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August 22, 2017

VIA MESSENGER

Honorable William Sosnay
Circuit Court Judge, Br. 8
Milwaukee County Courthouse
901 North 9th Street, Room 414
Milwaukee, WI 53233

ROBERT H. FRIEBERT
(1938-2013)

EMERITUS

JOHN D. FINERTY

OF COUNSEL

THOMAS W. ST. JOHN

Re: *WoodSpring Suites Milwaukee Airport LLC v. City of Milwaukee*
Milwaukee County Circuit Court Case No. 17-CV-006239

Dear Judge Sosnay:

This firm represents WoodSpring Suites Milwaukee Airport, LLC (“WoodSpring”), and we are in receipt of the City Attorney’s letter requesting modification of deadlines in the Certiorari Order entered on July 28, 2017 in this case. The City seeks to put off further action in this Certiorari case until after Judge Fiorenza rules on the City’s motions to consolidate and to dismiss in the Mandamus action. A hearing is scheduled before Judge Fiorenza on August 30, 2017. WoodSpring opposes the City’s request for modification.

The City posits that Judge Fiorenza’s rulings may obviate the need for further action on the Certiorari claim. Whether Judge Fiorenza grants or denies the motion to consolidate, the City will need to respond to the Certiorari claim and compile the record because Mandamus and Certiorari are separate claims involving different legal and factual issues.

In addition, the burden to the City is minimal at best. The July 28th Order requires a response to the complaint on or before September 1st. The City was served on August 1st, so the City already has more than the 20 days required by Wis. Stat. § 802.06(1). The City’s request for delay acknowledges that it has already prepared its response to the Certiorari action with its assertion that it has filed a motion to dismiss WoodSpring’s claims – including the Certiorari claim pending before this Court — in the Mandamus action. While WoodSpring submits that a motion to dismiss the Certiorari claim in the action before Judge Fiorenza is at best premature, it demonstrates that the City’s response to the Certiorari complaint is already completed.¹ And if the City chooses to simply answer rather than move to dismiss the Certiorari claim, it will have had thirty-one days to do so. The City does not need additional time to file a response to WoodSpring’s Certiorari claim.

¹ WoodSpring will certainly address a motion to dismiss its certiorari claim at the appropriate time, but suffice it to say that the right to certiorari review is well-established and any such motion would fail. This is particularly so given the standard of review on motions to dismiss. See *State ex rel. Griffin v. Litscher*, 2003 WI App. 60, ¶ 6, 261 Wis. 2d 694, 659 N.W.2d 455.

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The City has not offered a compelling reason for delay and its request should be denied.

Thank you for your consideration.

Very truly yours,

FRIEBERT, FINERTY & ST. JOHN, S.C.



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cc: Gregg C. Hagopian – Via Email