

While the transactions proposed here are not uncommon in regard to the modern affordable housing industry, I certainly can understand that it is an extremely difficult and complex transaction for laymen to understand, so I will attempt to summarize the main terms of the three documents (the Agreement, the Ground lease and the Sublease) and to explain the manner in which we have attempted to protect the interest of SUMC, while at the same time recognizing the needs of the developer (Mutual Housing Association of Southwestern Connecticut, Inc or "MHA).

At the present time, the most important document is the Agreement between SUMC and MHA. It is the only document which is presently in force, the Ground Lease and Sublease not yet being in existence although the parties have agreed on the essential terms of each. The Agreement is a contract by which SUMC has agreed to lease a portion of the church property to MHA for the development and construction of a 57 unit residential apartment building which qualifies as "affordable" under the present State of Connecticut definitions of the same. The vehicle for accomplishing this is a 98 year Ground lease, meaning that all that SUMC is leasing is the ground on which MHA will build the apartment building. The apartment building itself will be constructed and owned by MHA for the duration of the lease, after which time the lease will terminate and ownership of both the ground and the apartment building will revert to SUMC free and clear. In order to construct the proposed apartment building the existing school will have to be demolished. All costs of demolition will be paid for by MHA. I understand that one of the fears that has been expressed is that there may well be asbestos in the building. However, my opinion is that pursuant to paragraph 2a of the agreement MHA will be liable for the costs of remediation if this feared eventuality occurs. In return for the 98 year lease and the right to construct and operate the apartment building, MHA has agreed that it will pay SUMC a lump sum of \$533,618.00. This will be paid at the time the final version of the Ground Lease is actually executed by the parties, which will be after MHA secures its financing from the State of Connecticut and any private investors ("tax credit investors," so called because their compensation for putting up their money consists of receiving tax credits from the government which they

can use to reduce their future general tax liability). It is anticipated that the execution of the Ground lease, and the resulting lump sum payment, will not take place until some three years in the future. I understand that there has been some question as to the adequacy of this amount of compensation for a 98 year lease. I will allow SUMC officials to explain their thought on this. However, I can say that the real estate appraiser hired by SUMC to provide advice on market value of the property indicated that the rental value on which that payment was premised is favorable to SUMC. Of course, since SUMC will be getting a lump sum payment after approximately three years rather than having to collect monthly rental payments during the term of the lease, it will receive far less than the total of 98 years of lease payments. The anticipated loan payments will be discounted to present value. However, having received the monies after only three years, SUMC will be able to increase the amount of those funds through investment.

In the meantime there are several contingencies which must be satisfied or else the parties, or either of them, can terminate this agreement. The first is that MHA has 180 days to conduct whatever investigations it deems necessary in connection with the property and the proposed project. This will consist of a physical inspection of the property and the school building, together with consultations with architects, engineers, title insurance companies, etc. or anything else that MHA wishes to investigate. If as a result of this due diligence MHA feels the property is unsatisfactory for its needs, then MHA can terminate the agreement. Of course, MHA can also request some type of concessions from SUMC. However, SUMC has the unilateral right to reject such a request and cannot be forced into anything. Additionally, the due diligence may raise other issues about the demolition, parking requirements, etc. all of which will have to be discussed. However, it is important to note that should agreement not be reached on any of these issues either party may terminate the agreement at this point in time.

This project will require several approvals of local Stratford land use agencies and regulatory departments. This will be at MHA's cost and

should the necessary approvals not be secured MHA can terminate the agreement at that point. MHA has a period of one year in which to secure these approvals, although more time may be requested if there are delays in the process.

The entire agreement is also contingent upon MHA obtaining necessary funding. This may take up to three years and during this period there will be numerous requirements that must be met by MHA in order for the State to commit taxpayer money to this project. There will also be a review of the Agreement, the proposed ground lease and the proposed sublease by the State and by any tax credit investors. However, the ground lease already contains many of the terms that were approved by the State and investors in previous projects of this nature. Also, the agreement also states that when a request for bids is sent out to solicit investors, that request will mandate that the bidder reviews the ground lease and either indicates that it is satisfactory or, in the alternative, indicates those modified or additional terms it would like. This will increase the likelihood that a bidder will be chosen that is satisfied with the Ground Lease as presently drafted. Nevertheless, it is conceivable, depending on regulations and lending guidelines in effect at the time of the funding, that requests may be made to modify some of the terms of these various documents. SUMC has the right to refuse such requests, although SUMC has agreed that its' consent to such requests will not be unreasonably withheld. This means that SUMC (or the Connecticut Board of Church, Building and Location for that matter) will not be able to simply say "no". This means that SUMC will not be able to unilaterally change its' mind as to the desirability of the project, the scope of the project, or the benefit of going forward with the project. Rather, SUMC must have a reasonable basis grounded in fact in order to refuse the requested changes. Further, if there is a good faith basis grounded in fact the parties have agreed to meet and try to come up with a mutually agreeable resolution which satisfies the concerns of all of the parties. However, if that is not achievable, then either SUMC or MHA can terminate the agreement at that point.

To the extent that the District Building Committee insists on a "consent right", which I take to mean the right to unilaterally withhold consent or

maintain veto power over any request by the State or a tax credit investor to modify the proposed ground lease or sub lease, this unfortunately is never going to happen. The District Building Committee and church officials must realize that by the time the process reaches this point MHA will have spent a few hundred thousand dollars in performing due diligence, pursuing the various land use approvals, design, architect and engineering costs, etc. MHA simply could never agree to any proposal which would cause them to have to walk away from the project, and lose these monies already spent, based on the speculative fears or whims of a third party. such as the District Building Committee. I understand the position of MHA and agree with it. I am sure you remember the painstaking negotiations with MHA over this very issue - the right of SUMC to reject requested changes. We insisted on the right to be able to review and reject any requested changes inasmuch as we had no idea what the scope of these changes could be. We could not agree to consent to something we had not seen. However, the inclusion of language that we would not unreasonably withhold our consent (which is common language to most commercial leases) provides, in my opinion, sufficient protection to SUMC although it restricts the unlimited freedom of SUMC. The requests of the lender and/or the investor can be denied at the time they are made, but only if we have a reasonable basis in fact for doing so.

The Agreement is further contingent upon the approval of the District Building Committee and the Charge Conference. We have already agreed to extend the time for these approvals to the end of February. In the letter of January 18, 2024 ,responses to several questions are requested. We can respond as follows:

- 1) SUMC will not be responsible for any real estate tax resulting from the use of part of the property for residential housing. Sections 6.2 of the Ground lease and 7.1 make that clear. As an Assistant Town Attorney for Stratford I can represent to you that when the Ground lease is executed the Tax Assessor will reclassify the leased area and assess a tax against that portion of the property. However, that tax will be paid by MHA or another entity to which MHA assigns the

rights to develop the property. The portion retained by SUMC and dedicated exclusively for religious purposes will remain tax exempt.

- 2) We have a map previously provided by Attorney Scaramozza showing the proposed boundary lines of the ground lease. If that has not already been provided to the District Building Committee it should be forwarded, but it does already appear as an Exhibit to the Agreement.
- 3) MHA will assume all operational costs as set forth in paragraph 2 of the Agreement and paragraphs 6.2 and 7.3 of the ground lease. MHA will assume the costs of demolition of the school. I know an issue has been raised with respect to any asbestos which may be found in the school, but I am of the opinion that paragraph 2 controls the issue and that MHA is responsible (although we can clarify that with Attorney Scaramozza if you would like). Don't forget, the Ground lease will not spring into existence until the funding is secured. The due diligence of MHA will uncover the existence of asbestos in the building long before that and the parties will be able to discuss any remediation necessary so that the provisions of section 10 of the Ground lease are somewhat irrelevant. SUMC will be responsible for the payment of the rent under the sub lease, for the payment of the utilities serving the sub leased premises, for the costs to fit out the sub leased space to the wishes of SUMC and any other costs directly related to SUMC's use of the subleased space, all as set forth in paragraph 2b of the Agreement and paragraphs 4, 5, 6 and 11a of the sublease.
- 4) We can not supply a "precise scope" of tolerable changes to be requested by the lender or the investor because we have not seen them yet. The ground lease already contains most of the terms that have been requested in the past. However, that does not mean that additional changes will not be requested in the future based on the governmental regulations and state of the industry at the time of the funding. We can not predict these circumstances. This is the reason

we insisted upon the right to review such changes and to reasonably refuse such changes.

- 5) The parties can terminate the agreement for the reasons and at the times as set forth above. However, there is no single identifiable point of "potential exit" that the church can employ unilaterally.
- 6) The lump sum payment will be made to the church at the time that the ground lease is executed, which will not be until all contingencies, including funding, are satisfied.
- 7) As explained above, there will be no "consent right". As set forth in the letter from Steve Gulick, this would likely be a deal killer.
- 8) I will let you offer the explanation of why, from the operational perspective of SUMC, leasing is preferable to outright sale, although I would stress to you that if outright sale is to be explored we would need to assess considerations that we have not addressed or considered in the leasehold situation. Examples of such considerations are the legal ability to sub-divide the property (if in fact this would constitute a subdivision), the practical effects of subdividing the property, potential zoning issues, purchase price as opposed to lease price, etc.

One final thought. To accept the conditions of the Committee would likely require us to go back to the drawing board with MHA and renegotiate and redraft the documents. Obviously, there will be consequential delays and costs, to which I am not sure MHA can agree as time is getting short with respect to their funding application. I am, similarly, not sure they can agree to the "tiered approach" proposed by the Committee. The agreement we previously negotiated was based on the notion that the Committee would review the documents we provided and either approve or reject. You will note that the Agreement is structured so that the various contingencies do

not begin to run until specified time periods following "the church approvals". MHA reasonably requested this type of time frame because it did not want to begin spending money until it was sure that the church approvals were in place. MHA did not want precisely the type of continuing ability to consent or reject that the Committee is proposing. It would seem to me that MHA will be requesting, at the very least, an approval of all of the documents that have been presently provided, with the ability to reasonably consent or reject material changes in those documents or in further documents that may be requested by project lenders or investors. Obviously, should the Committee continue to insist on the terms set forth in the letter of January 18, we will need to involve MHA in those discussions in order to determine whether we still have a viable path forward.