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Administrative Review Appeals Board Office of the City of Clerk 200 E. Wells Street Room 205 Milwaukee, WI 53202

RE: Nuisance Determination against Berrada Properties 34, LLC

4264 N. 27th Street

Administrative Review Appeal Board:

Pursuant to the Board's request of a written submission on the issues in this matter, this letter will serve as Berrada Properties 34, LLC's written submission.

## **Determination and Standard**

On December 20, 2024, the Milwaukee Police Department issued a letter to Berrada Properties 34, LLC (hereinafter, "Berrada"), that it had determined that 4264 N. 27<sup>th</sup> Street was a Chronic Nuisance Premises pursuant to MCO § 80-10. As a result of this determination, Berrada is subject to special charges for any future enforcement at its property.

MCO 80-10-3 allows a premise to be designated as a chronic nuisance premise if police responded to particular "nuisance activity" which occurred at the premise within a year. "Nuisance activity" is a defined term, which itself incorporates defined terms. The definitions necessary to understand what a "nuisance activity" is are as follows:

MCO 80-10-2-c-c-1 "Nuisance activity" means any of the following activities, behaviors or conduct whenever engaged in by persons associated with a premises. (emphasis added)

MCO 80-10-2-e "Person associated with a premises" means the premises owner, operator, manager, resident, occupant, guest, visitor, patron or employee or agent of any of these persons.

Therefore, to properly issue a chronic nuisance determination against a premises, the City must present sufficient evidence that an owner, operator, manager, resident, occupant, guest, visitor, or patron engaged in the prohibited conduct. The City fails to meet this burden if it can not identify the person who engaged in the conduct, or if the person engaged in the conduct was a trespasser.

## November 18, 2024 Incident

The first "nuisance activity" alleged by the City occurred on November 18, 2024. The City's determination alleged that there was a violation of MCO-80-10-2-C-1-L, "Crimes involving illegal possession or use of firearms" and MCO-80-10-2-c-1-gg "Robbery as enumerated in s. 943.32" The City must then show that an owner, operator, manager, resident, occupant, guest, visitor, or patron of the premises illegally possessed or used a firearm, or committed a robbery.

The night before the incident, two residents, T.L.H and D.H. invited a prostitute over to their premises, and did not pay her. The next night, two masked men broke into their apartment and robbed them at gun point. The robbers are not identified.

There is no indication, whatsoever, that the men who broke into the apartment and robbed the victims at gunpoint were an owner, operator, manager, resident, occupant, guest, visitor, or patron of the premises. The robbers have not been identified. If the identity of the robber is unknown, then certainly it can not be said that the unknown person was an owner, operator, manager, resident, occupant, guest, visitor, or patron of the premises. The City utterly fails to identify a "person associated with the premises" who committed these crimes.

It should also be noted that the City issued a determination identifying specific nuisance activities. The City may not now alter its determination to include any activity it wishes to include. This is especially true as the determination is tied specifically to a call for service. In this case, the call for service was due to a robbery and illegal use of a firearm, not because of narcotics.

## **December 13, 2024 Incident**

The second "nuisance activity" alleged by the City occurred on December 13, 2024. The City's determination alleged that there was a violation of MCO-80-10-2-C-1-L, "Crimes involving illegal possession or use of firearms." The City must then show that an owner, operator, manager, resident, occupant, guest, visitor, or patron of the premises illegally possessed or used a firearm.

Here, a resident of the premises had his cousin over. They were smoking K-2 together. The resident, his son, and the cousin all left the premises at some point to get some food. The resident told police that his cousin drove him home, and then he went inside while his cousin was still in the car. At some point soon after, the cousin entered the apartment and forced the resident and his son to strip to their underwear. There is no indication that the cousin was invited back into the property after they had gotten food.

## Conclusion

To succeed on its determination, the City must demonstrate that in <u>both</u> of the above instances, that the person who did the shooting was <u>an owner, operator, manager, resident, occupant, guest, visitor, or patron of the premises committed the crime. Here, one of the incidents clearly fails to demonstrate that, and the other one lacks sufficient evidence.</u>

Very truly yours,

/s/Michael A. Pflughoeft Jr.

Michael A. Pflughoeft Jr.