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March 3, 2016

**VIA EMAIL**

Mr. Scott B. Manske  
Comptroller  
Milwaukee County  
County Courthouse  
901 North Ninth Street, Room 301  
Milwaukee, WI 53233

Re: Change in Ownership of O'Donnell Parking Structure and Certain Art Museum  
Center Buildings

Dear Scott

You have asked us to consider the effect that the proposed transfer of the O'Donnell Parking Structure ("O'Donnell") and the Saarinen and Kahler buildings (collectively, the "Art Museum") to the Milwaukee Art Museum, Inc. ("MAM") would have on the tax status of the obligations issued by Milwaukee County (the "County") to finance improvements to O'Donnell and the Art Museum. We understand that MAM is an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and the related regulations of the Internal Revenue Service (the "Regulations"). We have based our conclusions on our review of version 6 of the term sheet (the "Term Sheet"), the County's lease with MAM and a Development Agreement between the County and MAM. If there are changes to the Term Sheet or if the final form of the transaction does not follow the terms outlined in the Term Sheet, we would have to revisit the analysis and our conclusions could change.

The transfer of O'Donnell and the Art Museum to MAM will not in and of itself change the tax status of the County's outstanding obligations that were issued to finance improvements to O'Donnell and the Art Museum. The tax status of obligations (including bonds, notes or capital lease) issued by the County to finance renovations and other improvements is different for obligations issued for O'Donnell ("O'Donnell Obligations") and the Art Museum ("Art Museum Obligations"). Accordingly, the analysis regarding the effect of the transaction on the tax status of each is different. We will first address the O'Donnell Obligations and then the Art Museum Obligations.

**O'Donnell Obligations**

The O'Donnell Obligations are all governmental, tax advantaged or tax-exempt obligations and as such must comply with certain requirements of the Code and Regulations in

order to maintain their tax status. One of those requirements is the Private Activity Test which is described below. Because of the change in ownership and use of O'Donnell that would result from the transfer of the property to MAM, we analyzed whether such change would cause the O'Donnell Obligations to meet the Private Activity Test. We have concluded that it will not. Because the Private Activity Test will not be met, the tax status of the O'Donnell Obligations will not change. An explanation of the Private Activity Test as it relates to our conclusion follows.

The Private Activity Test concerns the ownership and use of property financed with the proceeds of tax-exempt or tax advantaged bonds ("Financed Property"). There are two prongs to the Private Activity Test: (1) private business use (use by an entity other than state or local governmental unit) and (2) private payment or security derived directly or indirectly from the Financed Property. Both prongs of the test have to be met in order for the Private Activity Test to be met. The transfer of ownership and use of O'Donnell by MAM will constitute use by an entity other than a state or local government and accordingly the first prong of the test will be met. However, as the transaction is currently structured, there is no private payment that would cause the second prong of the test to be met. The release of the County from fixed and determinable legal obligations could constitute an indirect private payment. We have concluded that the release of the County from its obligation under the existing lease with MAM to pay for major maintenance, repair and replacement of certain portions of the Art Museum does not constitute an indirect private payment to the County for purposes of the Code and Regulations because those obligations are not fixed and determinable today. Further, the County is not being released from its existing obligation to provide annual operating support to MAM or to perform under the Development Agreement with MAM. As a result, only the first prong of the Private Activity Test is met and not the second. In this way, the transfer of the property to MAM is in the nature of a grant for federal tax purposes. Accordingly, the O'Donnell Obligations will not meet the Private Activity Test, the tax status of the O'Donnell Obligations will not be adversely affected and the County does not have to take remedial action with respect to the O'Donnell Obligations.

#### **Art Museum Obligations**

Because of use by MAM and other 501(c)(3) entities of the Art Museum, the County issued the Art Museum Obligations as "qualified 501(c)(3) bonds." Qualified 501(c)(3) bonds are tax-exempt obligations and as such are subject to certain provisions under the Code and Regulations in order to maintain their tax status. We analyzed whether the proposed change in ownership of the Art Museum would cause the Art Museum Obligations to violate any such provisions and have concluded that it will not. An explanation of our conclusion follows.

For qualified 501(c)(3) bonds, such as the Art Museum Obligations, all of the Financed Property must be owned by a governmental unit or a 501(c)(3) entity and at least 95% of the proceeds of the bonds must be used by a governmental unit or 501(c)(3) entity in activities which



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do not constitute unrelated trade or business activities. If, after issuance of the bonds, a change in ownership and/or use of the Financed Property occurs, but the Financed Property will continue to be owned and used by either a governmental unit or a 501(c)(3) entity, no remedial or corrective action is necessary to protect the tax-exempt status of the outstanding bonds. In this case, since MAM is a 501(c)(3) organization and will continue to use the Art Museum for its exempt purposes after the transfer, the qualified 501(c)(3) bond requirements will still be satisfied after the transfer of the Art Museum to MAM and no remedial action must be taken by the County.

We should note that the covenants with respect to use of the Art Museum remain in effect after the transfer and for as long as the Art Museum Obligations remain outstanding. Having the obligations attendant to those covenants without having control of the Art Museum creates potential risk for the County. For example, if the management or use of the Art Museum was subsequently changed so that qualified 501(c)(3) bond requirements were no longer satisfied, the change could adversely affect the tax status of the Art Museum Obligations and require the County to take corrective or remedial action with respect to the Art Museum Obligations even though the County had no control over the circumstances that caused the change. Therefore, the County should obtain contractual assurances from MAM that the restrictions will be complied with. We understand that the Term Sheet provides that continued compliance with the use restrictions will be required of MAM.

### CONCLUSION

The transfer of ownership of O'Donnell and the Art Museum to MAM under the terms described in the Term Sheet will not adversely affect the tax status of the O'Donnell Obligations or the Art Museum Obligations and will not require the County to take remedial action to preserve the tax status of the O'Donnell Obligations or the Art Museum Obligations.

Very truly yours,

QUARLES & BRADY LLP



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