



**CITY OF MERRILL**  
**COMMON COUNCIL**  
**AGENDA • TUESDAY AUGUST 29, 2017**

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**Special Meeting**

**City Hall Council Chambers**

**6:00 PM**

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- I. Call to Order
- II. Public Comment Period
- III. Resolutions:
  1. A Resolution approving Merrill Area Housing Authority request to continue and adjust Payment In Lieu of Taxes and support of renovation program. This resolution was referred from the August 23<sup>rd</sup>, 2017 special Common Council meeting.
- IV. Adjournment

William N. Heideman, CMC, WCMC  
City Clerk

The Merrill City Hall is accessible to the physically disadvantaged. If special accommodations are needed, please contact the Merrill City Hall at (715) 536-5594.

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION APPROVING MERRILL AREA HOUSING AUTHORITY  
REQUEST TO CONTINUE AND ADJUST PAYMENT IN LIEU OF TAXES AND  
SUPPORT OF RENOVATION PROGRAM**

WHEREAS, there exists a program entitled Section 42 Low Income Housing Tax Credits which is administered in the State of Wisconsin by the Wisconsin Housing and Economic Development Authority (“WHEDA”) whose purpose is to provide development of rental units for low income households, and

WHEREAS, the Merrill Area Housing Authority is renovating and redeveloping 102 units of affordable housing currently known as Park Place Apartments and Westgate Apartments in connection with an allocation of Section 42 Low Income Housing Tax Credits it has received from WHEDA and has requested the City of Merrill to support the renovation and redevelopment of Park Place Apartments and Westgate Apartments, and

WHEREAS, City Council finds that the redevelopment of affordable rental housing within the City will be beneficial to the City of Merrill and its residents, and

WHEREAS, in connection with WHEDA’s allocation of tax credits and the redevelopment, Merrill Area Housing Authority will transfer federal income tax ownership of Park Place Apartments and Westgate Apartments to the entity formed to receive the tax credits from WHEDA, Park Place & Westgate, LLC (the “LLC”), by leasing the land, buildings and other improvements constituting the apartment projects to the LLC pursuant to a capital lease, and

WHEREAS Merrill Area Housing Authority is the sole member of the managing member of the LLC and the property manager of the apartment projects, with the exception of compliance associated with the Section 42 Low Income Housing Tax Credits, and as such, notwithstanding the transfers of ownership of the improvements to the LLC as described above, continues to exercise exclusive control and authority over the operation of the apartment projects, and

WHEREAS upon completion of the redevelopment, the project will consist of 54 units of affordable housing known as Park Place Apartments, 38 units of

affordable housing known as Stonebridge Apartments and 10 units of affordable housing known as Westgate Apartments, and

WHEREAS, the current payment in lieu of taxes for Park Place Apartments PILOT is now shelter rent less utilities x 10% will remain the same, and

WHEREAS, the payment in lieu of taxes for Westgate Apartments PILOT is now shelter rent less utilities x 10% and will remain the same, and

WHEREAS, the payment in lieu of taxes for Stonebridge Apartments PILOT is proposed to be shelter rent less utilities x 10%.

NOW, THEREFORE, BE IT RESOLVED, BY THE COMMON COUNCIL, OF THE CITY OF MERRILL this 8<sup>th</sup> day of August, 2017, that it supports the Merrill Area Housing Authority's allocation of tax credits and hereby authorizes the Mayor to execute all documents necessary to accomplish those purposes, including the PILOT Agreement in the form of Exhibit A attached hereto.

Recommended by:

CITY OF MERRILL, WISCONSIN

Moved: \_\_\_\_\_

\_\_\_\_\_  
William R. Bialecki  
Mayor

Passed: \_\_\_\_\_

\_\_\_\_\_  
William N. Heideman  
City Clerk

Attachment: Resolution on Merrill Area Housing Authority PILOT (2736 : Resolution on PILOT for Merrill Area Housing Authority)

## PILOT AGREEMENT

This PILOT Agreement (“**Agreement**”) is entered into effective \_\_\_\_\_, 2017, by and among the City of Merrill, Wisconsin (the “**City**”), Park Place & Westgate, LLC, a Wisconsin limited liability company (the “**Company**”) and Merrill Area Housing Authority, a public body, corporate and politic, organized and existing under the laws of the State of Wisconsin (the “**Housing Authority**”).

### RECITALS

WHEREAS, the Housing Authority has approval from the Department of Housing and Urban Development to own and operate 102 units of subsidized housing to be located at 215 Grand Avenue, 1705 – 1707 - 1709 Water Street and 307 West Main Street, Merrill, Wisconsin 54452 (referred to herein as the “**Project**”); and

WHEREAS, the Housing Authority has received an allocation of Federal Low Income Housing Tax Credits for the rehabilitation and redevelopment of the Project; and

WHEREAS, in order to raise debt and equity capital for the substantial rehabilitation, construction and redevelopment of the Project, the Housing Authority anticipates transferring federal income tax ownership of the Project to the Company by leasing the entire Project to the Company in 2017 pursuant to a capital lease (such lease to include the land described on Exhibit A attached hereto and made a part hereof); and

WHEREAS, the Housing Authority is the sole member of the managing member of the Company and the property manager of the Project (with the exception of compliance associated with the Federal Low Income Housing Tax Credits), and, as such, exercises exclusive control and authority over the operation of the Project; and

WHEREAS, the Housing Authority has loaned substantial sums to the Company in connection with the acquisition and rehabilitation/construction of the Project, and has a right of first refusal to acquire the Project for a nominal sum following expiration of the fifteen (15)-year low-income housing tax period (the “**Compliance Period**”); and

WHEREAS, the Company is obligated to operate the Project as affordable housing in compliance with HUD and Internal Revenue Code restrictions and requirements, and the Housing Authority is solely responsible for ensuring that such restrictions and requirements are satisfied by the Company throughout the Compliance Period; and

WHEREAS, the Company will not generate material positive cash flow in excess of its fixed expenses, fees and debt obligations; and

WHEREAS, the parties have determined, based upon the foregoing RECITALS, that the Project constitutes property of the Housing Authority that is exempt from taxation under Section 70.11(18) of the Wisconsin Statutes and which may be subject to a payment in lieu of taxes (“**PILOT**”) imposed by the City, as provided in Section 66.1201(22) of the Wisconsin Statutes;

NOW, THEREFORE, acknowledging the receipt of sufficient consideration, the parties agree as follows:

1. Term of PILOT Agreement. The Company shall make a PILOT to the City with respect to the Project for each calendar year beginning in 2018 and ending in the final calendar year of the Project's Compliance Period, now estimated to be calendar year 2034. As required by Section 66.1201(22) of the Wisconsin Statutes, such PILOT shall not exceed the amount that would be levied as the annual tax of the City upon the Project.

2. Computation of PILOT. The PILOT for each calendar year shall be ten percent (10%) of the difference between (a) one hundred percent (100%) of the tenant's portion of the collected rents for all of the residential rental units in the Project for such calendar year; and (b) one hundred percent (100%) of the electricity, water, sewer and fuel bills incurred by the Company with respect to the Project for such calendar year. The amounts under clauses (a) and (b) above shall be based upon the financial statements of the Company for the prior calendar year.

3. Payment of PILOT. The Company shall make the PILOT within the time periods applicable to properties that are not exempt from property taxation, as provided in Section 74.11 of the Wisconsin Statutes.

4. Obligation of Company and Housing Authority. The Housing Authority shall cause the Company to rehabilitate and operate the Project as affordable rental housing throughout the Compliance Period in accordance with the income, rent and other restrictions and limitations imposed by HUD and the Internal Revenue Code.

5. Obligations of City. The City shall furnish or cause to be furnished to the Company and/or Project tenants such services or facilities as are furnished to other property owners and residents of the City on the same basis as such City services are ordinarily provided. The City shall also, to the extent permitted by applicable law, apply or modify existing City codes and ordinances to permit the Housing Authority and the Company to operate the Project as described above throughout the Compliance Period.

6. Miscellaneous. This Agreement cannot be unilaterally amended, modified or terminated by any party hereto. Each party hereby represents to and for the benefit of the other party that the person executing this Agreement on the signature page on behalf of such party has been duly authorized to execute this Agreement, and that this Agreement has been duly authorized and approved by such party. The benefits of this Agreement shall not be assigned by the Company or the Housing Authority without City's consent. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. This Agreement shall be governed by the laws of the State of Wisconsin. This Agreement may be signed by facsimile or in counterparts.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto duly execute this PILOT Agreement effective as of the date first set forth above.

**CITY OF MERRILL**

By: \_\_\_\_\_  
Name: William R. Bialecki  
Its: Mayor

By: \_\_\_\_\_  
Name: William N. Heideman  
Its: City Clerk

By: \_\_\_\_\_  
Name: Thomas N. Hayden  
Its: City Attorney

**MERRILL AREA HOUSING AUTHORITY,**  
a public body, corporate and politic, organized and existing under the laws of the State of Wisconsin

By: \_\_\_\_\_  
Name: Paul Russell, Executive Director

**PARK PLACE & WESTGATE, LLC,**  
a Wisconsin limited liability company  
By: Park Place and Westgate MM, LLC  
Its: Managing Member  
By: Merrill Area Housing Authority,  
a public body, corporate and politic, organized and existing under the laws of the State of Wisconsin  
Its: Sole Member

By: \_\_\_\_\_  
Name: Paul Russell, Executive Director

Attachment: Park Place-Westgate PILOT Agreement (2736 : Resolution on PILOT for Merrill Area Housing Authority)

**EXHIBIT A**

**PROJECT**

102 apartment units located at \_\_\_\_\_, Merrill, Wisconsin 544492 more particularly described as:

Attachment: Park Place-Westgate PILOT Agreement (2736 : Resolution on PILOT for Merrill Area Housing Authority)



## City of Merrill

Kathy Unertl, Finance Director

1004 East 1st Street • Merrill, Wisconsin • 54452

Phone: 715.536.5594 • Fax: 715.539.2668

e-mail: Kathy.Unertl@ci.merrill.wi.us

Date: August 24<sup>th</sup>, 2017

To: Mayor Bill Bialecki  
Alderspersons

From: Kathy Unertl, Finance Director/City Comptroller *Kathy Unertl*

RE: Request for Potential PILOT (Payment in lieu of property taxes) –  
**Park Place & Westgate LLC**

- There is a separate PILOT fiscal projection prepared by the developer. The fiscal projection is comparable to the current PILOT.

Recent PILOT payments amounts were:

<u>For</u>	<u>Amount</u>
2013	\$23,952
2014	\$21,278
2015	\$20,255
2016	\$22,536

Note: The HUD-55267 form for the 2016 Park Place is provided for your information.

- There is separate legal analysis prepared by Quarles & Brady for your review.
- **The following in new information:** No tax exempt paperwork forms need to be filled for "Housing exempt under section 66.12012(22)" or "Section 70.11(18)".

Properties that are exempt under Sect. 70.11(18) or 66.1201(22) are exempt from the initial filing on Wisconsin DOR Form PR-230 – Property Tax Exemption Request. Such entities are also exempt from the every two year filing if a payment in lieu of taxes is made.

The Park Place – Westgate LLC that is the tenant under the ground lease, as well as the Merrill Area Housing Authority, would not be required to file. See the following attachments - one is from the Wisconsin Property Assessor's Manual and one is Form PC-220 itself.

HUD-52267

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT LOW-RENT HOUSING PROGRAM		TYPE OF PROJECT(S) <input checked="" type="checkbox"/> LHA Owned Rental Housing <input type="checkbox"/> LHA Owned HomeOwnership	
<b>COMPUTATION OF PAYMENTS IN LIEU OF TAXES</b>		FOR FISCAL YEAR ENDED: 12/31/16	
NAME OF LOCAL HOUSING AUTHORITY <b>MERRILL HOUSING AUTHORITY - PARK PLACE</b>		CONTRACT NUMBER C-732	
ADDRESS 215 GRAND AVENUE MERRILL, WI 54452		PROJECT NUMBER (5) WI01700109D	
<b>COMPUTATION OF SHELTER RENT CHARGED</b>			
1. Dwelling Rental (Account 3110) .....	306,782.00		
2. Excess Utilities (Account 3120) .....	1,413.00		
3. Nondwelling Rental (Account 3180) .....	900.00		
Homebuyers Monthly Payments for:			
4. Earned Home Payments (Account 7712) .....			
5. Nonroutine Maintenance Reserve (Account 7714) .....			
6. Total Rental or Homebuyers Payments Charged (Lines 1 to 5) .....		308,105.00	
7. Total Utilities Expense (Accounts in 4300 group) .....		83,748.58	
8. SHELTER RENT CHARGED (Line 6 minus Line 7) .....		225,356.42	
<b>COMPUTATION OF SHELTER RENT COLLECTED</b> (To be completed only if Cooperation Agreement provides for payment of PILOT on basis of Shelter Rent Collected)			
9. Accounts Receivable (Account 1122 or 1124) at beginning of fiscal year			
10. Total of Lines 6 and 8 .....			
Deductions:			
11. Collection Losses (Account 4570) during current fiscal year .....			
12. Accounts Receivable (Account 1122 or 1124) at end of fiscal year .....			
13. SHELTER RENT COLLECTED (Line 10 minus total of Lines 11 & 12)			
<b>COMPUTATION OF APPROXIMATE FULL REAL PROPERTY TAXES</b>			
TAXING DISTRICTS (1)	ASSESSABLE VALUE (2)	TAX RATE (3)	AMOUNT (4)
14. Approximate Full Real Property Taxes (Total of amounts in Col. (4) ) .....			
<b>PAYMENTS IN LIEU OF TAXES</b>			
15. 10% of Line 8 or Line 13, whichever is applicable 1/ (see Instructions on reverse side) .....			22,535.64
16. PAYMENTS IN LIEU OF TAXES (Line 15 or Line 14, whichever is lesser) .....			22,535.64
Were any expenses incurred for the project(s) during the fiscal year for services or facilities which the local taxing body should have furnished under the terms of the Cooperation Agreement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. If the answer is "yes" will such expenses be deducted from PILOT or otherwise collected from the applicable taxing body? <input type="checkbox"/> YES <input type="checkbox"/> NO. If the answer is "no," attach a statement showing the amount of such expenses incurred and the reason for not collecting.			
1/ If the percentage specified in the Cooperation Agreement or the Contract with HUD is lower, such lower percentage shall be used.			
PREPARED BY: Name <i>Hawkias Ash CPAs LLP</i>		APPROVED BY: Name	
Title Accountant	Date 02/05/15	Title	Date

Replaces HUD-52267 and HUD-52267a which are obsolete

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Attachment: PILOT-Finance Director Memo (2736 : Resolution on PILOT for Merrill Area Housing Authority)

used, construed strictissimi juris. *Railroad Co. v. Thomas*, 132 U.S. 185, 10 Sup. Ct. Rep. 68; *Railroad Co. v. Dennis*, 116 U.S. 668, 6 Sup. Ct. Rep. 625.”

## The Exemption Application

### Real Property Exemptions

In 1998 sec 70.11 Wis. Stats., was amended to require the owner seeking exemption of a property, to file, **on or before March 1**, an application (Form PR-230) along with any necessary attachments. The form must be filed with the assessor of the taxation district where the property is located. The filing requirement applies only to new exemption requests. Owners of properties already exempt are not required to fill out the form. Failure to complete the form in its entirety and file with the assessor by March 1 may result in denial of the exemption.

Some entities are not required to file a Property Tax Exemption Request form. These include:

- |   |                            |
|---|----------------------------|
| ➤ Property of the State                                   | Sec. 70.11(1) Wis. Stats   |
| ➤ Municipal property                                      | Sec. 70.11(2) Wis. Stats.  |
| ➤ Housing exempt under section 66.12012(22)               | Sec. 70.11(18) Wis. Stats. |
| ➤ Crops   | Sec. 70.11(30) Wis. Stats. |
| ➤ Manufacturing machinery & specific processing equipment | Sec. 70.11(27) Wis. Stats. |

The Property Tax Exemption Request (PR-230) compels an owner seeking exemption of property to provide the assessor with pertinent information to enable the assessor to determine whether the property meets the statutory requirements for exemption. The form has four sections that must be completed by the property owner or the owner's representative.

1. Applicant information
2. Subject Property Information
3. Tenant Information
4. Supporting documentation. Depending on the type of exemption, supporting documentation must be attached to the request. Examples of supporting documentation include copies of:
  - ❖ Proof of non-profit status
  - ❖ Partnership Agreement, Association Documents, Articles of Incorporation, Charter and By-laws, including any amendments
  - ❖ Latest annual report filed with State Department of Financial Institutions
  - ❖ Educational curriculum
  - ❖ Part II of IRS Form 1023
  - ❖ Form 990
  - ❖ Form 990T
  - ❖ Ordination papers of occupants
  - ❖ Leases and subleases

# Tax Exemption Report For \_\_\_\_\_ (Year)

**THIS FORM MUST BE FILED WITH THE LOCAL CLERK NO LATER THAN MARCH 31 in even numbered years (sec. 70.337, Wis. Stats.)**  
(See Instructions on Reverse Side)

1. Name of Organization _____		
2. Address of Organization _____		3. Purpose of Organization _____
4. Location of Property <input type="checkbox"/> Town <input type="checkbox"/> Village <input type="checkbox"/> City of _____ County _____		
5. Street Address of Property _____		6. Date Acquired (mm-dd-yyyy) _____
7. Number of Acres _____		
8. Parcel Number _____		
9. Legal Description _____		

<p><b>10. Purpose of Property</b> Check the box that best describes the property. See instructions if parcel has more than one building put to different uses.</p> <p style="text-align: right;"><u>Exemption Under Wis. Stat.</u></p> <p><b>Church/Religious</b></p> <p><input type="checkbox"/> Place of Worship ..... s. 70.11(4)</p> <p><input type="checkbox"/> Other _____ s. 70.11( ) (Explain)</p> <p><b>Educational (Incl. religious)</b></p> <p><input type="checkbox"/> Grades K-12 ..... s. 70.11(4)</p> <p><input type="checkbox"/> Private College ..... s. 70.11(3)</p> <p><input type="checkbox"/> Other _____ s. 70.11( ) (Explain)</p> <p><b>Medical Facility</b></p> <p><input type="checkbox"/> Non-Profit Hospital (Incl. religious) ..... s. 70.11(4m)</p> <p><input type="checkbox"/> Medical Research Foundation ..... s. 70.11(25)</p> <p><input type="checkbox"/> Other _____ s. 70.11( ) (Explain)</p> <p><b>Housing</b></p> <p><input type="checkbox"/> Nursing Home (Incl. religious) ..... ss. 70.11(4), (19)</p> <p><input type="checkbox"/> Retirement Home (Incl. religious) ..... ss. 70.11(3a), (4)</p> <p><input type="checkbox"/> Other _____ ss. 70.11(3a), (18), (19), ( ) (Explain)</p> <p><input type="checkbox"/> <b>Public Benefit</b></p> <p>YMCA/YWCA, Scouts, Boys' Club, Youth Hockey, ss. 70.11(10), (12), (32)</p> <p>Lions Camp, Bible Camp, Camp for Handicapped, ss. 70.11(10m), (11), (22)</p> <p>Women's Club, Historical Society, Library Assoc., ss. 70.11(4), (31m)</p> <p>Fraternal, Labor/Farmers' Temple, Agri Fair, ss. 70.11(4), (5), (16), (17)</p> <p>Nonprofit Radio, Theatre, Art Gallery, ss. 70.11(14), (29), (29m)</p> <p>Sports and Entertainment Facility/Stadium, ss. 70.11(31)(36)</p> <p>Humane Society, ss. 70.11(28)</p> <p>Historical Site, Public Trust ss. 70.11(9), (20), (34), (35)</p> <p><input type="checkbox"/> Other _____ ss. 70.11( ) (Explain)</p>	<p><b>11. Estimated Fair Market Value of Parcel</b> Check box that best approximates the value of all improvements and land of property described in Question 10.</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> 1. \$1,000 - \$10,000</td> <td><input type="checkbox"/> 8. \$5,000,001 - \$10,000,000</td> </tr> <tr> <td><input type="checkbox"/> 2. \$10,001 - \$100,000</td> <td><input type="checkbox"/> 9. \$10,000,001 - \$15,000,000</td> </tr> <tr> <td><input type="checkbox"/> 3. \$100,001 - \$200,000</td> <td><input type="checkbox"/> 10. \$15,000,001 - \$25,000,000</td> </tr> <tr> <td><input type="checkbox"/> 4. \$200,001 - \$500,000</td> <td><input type="checkbox"/> 11. \$25,000,001 - \$50,000,000</td> </tr> <tr> <td><input type="checkbox"/> 5. \$500,001 - \$1,000,000</td> <td><input type="checkbox"/> 12. \$50,000,001 - \$75,000,000</td> </tr> <tr> <td><input type="checkbox"/> 6. \$1,000,001 - \$2,000,000</td> <td><input type="checkbox"/> 13. \$75,000,001 - \$100,000,000</td> </tr> <tr> <td><input type="checkbox"/> 7. \$2,000,001 - \$5,000,000</td> <td><input type="checkbox"/> 14. OVER \$100 million</td> </tr> </table> <p><b>12. Leasing of Property</b> Was any portion of this property leased during the preceding two years?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes</p> <p>If yes, describe portion leased, percentage of property, lessee, and how lease payment was used.</p> <p><b>13. Unrelated Trade or Business</b></p> <p>Was this property used in an unrelated trade or business for which the owner was subject to taxation under section 511 to 515 of the Internal Revenue Code?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<input type="checkbox"/> 1. \$1,000 - \$10,000	<input type="checkbox"/> 8. \$5,000,001 - \$10,000,000	<input type="checkbox"/> 2. \$10,001 - \$100,000	<input type="checkbox"/> 9. \$10,000,001 - \$15,000,000	<input type="checkbox"/> 3. \$100,001 - \$200,000	<input type="checkbox"/> 10. \$15,000,001 - \$25,000,000	<input type="checkbox"/> 4. \$200,001 - \$500,000	<input type="checkbox"/> 11. \$25,000,001 - \$50,000,000	<input type="checkbox"/> 5. \$500,001 - \$1,000,000	<input type="checkbox"/> 12. \$50,000,001 - \$75,000,000	<input type="checkbox"/> 6. \$1,000,001 - \$2,000,000	<input type="checkbox"/> 13. \$75,000,001 - \$100,000,000	<input type="checkbox"/> 7. \$2,000,001 - \$5,000,000	<input type="checkbox"/> 14. OVER \$100 million
<input type="checkbox"/> 1. \$1,000 - \$10,000	<input type="checkbox"/> 8. \$5,000,001 - \$10,000,000														
<input type="checkbox"/> 2. \$10,001 - \$100,000	<input type="checkbox"/> 9. \$10,000,001 - \$15,000,000														
<input type="checkbox"/> 3. \$100,001 - \$200,000	<input type="checkbox"/> 10. \$15,000,001 - \$25,000,000														
<input type="checkbox"/> 4. \$200,001 - \$500,000	<input type="checkbox"/> 11. \$25,000,001 - \$50,000,000														
<input type="checkbox"/> 5. \$500,001 - \$1,000,000	<input type="checkbox"/> 12. \$50,000,001 - \$75,000,000														
<input type="checkbox"/> 6. \$1,000,001 - \$2,000,000	<input type="checkbox"/> 13. \$75,000,001 - \$100,000,000														
<input type="checkbox"/> 7. \$2,000,001 - \$5,000,000	<input type="checkbox"/> 14. OVER \$100 million														

14. Name and Title _____			17. Signature _____	
15. Street Address _____			18. Telephone ( ) - _____	19. Date (mm-dd-yyyy) - -
16. City _____	State _____	Zip _____	20. Email _____	

Attachment: PILOT-Finance Director Memo (2736 : Resolution on PILOT for Merrill Area Housing Authority)

## Instructions

- This form should be completed by the property owner or representative and filed with the municipal clerk by March 31, in even numbered years (sec. 70.337, Wis. Stats.)
- Only properties exempt under sec. 70.11, Wis. Stats. are required to file this form (review list of properties at bottom of this page that are not required to be reported).

1. NAME OF ORGANIZATION – Enter the organization that owns the exempt property.
2. ADDRESS OF ORGANIZATION – Enter the address of the administrative office or headquarters.
3. PURPOSE OF ORGANIZATION – State the primary purpose of this organization.
4. LOCATION OF PROPERTY – Enter the taxation district and county in which the exempt property is located.
5. ADDRESS OF PROPERTY – Enter the number and street name at which the exempt property is located.
6. Enter date property was acquired.
7. Enter number of acres of exempt property.
8. PARCEL NUMBER – Enter the parcel number as shown in the assessment roll.
9. LEGAL DESCRIPTION – Enter the description of the property as shown on the deed or in the assessment roll.
10. PURPOSE/USE OF PROPERTY – Check the appropriate box that describes the use of the property. **REVIEW ALL CATEGORIES BEFORE SELECTING APPROPRIATE BOX.** Check only 1 box. If the parcel has more than 1 building put to different uses, report each use in a separate form. If all buildings on parcel are put to same use, submit only 1 report. If a parcel has a single building that is put to more than one use, report the predominant use.

EXAMPLE: A parcel with 3 buildings – a church, parsonage and school – would submit 3 forms since the parcel has 3 different uses: Place of Worship, Housing (Other), Educational (K-12).

EXAMPLE: A parcel with 2 buildings – a church and a separate fellowship hall – would file 1 form since the fellowship hall serves the same purpose as the place of worship.

EXAMPLE: A parcel with a retirement home and a nursing home in the same building would indicate predominant use

EXAMPLE: A parcel with 2 buildings – a nursing home and a separate retirement home – would file 2 forms – one for the nursing home and one for the retirement home.

11. ESTIMATED FAIR MARKET VALUE OF PROPERTY – Check the box that best approximates the value of the buildings and land described in Question 10.
12. LEASING OF PROPERTY – Indicate if the property was leased during the preceding 2 years. Describe the portion leased, the name of lessee, and how the organization used the lease payments. Attach additional sheets if necessary.
13. UNRELATED TRADE OR BUSINESS – Indicate if the property was used in a trade or business for which the owner was subject to taxation under Sections 511 to 515 of the IRC as defined in sec. 71.22(4m), Wis. Stats.  
  
NOTE: If you check yes, you must also complete form PC-227.
- 14-20. NAME, ADDRESS, TELEPHONE, EMAIL – Enter the name and title, address, telephone number, and email address of the person completing this form. Sign and date the form. File with local clerk by March 31 in even numbered years.

### THE FOLLOWING TAX EXEMPT PROPERTIES ARE NOT REQUIRED TO BE REPORTED:

- Property owned by the Federal Government, State Government, County Government, Municipal Government
- Cemeteries, exempt under sec. 70.11(13), Wis. Stats.
- Archaeological sites, exempt under sec. 70.11(13m), Wis. Stats.
- Manure storage facilities, exempt under sec. 70.11(15), Wis. Stats.
- Secondary containment structures used to prevent leakage of liquid fertilizer or pesticides, exempt under sec. 70.11(15m), Wis. Stats.
- Treatment plant and pollution abatement equipment, exempt under sec. 70.11(21), Wis. Stats.
- All perennial plants that produce an annual crop, exempt under sec. 70.11(30), Wis. Stats.
- Property of housing authorities exempt under sec. 70.11(18), Wis. Stats. if a payment in lieu of taxes is made for that property
- Lake beds owned by the State
- Highways, as defined in sec. 340.01(22), Wis. Stats.
- Utility property assessed under Chapter 76
- State and county forests
- School districts
- Technical college districts

**Park Place & Westgate, LLC**  
**Estimate of Annual Payment in Lieu of Taxes**

	<u>Westgate</u>	<u>Park Place</u>	<u>Stone Bridge</u>	<u>Total</u>
Avg dwelling rental	\$ 195.00	\$ 288.00	\$ 288.00	
No of units	<u>10</u>	<u>54</u>	<u>38</u>	<u>102</u>
Avg monthly rental	\$ 1,950.00	\$ 15,552.00	\$ 10,944.00	\$ 28,446.00
No of months	<u>12</u>	<u>12</u>	<u>12</u>	<u>12</u>
Estimated dwelling rental	\$ 23,400.00	\$ 186,624.00	\$ 131,328.00	\$ 341,352.00
Estimated vacancy rate	<u>3%</u>	<u>3%</u>	<u>3%</u>	<u>3%</u>
Estimated net dwelling rental	\$ 22,698.00	\$ 181,025.00	\$ 127,388.00	\$ 331,111.00
Excess utilities	98.00	529.00	373.00	1,000.00
Non dwelling rental	118.00	635.00	447.00	1,200.00
<b>Total rental or homebuyers payments charged</b>	<u>\$ 22,914.00</u>	<u>\$ 182,189.00</u>	<u>\$ 128,208.00</u>	<u>\$ 333,311.00</u>
Total utilities expense	<u>1,351.00</u>	<u>53,524.00</u>	<u>37,665.00</u>	<u>92,540.00</u>
Shelter rent charged	\$ 21,563.00	\$ 128,665.00	\$ 90,543.00	\$ 240,771.00
PILOT %	<u>10%</u>	<u>10%</u>	<u>10%</u>	<u>10%</u>
Estimated PILOT	<u>\$ 2,156</u>	<u>\$ 12,867</u>	<u>\$ 9,054</u>	<u>\$ 24,077</u>

This is an estimate only based on current occupancy of the Westgate and Park Place properties. Actual results will differ

Attachment: PILOT-Projected Fiscal (2736 : Resolution on PILOT for Merrill Area Housing Authority)

## Subject to Attorney Client Privilege

## Memorandum



August 17, 2017

**To:** City of Merrill, Wisconsin  
**From:** Quarles & Brady LLP  
**Climat:** City of Merrill  
 650232.00027  
**Re:** Property Tax Exemption and PILOT Agreement- Property of Merrill Area Housing Authority/Park Place

ISSUES

The City of Merrill, Wisconsin (the "City") has asked (i) whether certain property owned by the Merrill Area Housing Authority (the "Housing Authority") that will be leased to Park Place & Westgate, LLC (the "Company") is exempt from property taxation, and (ii) the legal status of a proposed PILOT Agreement between the City, the Company and the Housing Authority.

ASSUMPTIONS

For purposes of the advice set forth herein, we assume the following facts:

1. The Merrill Area Housing Authority (the "Housing Authority"), a Wisconsin public body corporate and politic, is a housing and community development authority under Wis. Stat. §66.1335(4). Under Wis. Stat. §66.1335(4), the Authority has all "the powers, duties and functions" set out in Wis. Stat. §66.1201 (the "Housing Authorities Law"). Wis. Stat. §66.1335(4) further provides that as to all housing projects initiated by a community development authority, it shall proceed under Wis. Stat. §§ 66.1201. With respect to its housing projects, the Authority is operated in accordance with the Housing Authorities Law.
2. The Housing Authority is renovating and redeveloping 54 units of affordable housing currently known as Park Place Apartments and 10 units of affordable housing currently known as Westgate Apartments, and constructing 38 units of affordable housing to be known as Stonebridge Apartments, located at 215 Grand Avenue, 1705 – 1707 - 1709 Water Street and 307 West Main Street, Merrill, Wisconsin 54452. Collectively, these 102 units of affordable housing are referred to herein as the "Apartment Complex."
3. The Housing Authority is the current fee owner of the Apartment Complex and fee ownership of the Apartment Complex will not be transferred by the Housing Authority.

QBV47644892.1

Attachment: PILOT-Legal Analysis (2736 : Resolution on PILOT for Merrill Area Housing Authority)

## Memorandum

4. The Housing Authority has received an allocation of Federal low income housing tax credits under Section 42 of the Internal Revenue Code (the "Code") for the rehabilitation and redevelopment of the Apartment Complex.

5. In connection with the allocation of tax credits and the redevelopment and construction, the Housing Authority will transfer federal income tax ownership of the Property to Park Place & Westgate, LLC, a Wisconsin limited liability company (the "Company"), by leasing the entire Apartment Complex to the Company pursuant to a capital lease (the "Lease," the current proposed form of which is attached hereto as Appendix 1) (such lease to include the land described on Exhibit A to the Capital Lease).

6. The residential units in the Apartment Complex will be rented to persons or families who lack the amount of income necessary, as determined by the Housing Authority on behalf of the Company, to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding.

7. The Company will not have the right to assign its rights under the Lease without the Housing Authority's consent unless: (a) the assignee assumes, in full and in a written instrument reasonably satisfactory to the Housing Authority, all of the obligations of the Company set forth in the Lease; (b) Tenant remains fully liable for all of its obligations under this Lease; (c) the assignee's proposed use of the Apartment Complex is compatible with the permitted uses as set forth in the Lease; and (d) the assignee is, in the Housing Authority's reasonable judgment, sufficiently creditworthy.

8. The managing member of the Company is Park Place and Westgate MM LLC, a Wisconsin limited liability company (the "Managing Member"). The sole member of the Managing Member is the Housing Authority.

9. The Managing Member will exercise exclusive control and authority over the Company (with the exception of ensuring compliance with Section 42 of the Code) and operation of the Apartment Complex pursuant to the Company's operating agreement.

10. The Housing Authority will act as the manager and administrator of the Apartment Complex pursuant to a property management subcontract agreement to be entered into between the Housing Authority and the Company (the "Management Agreement," the proposed form of which is attached hereto as Appendix 2). Under the Management Agreement, the Housing Authority will be responsible for: (a) marketing and renting the Apartment Complex to qualified persons of low income at qualified rents; (b) contracting for all utility services, trash collection, snow removal and maintenance and repairs; (c) collecting rents and paying Apartment Complex operating expenses from a Housing Authority bank account; (d) all aspects of tenant and community relations arising from operation of the Apartment Complex; (e) maintaining compliance with all federal, state and local laws, other than Section 42 of the Code; (f) preparing operating budgets; and (g) performing all other services reasonably necessary for the care, protection, management, maintenance and operation of the Apartment Complex.

11. The Company has granted the Housing Authority a right of first refusal to acquire the Company's interest in the Apartment Complex after the federal low income housing tax

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credit compliance period. Under the right of first refusal, the Housing Authority will have the contractual right to acquire the Apartment Complex for a nominal sum for 24 months following the end of the 15-year compliance period under Section 42 of the Code and thus, prevent the Company from selling its interest in the Apartment Complex to a third party during this time. A copy of the proposed form of the Right of First Refusal is attached hereto as Appendix 3.

12. It is not expected that the Company will generate material positive cash flow in excess of its fixed expenses, fees and debt obligations.

CONCLUSIONS

Based upon the facts and assumptions set forth above and for the reasons set forth below and subject to the qualification in the final paragraph of this Memo, there is a reasonable basis upon which the City can treat the Apartment Complex as exempt from general property tax under Wis. Stat. §70.11(18) because: (1) the Apartment Complex is “property of” the Housing Authority within the meaning of Wis. Stat. §§66.1201(22) and 70.11(18), and (2) the leasing restrictions imposed by the flush language of Wis. Stat. §70.11 will not apply. We note that notwithstanding the foregoing, the Apartment Complex should be subject to payments in lieu of taxes imposed by the City under the Cooperation Agreement, the PILOT Agreement and under the authority granted in Wis. Stat. §66.1201(22), provided the PILOT Agreement is entered into.

DISCUSSION

A. “Property Of”

Wis. Stat. §70.11(18) exempts from general property taxes the “[p]roperty of housing authorities exempt from taxation under s. 66.1201(22).” [Emphasis Added] Wis. Stat. §66.1201(22) provides as follows:

TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES. The property of an authority is public property used for essential public and governmental purposes and the property and an authority are exempt from all taxes of the state or any state public body, except that the city in which a project or projects are located may fix a sum to be paid annually in lieu of taxes by the authority for the services, improvements or facilities furnished to the property of the authority by the city. The amount paid in lieu of taxes may not exceed the amount that would be levied as the annual tax of the city upon the project. [Emphasis Added]

The critical phrase “property of” a housing authority is not expressly defined in the Wisconsin Statutes. In construing this property tax exemption, it is important to note what the statute does not say: it does not say that the Apartment Complex must be “owned” by a housing authority. Numerous property tax exemptions are expressly conditioned on ownership. See Wis. Stat. §§ 70.11(4), (4m), (5), (7), (9), (10m), (12), (13), (16), (17), (20), (22), (25) and (28) (describing various properties exempt from taxation). If the Wisconsin legislature had intended to limit the housing authority exemption to properties “owned” by a housing authority, it could have easily used words such as property “exclusively owned by” or “owned and used” by a housing authority in Wis. Stat. §§ 66.1201(22) and 70.11(18). By using broader statutory

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language for the exemption, a strong argument exists that the legislature intended “property of” a housing authority to include properties other than just those which a housing authority holds legal title to.

Even if the phrase “property of” is deemed ambiguous, it is well settled that ambiguous statutory provisions are to be interpreted in the manner that best achieves the intent of the legislature. Verdoljak v. Mosinee Paper Corp., 200 Wis.2d 624 (1996); State v. Olson, 175 Wis.2d 628 (1993). As stated by the Wisconsin Supreme Court, “[t]he cardinal rule in all statutory interpretation, as this Court has often said, is to discern the intent of the legislature. The Court will ascertain that intent by examining the language of the statute, as well as its scope, history, context, subject matter and purpose.” Scott v. First State Insurance Company, 155 Wis.2d 608, 612 (1990)

The intent of the legislature is plainly stated. Wis. Stat. §66.1201(2) provides that, among other things, the purpose of the Housing Authorities Law is to provide safe and sanitary dwellings for persons of low income. In furtherance of this purpose, Wis. Stat. §66.1201(9) expressly authorizes housing authorities to engage in a variety of activities that foster low income housing including arranging or contracting for the furnishing of services or facilities in connection with a housing project or the occupants of a housing project and leasing housing units to low income persons. In the present case, the Housing Authority proposes to do these things in connection with its operation of the Apartment Complex. Rehabilitation, construction and operation of the Apartment Complex will help to alleviate the shortage of low income housing in the City. The Housing Authority’s activities with respect to the Apartment Complex and its tenants are described in the applicable statute as activities to be undertaken by housing authorities. Accordingly, these facts should be sufficient to make the Apartment Complex “property of” the Housing Authority for purposes of Wis. Stat. §66.1201(22) and 70.11(18).

If the phrase “property of” is equated with ownership, arguably the Housing Authority should be deemed the “owner” of the Apartment Complex under applicable Wisconsin property tax law. There are three contemporary Wisconsin Supreme Court decisions that address the issue of whether property is “owned” by an exempt entity for Wisconsin property tax purposes where the incidents of beneficial ownership are divided between the exempt entity and a non-exempt entity under a ground lease. See Mitchell Aero, Inc. v. City of Milwaukee, 42 Wis.2d 656; Gebhardt v. City of West Allis, 89 Wis.2d 103 (1979); City of Franklin v. Crystal Ridge, Inc., 180 Wis.2d 561 (1994). These cases establish that: (1) mere “paper title” does not constitute ownership for property tax purposes, and (2) each exemption case must be decided on its own facts “in the context of the purpose of the determination.” Mitchell Aero, 42 Wis.2d at 662.

In the case at hand, the Housing Authority will make all decisions and enter into all contracts related to the day-to-day operation of the Apartment Complex during the term of the Management Agreement, it is anticipated that substantially all of the operating cash flow from the Apartment Complex will be applied by the Company to pay Apartment Complex operating expenses or debt service, and the Apartment Complex will be operated solely to achieve the public purposes for which the Housing Authority was created. In contrast, if the Company were the true owner, the Development would be operated to maximize cash flow. Further, under Mitchell Aero, the determination of what combination of rights less than the whole bundle will

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constitute ownership must be determined in each case in the context of the purpose of the determination. In this case, the “purpose of the determination” is whether the Apartment Complex is the type of project that is consistent with the objectives of Wis. Stat. §66.1201. The Apartment Complex is property dedicated to an avowed public use and is intended to alleviate the shortage of safe and sanitary dwellings for persons of low income in the City. Accordingly, the public purpose of the Apartment Complex adds additional support for the proposition that for Wisconsin property tax purposes, the incidents of ownership of the Apartment Complex lie with the Housing Authority. There are factors, however, that would indicate that the Company has the incidents of ownership in the Apartment Complex, including the following: (1) the Company will have complete and exclusive possession and control of the Apartment Complex during the term of the Lease; (2) the Lease term, anticipated to be 65 years with two options to renew for periods of 15 years for each option, will constitute most, if not all, of the useful life of the Apartment Complex, and (3) the Company is required to maintain the property and bears the risk of loss with respect to the improvements located or to be located on the land comprising the Apartment Complex. Accordingly, it is not free from doubt that the Housing Authority would be considered the “owner” of the Apartment Complex if the phrase “property of” in Wis. Stat. §§70.11(18) and 1201(22) is equated with ownership.

**B. Leasing Restriction**

Under certain circumstances, property that is exempt from general property tax under Wis. Stat. §70.11 will be taxable if it is leased. Specifically, the introductory phrase to Wis. Stats. §70.11 provides in part as follows:

PROPERTY EXEMPTED FROM TAXATION. The property described in this section is exempted from general property taxes . . . Except as provided in subs. (3m)(c), (4)(b), (4a)(f) and (4d), leasing a part of the property described in this section does not render it taxable if the lessor uses all of the leasehold income for maintenance of the leased property, construction debt retirement of the leased property or both and, except for residential housing, if the lessee would be exempt from taxation under this chapter if it owned the property. . . . [Emphasis Added]

Under a technical interpretation of this language, the Company must use all of the income from the Apartment Complex for maintenance of the leased property, construction debt retirement of the leased property or both. Typically, in syndicated low-income housing investments such as that involved in this case, the operating agreement of the Apartment Complex entity (such as the Company) will provide for distributions that would allow cash flow in excess of that required for operations to be distributed for a number of different items that would not involve maintenance of the property or construction debt retirement. Accordingly, under a technical interpretation of the law, if the Company, in any year, uses leasehold income for anything other than the statutorily allowed purposes, the Apartment Complex would not be exempt from property tax under Wis. Stat. §70.11(18). However, Wis. Stat. §66.1201(22) also contains a property tax exemption for property of a housing authority and arguably is the primary source of the tax exemption for property of a housing authority since Wis. Stat. §70.11(18) simply states that property of housing authorities that is exempt under Wis. Stat. §66.1201(22) is exempt under Wis. Stat. §70.11. No leasing restrictions are contained in Wis. Stat. §66.1201.

## Memorandum

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To apply a strict interpretation of the leasing restriction found in Wis. Stat. §70.11 under the facts of this case arguably frustrates and defeats the legislative purpose of granting tax exemptions to housing authorities. The provisions of the Housing Authorities Law explicitly state that the Wisconsin legislature desires that low-income persons be afforded an opportunity to have a safe and decent place to live. The Housing Authority will provide shelter to low-income individuals through its operation of the Apartment Complex. In addition, Wis. Stat. §1201(22) grants property tax exemption to “property of” an authority and contains no leasing restrictions. Accordingly, while the law is uncertain on this issue, there is a reasonable basis on which to conclude that the leasing restrictions of Wis. Stat. §70.11 should not apply to property of a housing authority that is exempt under Wis. Stat. §§70.11(18) and 66.1201.

### C. Payments in Lieu of Taxes

The Housing Authority currently operates under a Cooperation Agreement (attached hereto as Appendix 4), dated May 11, 1965, between the City and the Housing Authority which governs the operations of “Projects” (as defined in the Cooperation Agreement) by the Housing Authority. Among other things, the Cooperation Agreement obligates the City to exempt from property tax and the Housing Authority to make payments in lieu of property taxes (“Payments in Lieu of Taxes”) under the Cooperation Agreement) on any Project so long as either: (1) the Project is owned by a public body or governmental agency and is used for low-income housing purposes, (2) any contract between the Housing Authority and the PHA for loans or annual contributions, or both, in connection with the Project remains in force and effect, or (3) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid. The Payment in Lieu of Taxes is equal to (1) 10% of Shelter Rent charged by the Housing Authority, or (2) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever is lower. The Cooperation Agreement defines “Shelter Rent” to mean the total of all charges to all tenants of a Project for dwelling rents and non-dwelling rents (excluding all other income of the Project), less the cost to the Housing Authority of dwelling and non-dwelling utilities. Finally, the Cooperation Agreement states that the agreement remains in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Housing Authority or any other public body or governmental agency.

In a document entitled “Merrill Area Housing Authority Board of Directors,” signed by the Executive Director of the Housing Authority (on September 11, 2016) and the Finance Director of the (on September 14, 2016) City (the “MAHA Resolution”) (attached hereto as Appendix 5), the Board of Directors sets forth that the Housing Authority operates under the Cooperation Agreement which provides for Payments in Lieu of Taxes and the Housing Authority intends to maintain this status after conversion of the Apartment Complex to Project-Based Rental Assistance (Section 8 contracts) under a Rental Assistance Demonstration (“RAD”) CHAP commitment.

The Company has submitted a proposed PILOT Agreement (the “PILOT Agreement”) (attached hereto as Appendix 6) to the City to be entered into between the City, the Company and the Housing Authority, pursuant to which the Company will make a payment in lieu of taxes

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(“PILOT”) beginning in 2018 and ending in the final calendar year of the Apartment Complex’s required 15-year compliance period under Section 42 of the Code. The amount of the PILOT for each calendar year would be equal to 10% of the difference between (1) 100% of the tenant’s portion of collected rents for residential units in the Apartment Complex for such calendar year, and (2) 100% fo the electricity, water, sewer and fuel bills incurred by the Company with respect to the Apartment Complex for such calendar year.

Several questions arise related to the Cooperation Agreement and the PILOT Agreement. First, does the Cooperation Agreement apply to the Company and the Apartment Complex when being operated by the Company? It is unclear whether the Cooperation Agreement continues to apply to the Apartment Complex after the Lease is executed and the Apartment Complex is converted under the RAD. Under paragraph 3 of the Cooperation Agreement, Payments in Lieu of Taxes continue so long as a “Project” is owned by a public body such as the Housing Authority. However, paragraph 9 of the Cooperation Agreement provides that it remains in full force and effect with respect to a Project so long as the Housing Authority holds beneficial title to the Project. As discussed above, the law is not clear as to whether the Housing Authority would be considered the “owner” of or the holder of “beneficial title” to the Apartment Complex following transfer of the Apartment Complex pursuant to the Lease. Regardless, arguably the Housing Authority and the City have agreed and ratified the terms of the Cooperation Agreement and intend that it continue to apply to the Apartment Complex following transfer of the Apartment Complex under the Lease as evidenced by the MAHA Resolution.

Second, can the Cooperation Agreement exempt the Apartment Complex from property tax? The Cooperation Agreement provides that the City will not levy property tax on “Projects” covered by the agreement. A “Project” can only be treated as exempt from property tax if it meets statutory requirements for exemption. A taxing jurisdiction such as the City cannot agree by contract to exempt from property tax any property that does not meet statutory requirements. Accordingly, if the City treats the property as exempt and a court subsequently finds the property to be taxable, the Cooperation Agreement is null and void.

Third, is amount of the PILOT under the PILOT Agreement consistent with the requirements of the Cooperation Agreement? The answer to this question is dependent on what is included in Shelter Rent under the Cooperation Agreement. Under the PILOT Agreement, the payment is based on 10% of actual rent collected from tenants (which presumably excludes any government subsidy payments such as Section 8 payments). Under the Cooperation Agreement, the payment is based on 10% of charges to tenants for dwelling rents. It is not clear whether this included any subsidy payments or not. The City should review prior year determinations of Payments in Lieu of Taxes to determine how rent was calculated in order to determine if basis of the PILOT will be similar.

In the final analysis, it is not clear whether the Cooperation Agreement continues to apply to the Apartment Complex due to the ambiguity of the definition of “Project” in the Cooperation Agreement and whether the MAHA Resolution is sufficient to ratify and amend the provisions of the Cooperation Agreement so that it does continue to apply. Moreover, no contractual arrangement will entitle a property to exemption if it does not otherwise satisfy statutory requirements for exemption. Notwithstanding, parties can voluntarily enter into an agreement

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for payments in lieu of taxes absent the existence of an agreement such as the Cooperation Agreement. The PILOT Agreement is a separate and distinct agreement and the Company is agreeing to make the PILOT. This should be true whether the Cooperation Agreement continues in full force and effect. The amount of the PILOT is apparently consistent with the Payment In Lieu of Taxes that the City would receive for the Apartment Complex under the Cooperation Agreement, assuming that Shelter Rent for purposes of determining the Payment in Lieu of Taxes under the Cooperation Agreement includes only actual rent paid by tenants and not total rent which would include any governmental subsidy payments. In addition, the PILOT is limited so that it does not exceed the amount that would be levied as the annual property tax by the City. Wis. Stat. §66.12011(22) allows a housing authority to make payments in lieu of taxes provided the payment does not exceed what actual real estate taxes would be on the property. Thus, the PILOT Agreement should be enforceable against the Company, regardless of the applicability of the Cooperation Agreement.

\* \* \*

The law is uncertain with respect to the issues addressed in this memo. Accordingly, the conclusions contained herein are not free from doubt and there can be no absolute assurance that the conclusions expressed herein would be followed if the issues were to be litigated.

Attachment: PILOT-Legal Analysis (2736 : Resolution on PILOT for Merrill Area Housing Authority)