

Kellar Kellar & Jaiven

ATTORNEYS AT LAW

PAUL T. KELLAR
MITCHELL L. JAIVEN

SARAH KELLAR HVOZDA
NORMAN KELLAR (1914-2012)

14 PEARL STREET, P. O. BOX 3536
KINGSTON, N.Y. 12402
TEL. (845) 331-8900
FAX (845) 331-0632

November 30, 2016

Kevin Bryant, Corporation Counsel
City of Kingston City Hall
420 Broadway
Kingston, New York 12401

RE: 346 WASHINGTON AVENUE, LLC

Dear Mr. Bryant:

Our firm represents 346 Washington Avenue, LLC (the "LLC"). The five members of the LLC, all Ulster County residents, undertook a project over 10 years ago to purchase and rehabilitate a derelict building at 346 Washington Avenue, Kingston, New York, that formerly housed an abandoned nursing home. Aided by the Ulster County Industrial Development Agency (the "UCIDA"), the LLC members successfully rehabilitated the building which now houses multiple medical offices. The efforts of the LLC have turned an unused, if not abandoned, commercial building into a productive asset that has generated, and will continue to generate, enhanced property tax revenues to the benefit of the City of Kingston and the Kingston City School District.

At the inception of the project in 2006, the LLC entered into a Payment in Lieu of Taxes (PILOT) Agreement with the UCIDA. Under the PILOT Agreement, the City of Kingston Assessor was charged with the responsibility for calculating the LLC's obligations in lieu of property taxes. Beginning with the 2008/2009 school tax year, the amount calculated was presented to the LLC, which always paid timely each amount billed under the PILOT Agreement. After making each payment, the LLC had the right, under various leases, to bill its tenants for the amounts paid and be reimbursed directly *pro rata* by tenants as added rent.

In 2013, the City of Kingston Assessor discovered an error and corrected the amounts billed going forward under the PILOT Agreement, significantly increasing the LLC's annual liability. Since the correction of the error, the LLC continued to make timely payments of each amount billed to it under the PILOT Agreement after the increase, and the LLC also continued to obtain reimbursement *pro rata* from tenants.

Kevin Bryant
November 30, 2016
Page 2

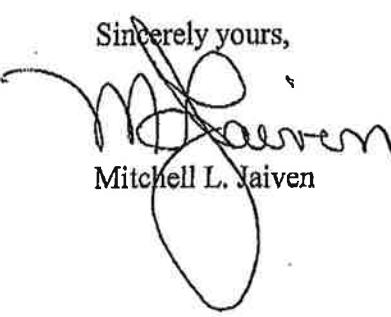
We understand that the City of Kingston and the Kingston City School District have advised that the LLC is liable for the shortfall billed from 2008 to 2013 that resulted from the then acting City Assessor's errors. Unfortunately, the former City Assessor's errors will cause the LLC and its members to incur damages. Some of the tenants who occupied space during that period of time to which the errors apply have vacated their premises; other tenants have leases that are nearing termination and are unlikely to willingly pay what would be owed at this late date. To obtain those reimbursements, the LLC would likely be compelled to commence multiple lawsuits for contributions that would have been recoverable without difficulty had the former City Assessor calculated the PILOT Agreement payments accurately, and the LLC's recovery is by no means assured even if such litigation has to be commenced.

Moreover, New York State, a major tenant in 346 Washington Avenue, occupies 48% of the square footage of the building, more space than any other tenant. New York State is responsible under its lease for 48% of each year's increase in the PILOT payments. However, the lease stipulates that New York State is liable to the LLC only if the LLC shows proof of payment for any year's obligation within one year afterwards to obtain reimbursement as added rent. For example, to hold New York State liable under the lease, proof of payment of the increase pertaining to the year 2009 had to be presented in 2010. These provisions were inserted in the lease at the insistence of New York State to comply with its annual budgetary requirements. The years to which the errors apply have long since passed, and the LLC will suffer damages to the extent it is now liable for at minimum 48% of the amount paid to the City of Kingston and the Kingston City School District.

The LLC and its members would certainly have the right to assert a counterclaim for damages resulting from this set of circumstances. Nonetheless, the LLC members acknowledge that the former City Assessor's errors were not intentional and wish to work out an equitable arrangement with both the City of Kingston and the Kingston City School District that acknowledges the error but mitigates the damages that the members will incur through no fault of their own. Accordingly, the LLC is prepared to pay the sum of \$130,000.00 immediately in settlement of the claims for past amounts due under the PILOT agreement that were incorrectly calculated. I believe that this offer is fair and reasonable given the fact that the LLC members will be out of pocket and suffer financial loss due to reasons for which they are blameless. Indeed, this compromise will show that the City of Kingston seeks to cooperate and work with businesses to foster success.

I look forward to hearing from you after the respective parties have had the opportunity to review this offer.

Sincerely yours,


Mitchell L. Jaiven

MLJ/dja