and a phase-in of the property assessment after the completion of the construction of such features of the Project;

WHEREAS, on or around October 1, 2010, the City Assessor assessed the Property and the Project with its then-completed improvements at \$130,051,320, with annual real estate taxes for the Property and the Project of approximately \$5,700,000;

WHEREAS, Owner would not have invested retirement funds from its union pension plans to construct the Project if Owner had known that the annual real estate taxes for the Property and the Project would be higher than the Original Tax Estimate;

WHEREAS, the City is authorized, pursuant to C.G.S. §12-65, upon adoption of required findings and determinations, and upon the satisfaction of certain other conditions, to execute an agreement with a property owner that fixes the tax assessment of such property owner's property;

WHEREAS, the Property and the Project are located both within a "redevelopment plan" (i.e. the State Street Redevelopment and Renewal Plan) and a "community development plan" (i.e. the City of New Haven Five Year Consolidated Plan for Housing and Community Development Programs: 2010-2014), as defined in C.G.S. §12-65;

WHEREAS, the City, acting through its Board and pursuant to its authority under C.G.S. §12-65, and by resolution adopted on [date], resolved that all requirements and conditions required for the City's execution of an agreement with Owner fixing the tax assessment of the Property and the Project are satisfied; and

WHEREAS, the City and Owner have agreed that it is in the best interest of the parties to enter into an agreement pursuant to which the City will fix the tax assessment of the Property and the Project pursuant to the terms and conditions set forth below:

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties hereto agree as follows:

1. TERMINATION OF TAX DEFERRAL AGREEMENT. As of the Effective Date, this Agreement shall supersede and replace the Tax Deferral Agreement in its entirety, and the Tax Deferral Agreement shall no longer be in force and effect.

2. FIXED ASSESSMENT OF THE PROPERTY AND THE PROJECT. Commencing on the Effective Date and continuing for a period of sixteen (16) years thereafter, up to and through the Grand List of October 1, 2027 (the "Fixed Assessment Period"), the City shall fix its tax assessment of the Property and the Project as follows (the "Fixed Assessed Value"):

- (i) Residential Condominium Unit: \$29,413,343.
- (ii) Parking Condominium Unit: \$1,951,268.

- (iii) Commercial Condominium Unit: \$4,022,620.
- (iv) Land: \$612,500.

a. Nothing in this Agreement or Title 12, Chapter 203 of the Connecticut General Statutes shall be construed as permitting the City to increase the tax assessment of the Property and the Project during the Fixed Assessment Period over the Fixed Assessment Value, including, without limitation, a City-wide revaluation of the Grand List conducted pursuant to C.G.S. §§12-62.

b. The parties shall submit this Agreement within ten (10) days after its execution to the Superior Court of New Haven (the "Superior Court"), in accordance with C.G.S. §12-65(a). The City, MEPT Chapel and MEPT Chapel QALICB hereby stipulate and agree that the provisions of this Agreement are "fair and reasonable" within the meaning of C.G.S. §12-65(a), as the Fixed Assessed Value is based on the City's assessments of properties that are comparable in size, quality, location and occupancy located within the City of New Haven. If for any reason the Superior Court declines to approve this Agreement, then the parties to this Agreement shall negotiate in good faith to make changes to this Agreement to address any matters disapproved by the Superior Court and shall promptly resubmit this Agreement as so revised to Superior Court for its approval. However, at any time following Superior Court disapproval of this Agreement, Owner may, in its sole discretion, provide written notice to the City that it no longer wishes to enter into this Agreement, in which case the parties shall terminate this Agreement and neither party shall have any further rights and obligations hereunder.

c. For any property in the City which the Owner has a legal and equitable interest, Owner shall not be more than two (2) months delinquent in the payment of any real estate taxes assessed against such property.

3. CONVEYANCE OF PROPERTY OR PROJECT. In the event of a sale or transfer of all or any portion of the Property or the Project, this Agreement shall remain in full force and effect and shall be binding on, and shall inure to the benefit of the Owner's heirs, successors or assigns, as the case may be; provided that the use of the Property or the Project shall remain substantially unchanged from the use of the Property or the Project as of the Effective Date. In the event of any such sale or transfer, the seller or transferor shall be released from any further obligations under this Agreement arising after the date of such sale or transfer, provided that the purchaser or assignee assumes such seller's or transferor's obligations hereunder in writing.

4. AMENDMENT OF OTHER AGREEMENTS BETWEEN PARTIES.

a. The City and Owner hereby agree to enter into a separate agreement, executed and acknowledged by all parties, to amend any provisions of the Development Agreement which may conflict in any way with the terms of this Agreement, and neither party shall unreasonably withhold or delay its consent or approval to such amendment to the Development Agreement.

b. The City entered into that certain Land Disposition Agreement with Becker Development Associates, LLC, a Connecticut limited liability company on July 11, 2008 (the "Land Disposition Agreement"), which was assigned to MEPT Chapel pursuant to the Assignment, and thereafter, partially assigned and assumed by MEPT

Chapel QALICB pursuant to the Condo Approval Agreement. The City and Owner hereby agree to enter into a separate agreement, executed and acknowledged by all parties, to amend any provisions of the Land Disposition Agreement which may conflict in any way with the terms of this Agreement, and neither party shall unreasonably withhold or delay its consent or approval to such amendment to the Land Disposition Agreement.

5. MISCELLANEOUS.

a. Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties and supersedes all prior agreements and understandings related to such subject matter, and it is agreed that there are no terms, understandings, representations or warranties, express or implied, other than those set forth herein.

b. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of any invalid, illegal, or unenforceable provision, there shall be automatically added to this Agreement a provision as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

c. Authority. Owner and the City each represent and warrant that they have full authority to enter into and perform this Agreement, and that any necessary consents, resolutions, approvals or authorizations from any other parties have been granted or obtained.

d. Notices. All notices, demands, and requests and other communications required or permitted under this Agreement must be in writing and will be deemed to be delivered when actually received by facsimile or personal delivery or, if earlier and regardless whether actually received or not, (i) upon deposit with a nationally recognized overnight courier for next business day delivery, charges prepaid, or (ii) upon three (3) Business Days following deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage prepaid, in either event to be addressed to the addressee as follows:

If to Owner: MEPT Chapel Street LLC  
MEPT Chapel Street QALICB LLC  
c/o NewTower Trust Company  
3 Bethesda Metro Center, Suite 1600  
Bethesda, MD 20814  
Attn: Patrick O. Mayberry  
Telephone: 240.235.9960  
Facsimile: 240.235.9961

With a copy to: Bentall Kennedy (U.S.) Limited  
Partnership  
1215 Fourth Avenue, Suite 2400  
Seattle, WA 98161  
Attn: Senior Vice President – Asset  
Management  
Telephone: 206.623.4739  
Facsimile: 206.682.4769

And to: Bentall Kennedy (U.S.) Limited  
Partnership  
7315 Wisconsin Avenue, Suite 350 West  
Bethesda, MD 20814  
Attn: Senior Vice President – Asset  
Management  
Telephone: 301.656.9119  
Facsimile: 301.656.9339

And to: McNaul Ebel Nawrot & Helgren PLLC  
600 University Street, Suite 2700  
Seattle, WA 98101  
Attn: Marc O. Winters  
Telephone: 206.467.1816  
Facsimile: 206.624.5128

If to the City The City of New Haven  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Any party may change the address to which any such notice, demand, request and other communication intended to be received by such party is to be delivered or mailed, by giving written notice of such change to the other parties hereto

e. Estoppel Certificate. Any party will, upon twenty (20) days' notice at the request of another party, execute, acknowledge and deliver an estoppel certificate stating that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified, and setting forth such modifications), and the dates to which payments due to such party hereunder have been paid, and either stating that no default exists hereunder or specifying each such default of which such party is aware, and stating such other matters relating to this Agreement as reasonably requested. Any such certificate may be relied upon by any person with a legitimate business purpose for obtaining the same, including any existing or prospective mortgagee or purchaser of all or any part of the Property.

f. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only. They are not intended to and shall not be construed to limit, enlarge or affect the scope or intent of this Agreement or the meaning of any provision of it.

g. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

h. No Partnership. Nothing contained in this Agreement or any other documents contemplated by this Agreement is intended or shall be construed to create any other relationship between the parties, including that of joint venturers or partners.

i. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut, exclusive of the conflict of laws principles of the State of Connecticut. The parties consent to the jurisdiction of the state courts located in New Haven, Connecticut, and to the Federal District Court for the District of Connecticut in the event of any litigation arising out of this Agreement.

j. Attorneys' Fees. In the event either party shall bring legal action for the breach of or to enforce this Agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees, expenses and court costs, including those relating to any appeal. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

k. Fair Interpretation. This Agreement has been carefully reviewed and negotiated by both parties and it shall be given fair and reasonable interpretation in accordance with the words contained in it without any weight being given to whether a provision was drafted by one party or its counsel. Whenever a provision of this



Agreement uses the words "include," "including" or words of similar meaning, the words shall not be construed so as to be limiting but shall be treated as illustrative. Paragraph headings are for convenience only and shall not be a part of this Agreement or considered in its interpretation.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MEPT CHAPEL:

**MEPT Chapel Street LLC**, a Delaware limited liability company

By: MEPT Chapel Street Member LLC, its Managing Member

By: MEPT Edgemoor REIT LLC, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

MEPT CHAPEL QALICB:

**MEPT Chapel Street QALICB LLC**, a Delaware limited liability company

By: MEPT Chapel Street LLC, its Managing Member

By: MEPT Chapel Street Member LLC, its Managing Member

By: MEPT Edgemoor REIT LLC, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY:

Approved as to Form and Correctness:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**The City of New Haven:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF )  
 )ss.  
COUNTY OF )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, a Manager of MEPT Edgemoor REIT LLC, which limited liability company is the Manager of MEPT Chapel Street Member LLC, which limited liability company is the Managing Member of **MEPT CHAPEL STREET LLC**, a Delaware limited liability company, known to me (or satisfactorily proved) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained as his/her free act and deed.

IN WITNESS WHEREOF, I hereto set my hand.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF )  
 )ss.  
COUNTY OF )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, a Manager of MEPT Edgemoor REIT LLC, which limited liability company is the Manager of MEPT Chapel Street Member LLC, which limited liability company is the Managing Member of MEPT Chapel Street LLC, which limited liability company is the Managing Member of **MEPT CHAPEL STREET QALICB LLC**, a Delaware limited liability company, known to me (or satisfactorily proved) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained as his/her free act and deed.

IN WITNESS WHEREOF, I hereto set my hand.

\_\_\_\_\_

Notary Public

My Commission Expires:

STATE OF )  
 )ss.  
COUNTY OF )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the **CITY OF NEW HAVEN**, known to me (or satisfactorily proved) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained as his/her free act and deed.

IN WITNESS WHEREOF, I hereto set my hand.

---

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Commercial Unit

All that certain real property situated in the City of New Haven, County of New Haven, and State of Connecticut designated as “**Commercial Unit**” together with all appurtenances thereto, being more particularly designated and described in a certain Declaration of 360 State Street Condominiums Declared by MEPT Chapel Street LLC dated September 2, 2010 and recorded on September 3, 2010 in Volume 8594 at Page 38 of the New Haven Land Records.

Parking Unit

All that certain real property situated in the City of New Haven, County of New Haven, and State of Connecticut designated as “**Parking Unit**” together with all appurtenances thereto, being more particularly designated and described in a certain Declaration of 360 State Street Condominiums Declared by MEPT Chapel Street LLC dated September 2, 2010 and recorded on September 3, 2010 in Volume 8594 at Page 38 of the New Haven Land Records.

Residential Unit

All that certain real property situated in the City of New Haven, County of New Haven, and State of Connecticut designated as “**Residential Unit**” together with all appurtenances thereto, being more particularly designated and described in a certain Declaration of 360 State Street Condominiums Declared by MEPT Chapel Street LLC dated September 2, 2010 and recorded on September 3, 2010 in Volume 8594 at Page 38 of the New Haven Land Records.

## Memorandum

Direct Phone: 860.240.2984  
Direct Fax: 860.240.2540  
frank.appicelli@bingham.com

DATE: August 7, 2012

TO: MEPT Chapel Street LLC and MEPT Chapel Street QALICB LLC

FROM: Frank A. Appicelli

RE: **Connecticut City and Town Development Act - 360 State Street**

I have reviewed the draft of the Tax Agreement (the “Agreement”) relating to the project located at 360 State Street in New Haven, Connecticut (the “Project”) which was recently submitted to the Board of Alderman of the City of New Haven (the “City”). The Agreement provides for an exemption of the Project from property taxes in exchange for negotiated payments based on the authority of the Connecticut City and Town Development Act (C.G.S. §7-480 *et seq.*) (the “Act”). You have asked whether the Act contains a prohibition on the City entering into the Agreement based on the fact that the current phases of the Project have already been constructed. Based on my review of the Act, the Act does not contain such a prohibition.

The Act provides broad powers to a municipality to prevent the deterioration of urban areas by assisting housing, parking, and retail facilities. In particular, the Act gives a municipality many powers in dealing with “development property” which is defined broadly to mean: “any real or personal property, interest therein, improvements thereon, appurtenances thereto and air or other rights in connection therewith, including land, buildings, plants, structures, systems, works, machinery and equipment *acquired or to be acquired*” (*italics added*). It is important to note that development property is not qualified or conditioned in its definition to mean real estate projects not yet constructed or real estate projects under development. In fact, the real estate project may already be an “acquired” project and not simply one that is contemplated or planned by a sponsor.

The Act allows a municipality to exempt a project from property taxes as follows:

**Sec. 7-498. Development property may be tax-exempt.** Any development property may be exempted from any property tax imposed by the municipality; provided any municipality may enter into an agreement, approved by resolution, providing for a payment or payments in lieu of taxes with respect to any such property, or providing that any such property is subject to all or any portion of local property taxes. In no case shall

Beijing  
Boston  
Frankfurt  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Washington

Bingham McCutchen LLP  
One State Street  
Hartford, CT 06103-3178

T +1.860.240.2700  
F +1.860.240.2800  
bingham.com

development property be exempt in whole or in part from such property tax for a period or periods, in the aggregate, in excess of twenty years.

The above section of the Act does not provide a construction timeframe or other conditions on a project in order for such project to qualify for a property tax exemption under the Act. The other sections of the Act similarly do not set forth any requirements that a property tax exemption be granted before a project is constructed.

In addition to property tax exemptions, the Act offers a municipality other broad powers in dealing with projects as follows:

**Sec. 7-489. Sale, lease, disposition and use of development property. (a)**

A municipality shall have power to sell, lease or otherwise dispose of all or part of any development property to any governmental unit or sponsor and *to make agreements of any kind with any governmental unit or sponsor for the use or operation thereof*, for such consideration and for such period or periods of time and upon such other terms and conditions as the municipality may fix and agree upon. *(italics added)*

The above section permits a municipality the power to make any agreement of any kind with a sponsor regarding the use or operation of a project. Like property tax exemptions under Section 7-498, the above section does not impose a timeframe as to when these types of agreement must be entered into. Moreover, the above section clearly provides that the agreements may relate to the use and operation of the project. Thus, a municipality may exercise its powers under the Act beyond matters relating to the construction and development of a project.

I also note that we have conducted an electronic search for reported Connecticut court cases interpreting the Act. We did not locate any court cases which have interpreted whether the Act imposes a timetable or other conditions to issue a property tax exemption to a project.

In short, once a municipality determines that urban deterioration exists and the voters approve that determination in a referendum as required by the Act, the legislative body of a municipality is vested with broad powers to assist housing, parking, and retail projects in accordance with the Act. We understand that the Board of Aldermen of the City of New Haven adopted a resolutions and amendments thereto (Journal, Board of Aldermen, September 19, 2005) designating the City as a rehabilitation area pursuant to C.G.S. §§12-65(c) to 12-65(e). The Act does not set timeframes or deadlines when the powers of legislative body of the municipality must be exercised during the lifespan of a particular project. The legislative body of the municipality is allowed the power to make the decision on such matters using its own reason and judgment as an elected body.



I further note that the Agreement provides that at the end of its twenty-year term the parties will pursue in good faith the execution of a similar tax agreement for an additional twenty-year term under then-existing laws. As set forth above, Section 7-498 of the Act prescribes a maximum twenty-year term. However, I understand that the intent of this provision of the Agreement was not to violate the twenty-year limitation in Section 7-498, but instead to express a desire to pursue another agreement as allowed under then-existing laws. These laws could include the Act, if and to the extent then permitted, or any future laws that might then exist. Based on this intent, the Agreement could be clarified to read that the parties will pursue such a tax agreement under “and to the extent permitted by” then-existing laws.

August 2, 2012

**Via Email and Facsimile**

James J. Perito, Esq.  
Halloran & Sage LLP  
195 Church Street  
New Haven, CT 06510

Re: 360 State Street Project: (Assessor's Map No. 240/0256/00102 to 00104) / Owners: MEPT Chapel Street LLC and MEPT Chapel Street QALICB LLC

Dear Attorney Perito:

I am writing on behalf of MEPT Chapel Street LLC and MEPT Chapel Street QALICB LLC (collectively, "MEPT") in anticipation of the Board of Aldermen Leadership meeting this evening (the "Leadership Meeting") to consider MEPT's proposed Tax Agreement Concerning Real Property Taxes for 360 State Street between the City of New Haven and MEPT, together with the Resolution pertaining thereto (the "PILOT Documents").

We understand that the Board of Aldermen (the "Board") may be concerned about discussing the PILOT Documents during the pendency of the Superior Court actions by MEPT appealing the City's tax assessments of MEPT's property (the "Tax Actions"). MEPT submits that the following points should address those concerns and allow full consideration and negotiation of the PILOT Documents:

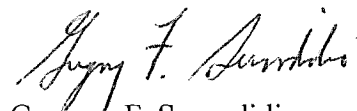
1. The pre-trial conference for the Tax Actions was postponed until November 16, 2012 specifically in order for the Board and MEPT to work toward an amicable resolution of the tax issues, including consideration of the PILOT Documents.

2. MEPT agrees that none of the discussions and negotiations occurring during the Leadership Meeting or subsequent Board deliberations, review, discussions and hearings shall be discoverable or admissible for proof of liability or for any other evidentiary purpose in the Tax Actions. MEPT further agrees that such discussions and negotiations constitute settlement negotiations pursuant to Connecticut Code of Evidence Section 4.8 and that such discussions and negotiations shall be without prejudice to any rights and remedies of the City and MEPT at law or at equity.

3. Upon approval and execution of the PILOT Documents by all necessary parties including MEPT, MEPT will promptly withdraw the Tax Actions with prejudice.

We hope the above points will foster the Board's good faith consideration of the PILOT Documents and obviate any concerns regarding unintended consequences of discussions and negotiations at the Leadership Meeting regarding the PILOT Documents.

Sincerely,



Gregory F. Servodidio

cc: Jorge Perez  
Tilly Hatcher  
David Antonelli  
James Landau  
Bruce Becker  
Marc Winters  
Anthony Avallone