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R. C. No. 267 - 21 - 22. By FINANCE AND PERSONNEL COMMITTEE.
April 18, 2022.

Your Committee to whom was referred R. O. No. 92-21-22 by City Clerk submitting a Notice of Circumstances and Notice of Claim from William T. Stuart, Attorney at Law, regarding Sheboygan Acquisitions LLC and Sheboygan Resort Operator LLC; recommends referring to Finance and Personnel Committee of the 2022-2023 Council.

*F+P
2022-2023 Council*

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

II

33

R. O. No. 92 - 21 - 22. By CITY CLERK. October 18, 2021.

Submitting a Notice of Circumstances and Notice of Claim from William T. Stuart, Attorney at Law, regarding Sheboygan Acquisitions LLC and Sheboygan Resort Operator LLC.

F4P

CITY CLERK

16-21
MKC

WILLIAM T. STUART
ATTORNEY AT LAW
WTS@MTFN.COM

October 7, 2021

Process/Server
Date: 10/8/21 Time: 10:25 am pm
 Personal Substitute
 Posted Corporate



VIA HAND DELIVERY

City of Sheboygan
c/o Meredith DeBruin, City of Sheboygan City Clerk
828 Center Avenue, Suite 103
Sheboygan, Wisconsin 53081

RE: Sheboygan Acquisitions LLC and Sheboygan Resort Operator LLC Notice of Claim Pursuant to Wis. Stat. § 893.80(1d)(a) and Wis. Stat. § 893.80(1d)(b)

Dear Ms. DeBruin:

Please be advised that our office represents Sheboygan Resort Operator LLC d/b/a Blue Harbor Resort ("SRO"), and Sheboygan Acquisitions LLC ("SA") in connection with all matters relating to the Blue Harbor Resort Condominium Association, Inc. ("Association").¹

This letter serves as SRO's and SA's Notice of Circumstances and Notice of Claim to the City of Sheboygan, a Wisconsin municipal corporation (the "City"), providing notice of both the circumstances of SRO's and SA's claim against the City pursuant to Wis. Stat. § 893.80(1d)(a) and notice of that claim, including SRO's and SA's respective addresses and an itemized statement of relief, pursuant to Wis. Stat. § 893.80(1d)(b). SA's address is 1111 Willis Avenue, Wheeling, Illinois 60090. SRO's address is 725 Blue Harbor Dr., Sheboygan, Wisconsin 53081.

A number of disputes regarding the Condominium have arisen between the Association on the one hand and SRO and SA as owners of one or more Units in the Condominium on the other hand. One of those disputes involves the Association's failure to enforce the requirement contained in documents affecting the Condominium which prohibit any person from occupying any Unit in the Condominium for a period exceeding twenty-nine (29) consecutive days (the "29-Day Restriction"). The resolution of that dispute may involve matters upon which the City is entitled to be heard. The City is therefore likely to be made a party to any lawsuit involving the interpretation and enforceability of the 29-Day Restriction.

At this time SRO and SA anticipate that the City will only be named as an interested party in any lawsuit it files against the Association related to the interpretation of the 29-Day Restriction. To the extent the naming of the City as an interested party in any such lawsuit involving the interpretation and enforceability of the 29-Day Restriction triggers the notice requirements of Wis. Stat. § 893.80, this letter serves as such notice. This letter also serves as such notice in the event the City becomes involved in such lawsuit in any other capacity other than an interested party.

¹The Association is the association for the Blue Harbor Resort Condominium (the "Condominium"). The Condominium was created by that certain Declaration of Blue Harbor Resort Condominium dated June 24, 2004, and recorded in the Office of the Register of Deeds for Sheboygan County, Wisconsin (the "Register's Office") on June 29, 2004 as Document No. 1738057 as thereafter amended (the "Declaration"). Any capitalized term in this Notice that is not specifically defined in this Notice shall have the same meaning given to such term in the Declaration.

I. NOTICE OF CIRCUMSTANCES OF CLAIM

The Declaration and other documents prohibit any individual from continuously occupying any Unit in the Condominium for a period of more than 29-day consecutive days. On June 21, 2021, Unit 847 was sold to a new Unit Owner. It is SRO's and SA's understanding that the new owner of Unit 847 is using this Unit as her permanent residence and is continually occupying the Unit. Accordingly, it is SRO's and SA's understanding that the owner of Unit 847 continuously occupied Unit 847 for more than twenty-nine consecutive days in violation of the 29-Day Restriction, has continued to do so since that time, and intends to do so on a going forward basis.

SRO and SA have brought these matters to the Association's attention. The Association has not taken any actions to enforce the 29-Day Restriction, and it is SRO's and SA's understanding that the Association is not going to take any actions to do so. Furthermore, other Unit Owners are listing their Units for sale as owner-occupied units, demonstrating that this issue will not be isolated if it is not addressed now.

The following will explain the circumstances surrounding SRO's and SA's claim in more detail.

1. The Documents Creating the 29-Day Restriction.

The Declaration states that no individual may continuously occupy a Unit for a period exceeding 29 days. Section 12.1 of the Declaration states as follows:

Use. Declarant, each Unit Owner, and their respective agents, representatives, guests, tenants and invitees shall be subject to the use restrictions set forth in this Declaration and the Condominium Documents including, but not limited to, the Rules and Regulations as amended from time to time, which such restrictions include, without limitation, (i) the restriction imposed by the City's building code in effect on the date of this Declaration that no individual may continuously occupy a Unit for a period exceeding 29 days, and (ii) the restriction that the Building and Units are intended for and restricted exclusively to residential uses; provided, however, that Declarant reserves the right to use each of the unsold Units as a sample, model or sales office or management office for the Condominium.

A separate restriction on the continuous occupancy of a Unit beyond a 29-day period is also found in the South Pier District Restrictive Covenants And Cross Easement Agreement dated July 30, 2003 and recorded with the Register's Office on August 12, 2003 as Document No. 1701704, as amended by the First Amendment to South Pier District Restrictive Covenants and Cross Easement Agreement dated June 25, 2004 and recorded with the Register's Office on July 7, 2004 as Document No. 1739007 (the "Restrictive Covenant"). Section 6(h) of the Restrictive Covenant states as follows:

The condominium units have been constructed to comply with the City of Sheboygan's building codes applicable to transient lodging. In order to comply with the City of Sheboygan's building codes, no individual may continuously occupy any particular condominium unit for a period exceeding 29 days. Any use of a condominium unit for any purpose other than as transient lodging will violate the City of Sheboygan's building codes and the City of Sheboygan shall have all rights and remedies available to it in connection with such violation, including without limitation, the right to require the owner of any such unit to bring his/her/its condominium unit into compliance with all applicable building codes. The issuance by the City of Sheboygan of an occupancy permit for any condominium

unit shall not be deemed to limit or restrict the City of Sheboygan's right to enforce its building codes and ordinances or its right to require any condominium unit owner to comply with such building codes and ordinances.

The City is a party to the Restrictive Covenant.

Each Unit Owner in the Condominium is expressly bound to the terms of the Restrictive Covenant. Section 7.8 of the Declaration states: "By acceptance of a deed of conveyance, each Unit Owner agrees to abide by the terms, conditions, restrictions, covenants and easements set forth in the Restrictive Covenants and Cross Easement Agreement." Section 1.1(ii) of the Declaration defines the "Restrictive Covenants and Cross Easement Agreement" to mean the "South Pier District Restrictive Covenants and Cross Easement Agreement dated as of July 30, 2003, . . . as the same may be amended, modified or supplemented from time to time." Furthermore, Section 1.1(r) of the Declaration defines "Condominium Documents" to include both of the Declaration and the Restrictive Covenants and Cross Easement Agreement as defined above, and Section 19.1 of the Declaration provides that by accepting "a deed of conveyance, each Unit Owner agrees to abide by the terms, conditions, restrictions, agreements, obligations, covenants and easements set forth in the Condominium Documents." Thus, each Unit in the Condominium is subject to a restriction prohibiting an individual from continuously occupying such Unit for a period exceeding 29 days.

2. Documents in the City's File Applicable to the Condominium.

On August 25, 2021, our firm delivered a public records request to the City pursuant to Wis. Stat. § 19.35 asking for various documents relating to the development of the Condominium (the "Public Records Request"). The City responded to the Public Records Request (and our additional follow-up requests) on various dates between August 27, 2021 and September 14, 2021.

As part of the City's responses to the Public Records Request, it provided copies of the Building Permits issued by the City for the sixteen (16) buildings in the Condominium. In each of those Building Permits, the following language was contained within the "Description/Remark" portion of those documents:

STATE APPROVED PLAN—TRANSACTION ID 886098 &
SITE ID 656660—RESIDENTIAL TYPE VB COMBUSTIBLE
UNPROTECTED CLASS OF CONSTRUCTION; NEW PLAN 6,920
SQ. FT. OCCUPANCY: R-1 TRANSIENT RESIDENTIAL.
ONE OF 16 CONDO UNITS²

Thus, each of the Building Permits issued by the City state that the Condominium was to be constructed for an R-1 Transient Residential occupancy. Other documents in the City's responses to the Public Records Request support the conclusion that the Condominium was to be built for an "R-1 Transient Residential" occupancy. These documents include the following:

- a. Letter dated July 21, 2003 from the Division of Safety & Buildings for the Department of State of Wisconsin ("Department") to Architectural Design Consultants Inc. ("ADC") This letter relates to the approval of the Condominium by the State of Wisconsin. The letter describes the Condominium project as an "Occupancy: R-1 Transient Residential".

² In four of the Building Permits, the clause states as follows: "SQ. FT. OCCUPANCY: 4-1 Transient Residential." The "4" appears to be a typographical error.

- b. Letter dated March 30, 2004 from the Department to ADC. Again, this letter relates to the approval of the Condominium by the State of Wisconsin and describes the Condominium project as an "Occupancy: R-1 Transient Residential".
- c. ADC Preliminary Plans dated February 16, 2003 states as follows: "The Blue Harbor Resort Condominiums development includes 16 buildings containing four rental units per building."

Three requests in the Public Records Request asked for copies of the City of Sheboygan's building code that was in effect on July 30, 2003, June 24, 2004 and June 25, 2004, including but not limited to any provisions in the City of Sheboygan's building code in effect on those dates that restricted individuals from continuously occupying any structures within the City of Sheboygan for a time period exceeding 29 days. In response to those three requests, the City made a binder available to us which contained the 2002 Wisconsin Enrolled Commercial Building Code (the "2002 Building Code"). Section 310.1 of the 2002 Building Code states in part as follows:

310.1 Residential Group R. Residential Group R occupancy includes, among others, the use of a building or structure, or a portion thereof, for sleeping accommodations when not classed as an Institutional Group I. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature (less than 30 days) including:
Boarding houses (transient)
Hotels (including motels)

.....

When read together, the documents set forth above make clear that (i) the Condominium was approved for an R-1 Transient Residential occupancy and (ii) according to Section 310.1 of the City of Sheboygan Building Code in effect on July 30, 2003, June 24, 2004, and June 25, 2004, as represented by the City, R-1 Residential occupancies were defined to be transient occupancies for less than 30 days. Thus, the 29-Day Restriction in the Declaration and the Restrictive Covenant operate to ensure the requirements of the R-1 definition in the 2002 Building Code were met (i.e., the occupancy of any Unit would be less than 30 days).

For purposes of Section 12.1 of the Declaration, there was clearly a restriction imposed by the City's building code in effect on June 24, 2004, and June 29, 2004 (the dates the Declaration was respectively signed and recorded) that no individual may continuously occupy a Unit for a period exceeding 29 days. These facts also provide further context for the provisions in Section 7 of the Restrictive Covenants.

3. Violation of the 29-Day Restriction.

As noted above, SRO and SA believe that at least one Unit Owner in the Condominium is currently occupying her Unit for non-transient purposes in continuous violation of the 29-Day Restriction. Moreover, SRO and SA understand that other Unit Owners are attempting to sell their Units and marketing the sale as being for non-transient purposes (i.e., for continuous owner-occupancy). The Association has not taken

October 7, 2021

Page 5

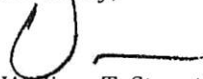
any actions to enforce the 29-Day Restriction and apparently has taken the position that the 29-Day Restriction does not apply to any Units in the Condominium. SRO and SA therefore contend that the Association is failing and refusing to enforce the 29-Day Restriction in the Declaration and Restrictive Covenant.

II. Legal Action and Notice of Claim.

SRO and SA intend to pursue a legal action against the Association seeking a declaration that the 29-Day Restriction is enforceable and prevents any Unit Owner in the Condominium, or any other individual, from continuously occupying a Condominium Unit for a period exceeding 29 days. SRO and SA may name the City as an interested party in that lawsuit on the basis that it is a party to the Restrictive Covenant and/or that it may otherwise be entitled to be heard on the issues in the case as they involve one of the City's ordinances. *See Wis. Stat. § 806.04(11)*. It will be the City's prerogative whether it chooses to be heard on any issues in that lawsuit. SRO and SA are not currently anticipating that either of them will seek any affirmative relief from the City. If, however, the 29-Day Restriction is deemed to be unenforceable as a result of any actions or omissions by the City, SRO and SA reserve the right to pursue the City for any such failures at a later time.

If you have any questions, please contact me.

Sincerely,



William T. Stuart

State Bar No. 1023839

111 E. Kilbourn Avenue, 19th Floor,
Milwaukee, Wisconsin 53202

Cc: Charles Adams, City Attorney