

**NOTICE OF CIRCUMSTANCES OF CLAIMS
AND CLAIMS (Itemization of Relief Sought)**

September 8, 2020

To: City of Madison
Clerk's Office
City-County Building
210 Martin Luther King Jr Blvd.
Room 103
Madison, WI 53703

City of Madison Treasurer
Craig Franklin, Treasury & Revenue Manager
City-County Building
210 Martin Luther King Jr. Blvd.,
Room 107
Madison, WI 53703



PLEASE TAKE NOTICE that the following claimants: 800 South, LLC; 825 E. Washington, LLC; Capitol Spring, LLC; Colonial Corner, LLC; North Park Apartments, LLC; Onsgard I, LLC; Onsgard, LLC; OTS Enterprises, LLC; Park Central I, LLC; Park Central II, LLC; Park Central III, LLC; Park Central, LLC; Park Terrace West, LLC; Pheonix, LLC; Port Vista, LLC; Randall Park Rentals I, LLC; Randall Park Rentals II, LLC; Randall Park Rentals III, LLC; Skyview Apartments I, LLC ("Claimants"), each of whose address is 222 North Street, Madison Wisconsin, 53704 ("Claimants"), by their attorneys, Reinhart Boerner Van Deuren s.c., hereby give notice of the following circumstances of claim against the City of Madison and the City Treasurer (the "City") with this Notice of Circumstances of Claim and Claim and present the City with this claim (containing an itemized statement of the relief sought) by Claimants, pursuant to Wisconsin Statutes section 893.80(1d). This Notice of Circumstances of Claim and Claim constitutes written notice of the circumstances of the claims and claims and includes an itemized statement of the relief sought.

Notice of Circumstances of Claims
under Wisconsin Statutes section 893.80(1d)

As a result of COVID-19, the Wisconsin legislature and local governments provided relief for late property tax payments due to impacts of COVID-19 on property owners. In a non-statutory provision inserted at the end of 2019 Wis. Act 185, the Legislature provided:

(25) INTEREST ON LATE PROPERTY TAX PAYMENTS. Notwithstanding ss. 74.11, 74.12, and 74.87, for property taxes payable in 2020, after making a general or case-by-case finding of hardship, a taxation district may provide that an installment payment that is due and payable after April 1, 2020, and is received after its due date *shall not accrue interest or penalties if the total amount due and payable in 2020 is paid on or*

before October 1, 2020. Interest and penalties shall accrue from October 1, 2020, for any property taxes payable in 2020 that are delinquent after October 1, 2020. A taxation district may not waive interest and penalties as provided in this subsection unless the county board of the county where the taxation district is located first adopts a resolution authorizing such waiver and establishing criteria for determining hardship, and the taxation district subsequently adopts a similar resolution. A county that has adopted a resolution authorizing the waiver of interest and penalties under this subsection shall settle any taxes, interest, and penalties collected on or before July 31, 2020, on August 20, 2020, as provided under s. 74.29 (1), and settle the remaining unpaid taxes, interest, and penalties on September 20, 2020. The August 20, 2020, settlement shall be distributed proportionally to the underlying taxing jurisdictions.

2019 Wis. Act 185, § 105(25)(emphasis supplied).

The legislature created a sequence of events that had to occur before a municipality could waive interest and penalties pursuant to Act 185. First, the county board had to adopt an authorizing resolution and, second, the taxation district had to adopt a similar resolution.

In this case, in accordance with Act 185, the City of Madison adopted the suspension of interest and penalties for late property tax installment payments by Resolution 60350. The resolution was presented on May 5, 2020 and signed on or about May 5, 2020. The resolution was contingent on adoption of a similar resolution by Dane County. (Exhibit A). Dane County authorized the taxation district to waive interest and penalties on property tax installment payments due on or after April 1, 2020 by Resolution 2020 RES-020. This resolution was signed by the County Executive on May 11, 2020. (Exhibit B). Thus, as of May 11, 2020, all of the conditions were satisfied such that the waiver of interest and penalties on late installment payments of property taxes was waived so long as all payments were made by October 1, 2020.

Claimants used the installment plan to pay their 2019 property taxes due in 2020 for the properties they owned in the City. Claimants timely paid their first installments on or before January 31, but due to financial difficulties, were untimely on their March 31 payment. The City, pursuant to Wis. Stat. § 74.12(10), attempted to accelerate payment on the remaining installments and charge Claimants interest and penalties not only on the March 31 payment, but also on the subsequent installments. These actions by the City are inconsistent with Act 185.

Act 185 provides that for any payment that is due after April 1, 2020—i.e., the May 31, 2020 and July 31, 2020 payments—can be made as late as October 1 without interest and penalty. The City has taken the position that Wis. Stat. 74.12(10) converted the May 31 and July 31, 2020 payments into being due prior to April 1, 2020. However, any argument that §74.12(10) converted the May 31 and July 31, 2020 installment payments into an installment payment due before April 1, 2020 is contradicted by the explicit language of Act 185, i.e., "Notwithstanding ss. 74.11, 74.12 . . ." In other words, the legislature acknowledged that other statutes may accelerate payment,

including Wis. Stat. § 74.12(10), but despite those provisions, taxpayers shall have until October 1, 2020 to make their May 31 and July 31, 2020 installment payments.

As of the date of these Claims, Claimants have made all of the annual payments including paying the unlawful penalties and interest applied by the City, thus all payments were made prior to October 1, 2020. The City's attempt to charge Claimants interest and penalties on the May 31 and July 31, 2020 installment payments is contrary to the statutory directive and is the basis for these claims.

The City's imposition of interest and penalties on the May and July installments, which Claimants have paid in full, resulted in unlawful taxation, in excess and in violation of the authorized statutory scheme. Claimants are injured by the City's position in this matter, accordingly serve this Notice of Claim on the City.

Claims/ Itemization of Relief Sought under
Wisconsin Statutes section 893.80(1d)(b)

The following Claimants paid the City unlawful, excess penalties and interest on the following properties in the amounts listed as follows.

Claimant	Property Address	Excess interest & penalties paid	Claimant Total
800 South, LLC	803 E Washington Ave	\$10,066.74	
	811 E Washington Ave	\$11,715.36	
			\$21,782.10
825 E Washington, LLC	824 E Main St	\$213.09	
	825 E Washington Ave	\$824.89	
			\$1,037.98
Capitol Spring, LLC	1216 Spring St	\$18,674.41	
			\$18,674.41
Colonial Corner, LLC	206 North St	\$466.98	
	2565 E Johnson St	\$1,315.26	
	2602 Eastlawn Ct	\$345.55	
	2611 E Johnson St	\$2,965.32	
	3710 Packers Ave #101	\$72.80	
	3710 Packers Ave #102	\$109.20	
	3710 Packers Ave #103	\$72.80	
	3710 Packers Ave #201	\$116.66	
	3710 Packers Ave #202	\$78.59	
	3710 Packers Ave #203	\$109.54	
	3710 Packers Ave #204	\$118.67	
	3714 Packers Ave #101	\$109.20	
	3714 Packers Ave #102	\$72.80	
	3714 Packers Ave #103	\$72.80	
	3714 Packers Ave #201	\$78.59	
	3714 Packers Ave #202	\$111.11	
	3714 Packers Ave #203	\$80.77	
	3714 Packers Ave #204	\$110.70	
			\$6,407.34
North Park Apartments, LLC	1613-1619 Troy Dr	\$5,921.24	
			\$5,921.24
Onsgard I, LLC	1705 Onsgard Rd	\$764.76	
	1709 Onsgard Rd	\$764.76	
			\$1,529.52
Onsgard, LLC	1718 Onsgard Rd	\$924.56	
			\$924.56

Claimant	Property Address	Excess interest & penalties paid	Claimant Total
OTS Enterprises, LLC	1745 Parkside Dr	\$1,883.20	\$1,883.20
Park Central I, LLC	404 E Wilson St	\$1,806.21	\$1,806.21
Park Central II, LLC	135 S Hancock St	\$2,167.91	\$2,167.91
Park Central III, LLC	304 N Hamilton St	\$1,029.13	
	307-309 E Gorham St	\$447.98	
	319 N Butler St	\$376.64	
	323 N Butler St	\$253.65	
			\$2,107.40
Park Central, LLC	1030 Jenifer St	\$539.47	
	1034 Jenifer St	\$538.59	
	125 S Hancock St	\$565.93	
	315 E Gorham St	\$395.85	
	317 E Gorham St	\$471.37	
			\$2,511.21
Park Terrace West, LLC	1323 Spring St	\$11,063.18	
	39 N Randall Ave	\$190.28	
			\$11,253.46
Pheonix, LLC	2001-2003 University Ave	\$620.24	
	2005-2007 University Ave	\$725.12	
	2009-2011 University Ave	\$725.12	
	2014 Kendall Ave	\$503.58	
	2019 University Ave	\$1,222.30	
			\$3,796.36
Port Vista, LLC	3602-3702 Packers Ave	\$5,231.29	
			\$5,231.29

Claimant	Property Address	Excess interest & penalties paid	Claimant Total
Randall Park Rentals I, LLC	103-107 N Randall Ave	\$2,377.05	
	1115 Spring St	\$1,178.72	
	111 N Randall Ave	\$442.87	
	121 S Hancock St	\$2,486.01	
	126 S Franklin St	\$2,504.91	
	127-129 S Hancock St	\$934.57	
	1309 Spring St	\$1,977.63	
	1314 Spring St	\$1,284.75	
	1315 Spring St	\$2,377.05	
	1316 Randall Ct	\$489.79	
	1317 Spring St	\$1,643.55	
	1320 Spring St	\$1,127.88	
	98 N Orchard St	\$44.03	
	502 E Main St	\$1,511.37	
			\$20,380.18
Randall Park Rentals II, LLC	1308 Spring St, 102 & 112 N Orchard St	\$4,875.39	
			\$4,875.39
Randall Park Rentals III, LLC	45 N Orchard St	\$2,494.73	
			\$2,494.73
Skyview Apartments I, LLC	1706 Onsgard Rd	\$924.56	
	1713-1715 Onsgard Rd	\$815.63	
	1717-1719 Onsgard Rd	\$815.63	
	1721-1723 Onsgard Rd	\$815.63	
	1722 Onsgard Rd	\$713.92	
	1725 Onsgard Rd	\$838.23	
	3714-3832 Orin Rd	\$4,831.80	
	3802 Lien Rd	\$888.23	
			\$10,643.63

In the aggregate, Claimants have suffered damages in the amount of \$125,428.12 for the City's failure to follow the statutory scheme and its unlawful calculation of interest and penalties related to the properties at issue. Consequently, in accordance with the Claimants' aforementioned Appeal, Claimants seek relief from and against the City in the amount of \$125,428.12. Claimants also seek reasonable interest, costs and disbursements.

Claimants reserves the right to supplement and amend this Notice of Circumstances of Claim and Claim (Itemization of Relief Sought). Furthermore, as the

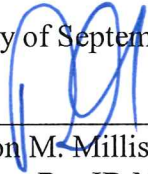
City had actual notice of the circumstances surrounding this claim, this Notice of Circumstances of Claim and Claim is unnecessary. This Notice of Claim and Claim does not constitute an election of remedy nor does it preclude or prohibit Claimants from taking any other legal action or bringing any other legal claims it deems necessary to seek redress from matters related to the City's refusal to return Claimants' overpayment of interest and penalties imposed by the City.

Dated at Madison, Wisconsin, this 8th day of September, 2020.

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2020 RES-020

AUTHORIZING A TAXATION DISTRICT TO WAIVE INTEREST AND PENALTIES ON
PROPERTY TAX PAYMENT INSTALLMENTS DUE ON OR AFTER APRIL 1, 2020

In December, 2019, a novel strain of coronavirus known as COVID-19 was detected, and COVID-19 has continued to spread throughout the world, including to the United States and the State of Wisconsin (“COVID-19 Pandemic”).

In response to the COVID-19 Pandemic the federal government, state governments, and local governments are working together to contain the further spread of the disease and treat existing cases. On January 31, 2020, the United States Department of Health and Human Services declared a Public Health Emergency, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic, on March 12, 2020 the Governor of the State of Wisconsin declared a Health Emergency in the State, and on March 16, 2020 Dane County (the “County”) declared a state of emergency under authority granted by Wis. Stats. Chap. 323.

The federal government has enacted various laws and regulations in response to the COVID-19 Pandemic including, without limitation, the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act. On March 24, 2020, Secretary-designee Andrea Palm of the Wisconsin Department of Health Services issued Emergency Order #12, Safer at Home Order (“Safer at Home Order”) requiring that everyone in Wisconsin stay at their home or place of residence except in limited circumstances until April 24, 2020. On April 16, 2020, Secretary-designee Palm extended the Safer at Home Order, with certain modifications, to May 26, 2020, pursuant to Emergency Order #28.

The federal, state, local and individual responses to the COVID-19 Pandemic and the uncertainty as to the effectiveness of those responses in mitigating the duration of the COVID-19 Pandemic have created economic hardship and uncertainty in the County’s business community, households throughout the County and for every County property taxpayer. Prominent economists have predicted record level unemployment rates for the coming months and this prediction suggests that County residents will also experience record level unemployment rates in the coming months, and an unprecedented number of businesses and employers throughout the State and in the County have been required to suspend operations.

In response to the COVID-19 Pandemic, the various federal laws and regulations implemented as a result of the COVID-19 Pandemic, and the various emergency orders and regulations implemented by state and local governments, on April 15, 2020, the Wisconsin Legislature enacted 2019 Wisconsin Act 185 (“Act 185”), which Governor Evers signed on April 16, 2020. Section 105(25) of Act 185 authorizes, among other things, the County to adopt a resolution enabling taxation districts in the County to waive interest and penalties on 2020 property tax installment payments due and payable after April 1, 2020, until October 1, 2020. A resolution authorizing the above referenced waiver must also establish criteria for determining hardship that would qualify a property tax payer for the waiver. The County’s authorization for a taxation



46 district to implement the above referenced waiver is contingent upon a taxation district adopting
47 a resolution in similar form and content as to the County's resolution.

48
49 Dane County Ordinance s. 26,24 imposes a penalty on delinquent general property taxes,
50 special assessments, special charges and special taxes in the amount of 0.5% per month of
51 fraction of the month.

52
53 This Resolution is intended to (1) serve as the County's enabling resolution
54 for purposes of Section 105(25) of Act 185; (2) authorize any taxation district located in the
55 County to waive interest and penalties on installment payments of property taxes due and
56 payable after April 1, 2020, in a manner consistent with Act 185 provided the taxation district
57 adopts a similar resolution and otherwise satisfies all conditions precedent to waiver contained in
58 Act 185 and this Resolution; and (3) declare that all property taxpayers in the County are
59 experiencing hardship as a result of the economic conditions associated with the COVID-19
60 Pandemic, the various federal laws and regulations implemented as a result of the COVID-19
61 Pandemic, the various emergency orders and regulations implemented by state and local
62 governments, and Act 185. While the plain language of Section 105(25) of Act 185 allows for
63 either a general or a "case-by-case" finding of hardship to qualify for the above referenced
64 waiver of interest and penalties, the County intends by this Resolution to authorize a taxation
65 district to waive interest and penalties for all property taxpayers in the County otherwise eligible
66 for waiver under Section 105(25) of Act 185 on a finding of general hardship based upon the
67 economic conditions described in this Resolution, which the Board determines has adversely
68 affected all taxpayers in the County. This Resolution is not intended to be construed as
69 authorizing any sort of "case-by-case" finding of hardship by a taxation district. Finally, this
70 Resolution is intended to allow a taxation district to waive the penalty imposed by Dane County
71 Ordinance s. 26.24 for property taxpayers qualifying for the waiver of interest and penalties as
72 provided in Section 105(25) of Act 185 and this Resolution.

73
74 **NOW THEREFORE BE IT RESOLVED** that pursuant to Section 105(25) of Act 185, the Board
75 hereby finds and authorizes the following:

76 1. Because of the COVID-19 Pandemic, the various federal laws and regulations implemented as
77 a result of the COVID-19 Pandemic, the various emergency orders and regulations implemented
78 by state and local governments, and Act 185, the

79 Board finds that all property taxpayers are experiencing hardship as that term is used in Section
80 105(25) of Act 185.

81 2. A taxation district is authorized to waive interest and penalties for property taxes payable in
82 2020 for an installment payment that is due and payable after April 1,
83 2020. This Resolution authorizes a taxation district to waive interest and penalties as provided in
84 Section 105(25) of Act 185 for all property taxpayers in the taxation district such that if a
85 taxation district authorizes the waiver under Section 105(25) of Act 185, it must offer the waiver
86 to all property taxpayers in the taxation district.

87 Notwithstanding the foregoing, nothing in this Resolution authorizes a taxation district to waive
88 interest and penalties for property taxes payable in 2020 for an installment payment that was due
89 and payable prior to April 1, 2020, except as otherwise permitted under applicable law.

- 90 3. The terms of Dane County Ordinance s. 26,24 imposing a penalty on delinquent property tax
91 payments are hereby modified for purposes of implementing the terms of this Resolution and
92 Section 105(25) of Act 185.
- 93 4. As provided under Section 105(25) of Act 185, the County shall deviate from the settlement
94 procedure set forth in Wis. Stat. § 74.29 and, instead the County shall settle property taxes,
95 interest and penalties collected on or before July 31, 2020, on
96 August 20, 2020, as provided under Wis. Stat. § 74.29(1), and on or before September 20, 2020
97 settle the remaining unpaid taxes, interest, and penalties. The August 20, 2020, settlement shall
98 be distributed proportionally to the underlying taxing jurisdictions according to payments
99 collected on or before July 31, 2020.
- 100 5. Notwithstanding Wis. Stat. § 74.57, the County Treasurer is authorized, but not required, to
101 omit from the tax certificate delivered to the County on September 1,
102 2020, all parcels of real property for which a taxation district has waived interest and penalties as
103 provided in this Resolution.
- 104 6. The County Treasurer is directed to consult with the Wisconsin Department of
105 Revenue, all taxation districts in the County, and corporation counsel regarding the
106 implementation of this Resolution and the procedures associated with, or contemplated by, this
107 Resolution.
- 108 7. Other County officers are authorized and directed to assist the Treasurer in the interpretation,
109 application and implementation of this Resolution and Section
110 105(25) of Act 185.
111



Dane County

Signature Copy

Resolution: 2020 RES-020

File Number: 2020 RES-020

AUTHORIZING A TAXATION DISTRICT TO WAIVE INTEREST AND PENALTIES ON PROPERTY TAX PAYMENT INSTALLMENTS DUE ON OR AFTER APRIL 1, 2020

Adopted by the County Board on May 7, 2020.

Approve Veto

County Executive



Date

5-11-20

