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January 30, 2017

Mr. Antonio M. Pérez  
Executive Director  
Housing Authority of the City of Milwaukee  
809 North Broadway, 3<sup>rd</sup> Floor  
Milwaukee, WI 53202

Re: Tax Exemption after RAD Conversion

Dear Mr. Pérez:

You have advised that Milwaukee's low-income public Housing Authority (HACM) is planning to convert its federally funded public housing portfolio to the Rental Assistance Demonstration (RAD) program, authorized by Congress in 2012 (in the Consolidated and Further Continuing Appropriations Act of 2012, Public Law 112-55). The RAD program's stated purpose is:

To conduct a demonstration designed to preserve and improve public housing . . . through the voluntary conversion of properties with assistance under Section 9 of the U.S. Housing Act of 1937<sup>1</sup> . . . to properties with assistance under a project-based subsidy contract under Section 8 of the Act.

The amounts allocated to the RAD public housing conversions: "shall be equal to the amounts transferred from the Public Housing Capital Fund and the Public Housing Operation Fund." *Id.*

HACM currently operates under a Cooperation Agreement with the City of Milwaukee, entered into in 1969, which provides, at Section 3(a), that:

<sup>1</sup> The original federal legislation creating the public housing program.



Under the constitution and statutes of the State of Wisconsin, all Projects<sup>2</sup> are exempt from all real and personal property taxes levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the Government for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the Government in connection with such Project remain unpaid, whichever period is the longest, the Municipality agrees that it will not levy or impose any real or personal property taxes upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

In fact, such a favorable tax arrangement between a public housing authority (PHA) and its local governing body is a requirement of the Annual Contributions Contract (ACC) that HACM needed to enter into with HUD in order to provide public housing in the city.<sup>3</sup> In return, the federal government agreed to provide annual funding through HUD.

We understand from our discussions with your Chief Financial Officer, Mr. Aniban, that a RAD conversion is a mixed-finance form of property renovation, wherein funds for improvements will come from low-income housing tax credits issued by the state or federal government; a housing assistance payments (HAP) contract funded by HUD; and annual PHA Capital Fund grants.

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<sup>2</sup> The term "project" has been replaced by the word "development" in most jurisdictions.

<sup>3</sup> HACM's current ACC, No. C-6135, was entered into with the federal government on September 13, 1995.

The tax credit financing component raised a concern due to the (statutory) requirement that such credits can only be issued to “for-profit” entities and that, during the 15-year tax credit period, HACM retains only a fraction of its legal ownership interest, ceding 99.99% to the investor member of the LLC in order to raise the necessary capital to facilitate the rehabilitation or construction of developments, thereby improving the living conditions of your residents without having to raise their rent or relinquish operational control of the properties.

As you know, Wis. Stat. § 70.11 lists the property that is exempted from property taxes under state law, and includes property of housing authorities exempt from taxation under § 66.1201(22). That state law, in turn, provides:

(22)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.

We have had the opportunity to meet and discuss your plans with City Assessment Commissioner Steve Miner and Assistant Commissioner Peter Bronek. They agreed that a change in federal funding source that does not alter the use or mission of HACM property and meets at least one of the three prerequisites set out in the 1969 Cooperation Agreement, would not call into question the tax-exempt status afforded such property under state law or under the terms of the Agreement, under which HACM agreed to make annual payments in lieu of taxes (PILOT).

In conclusion, then, we have reviewed the relevant state law, your Cooperation Agreement with the City, and the various publications on RAD produced by the U.S. Department of Housing and Urban Development. It is our opinion that upon conversion to a RAD development, each HACM property will continue to comply with the policies behind Wis. Stat. § 66.1201 and thereby continue to meet its statutory mission to its tenants and residents of the City of Milwaukee. In fact, the conversion of these properties is expected to allow HACM to obtain financing to

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rehabilitate units that are otherwise at risk of being lost from its low-income housing inventory. Thus, the conversion to RAD will actually enhance HACM's ability to do a better job meeting its statutory responsibilities and mission.

If we can be of any further assistance, please do not hesitate to ask.

Very truly yours,



GRANT E. LANGLEY  
City Attorney



JOHN J. HEINEN  
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JJH:ld

c: Mr. Steve Miner

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