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IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

CITY OF JACKSONVILLE,

2018-CA-1118

Plaintiff,

CV-H

vs.

TUSCAN RIVER ESTATE, LLC, a Delaware
Limited Liability Company, and
MICHAEL JOHNIGEAN, individually,

Defendants.

_____ /

**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

Plaintiff, City of Jacksonville (“City”) sues Defendants Tuscan River Estate, LLC
 (“Tuscan”) and Michael Johnigean (“Johnigean”) and states as follows:

General Allegations

1. This is an action by the City for temporary and permanent injunctive relief, civil penalties, and other related relief arising out of continuing violations of the City of Jacksonville Zoning Code, Chapter 656, Jacksonville Ordinance Code (“Ord. Code”), the Florida Fire Prevention Code and accompanying provisions of the Jacksonville Ordinance Code, and the Florida Building Code.

2. This Court has subject matter jurisdiction by virtue of the equitable relief that is sought, as well as the amount in controversy, which exceeds \$15,000.00, exclusive of interest, costs, and fees. Venue is proper as the subject property and alleged violations are located and occurring in Duval County.

3. The City is a consolidated municipal and county political subdivision, organized and existing under the laws of the State of Florida, with all of the powers of both a municipality and a county under Florida law.

4. Defendant Tuscan is a Delaware Limited Liability Company that owns and rents the following real property located within the City's jurisdictional boundaries: 4424 Kelnepa Drive, Jacksonville, Florida, 32207 (RE No. 099301-0000) ("Tuscan Property").

5. Defendant Johnnigan is a Florida resident and an employee/principal of Defendant Tuscan. Upon information and belief, Defendant Johnnigan manages and controls Tuscan's operations as they relate to the Tuscan Property, including but not limited to those set forth in Paragraph 7 below.

6. The Tuscan Property is located on the St. Johns River at the terminus of Kelnepa Drive, a narrower-than-average street that is otherwise occupied by moderately sized residences that have rarely if ever hosted large gatherings of the size and type described below. The Tuscan Property consists of approximately 1.24 acres and includes, among other features, an approximately 6,000 square foot mansion.

7. Since acquiring the Tuscan Property in June 2017, Defendants Tuscan and Johnnigan (collectively, "Defendants") have actively marketed and rented the Tuscan Property as a short term vacation rental on a daily basis. In addition, Defendants have actively marketed and rented the Property as a commercial event venue, resulting in large events, including but not limited to weddings, than have been far more numerous, frequent, and disruptive to nearby residents than those of an ordinary residential, single-family dwelling.

8. Pursuant to section Sec. 600.104, Ord. Code:

- a. Whoever commits an offense against the city, or aids, abets, counsels, commands, induces or procures its commission, is punishable as a

principal. He may be charged, convicted and punished as a principal, whether he is or is not actually or constructively present at the commission of the offense.

- b. Whoever wilfully causes an act to be done which, if directly performed by him or another, would be an offense against the city, is punishable as a principal. He may be charged, convicted and punished as a principal, whether he is or is not actually or constructively present at the commission of the offense.

Count I – Zoning Code / Non-Conforming Use

- 9. Paragraphs 1 - 8 are re-alleged and incorporated herein by reference.
- 10. Section 656.222, Ord. Code, prohibits the use of property except as expressly authorized in the Zoning Code as follows:
 - a. No structure, land, premises or water shall hereafter be used or occupied for a purpose other than as provided in the zoning district regulations, and
 - b. The use provisions in the various zoning districts are exclusive and a use not included under permitted or permissible uses shall be prohibited in the district.
- 11. Section 656.110, Ord. Code, provides that violations of the Zoning Code may be enforced by the City's Office of General Counsel through an action for injunctive relief, civil penalties, or both.
- 12. Regarding violations of Chapter 656 generally, Section 656.111, Ord. Code, provides as follows:
 - a. The owner violates this Chapter if any building, structure, land or premises on the property is . . . occupied or used in violation of this Chapter, and
 - b. An employee violates this Chapter if any act or omission of the employee within the scope of the employee's authority under the employer aids, furthers or assists a violation of this Chapter.
- 13. Regarding civil penalties for violations of Chapter 656, Section 656.111, Ord. Code, provides:

- a. That a separate offense is deemed to be committed for each infraction and each day that a violation occurs and for each day that property exists or remains in violation of Chapter 656 (§ 656.111(b));
- b. That the penalty for any such civil infraction shall be civil penalties (§ 656.111(i)); and
- c. That, unless otherwise provided for, the minimum amount of civil penalties shall be \$50.00 per violation and the maximum amount per violation shall be \$500.00 (656.111(i)).

14. Regarding attorney fees, Section 656.111(j), Ord. Code, provides that, “in any matter in which the General Counsel files a suit for civil penalties or injunctive relief or any other relief and the City prevails, the City shall be entitled to reasonable attorney's fees.”

15. The Tuscan Property is zoned Residential Low Density-90 (“RLD-90”).

16. Section 656.305, Ord. Code, specifies the permissible uses for properties zoned RLD-90. These uses do not include those described in Paragraph 7 above.

WHEREFORE, the City respectfully requests that the Court enter judgment against Defendants Tuscan and Johnnigan:

- a. Imposing civil penalties in accordance with Section 656.111, Ord. Code;
- b. Temporarily and permanently enjoining the operations set forth in Paragraph 7 above, as well as any other operations not constituting permissible uses for the Tuscan Property under Section 656.305, Ord. Code;
- c. Awarding the City its recoverable costs, including reasonable attorney fees; and
- d. Granting such other relief as the Court deems just and proper.

Count II – Zoning Code / Certificate of Use

17. Paragraphs 1-8 above are re-alleged and incorporated herein by reference.

18. Section 656.151, Ord. Code, generally requires a “certificate of use” for non-residential use of property, as follows:

No structure, other than a single family residence or duplex, shall be used . . . without first obtaining a certificate of use from the Department. Said certificate of use shall be required for each individual business and each multi-family building located within the City.

19. Section 656.160, Ord. Code, further provides that:

Any person conducting a business for which a certificate of use is required by this Chapter shall post the certificate of use in a conspicuous place in or about the place of business where it may be seen upon inspection by any official of the City.

20. At all times relevant to this action, Defendants Tuscan and Johnigan have conducted the operations set forth in Paragraph 7 above without having obtained and without posting a certificate of use as referenced in Sections 656.151 and 656.160, Ord. Code.

WHEREFORE, the City respectfully requests that the Court enter judgment against Defendants:

- a. Imposing civil penalties in accordance with Section 656.111, Ord. Code;
- b. Temporarily and permanently enjoining the operations set forth in Paragraph 7 above and any other commercial operations at the Tuscan Property not accompanied by a certificate of use that has been obtained and posted in accordance with Sections 656.151 and 656.160, Ord. Code;
- c. Awarding the City its recoverable costs, including reasonable attorney fees; and
- d. Granting such other relief as the Court deems just and proper.

**Count III – Violations of the Florida Fire Prevention Code and
Related Jacksonville Ordinance Code Provisions**

21. Paragraphs 1-8 above are re-alleged and incorporated herein by reference.
22. The Jacksonville Ordinance Code adopts by reference the Florida Fire Prevention Code (“FFPC”) as a part of the Jacksonville Building Code. *See* Ord. Code § 321.104; Ch. 420, Part 1.

23. The FFPC adopts the Standards of the National Fire Protection Association, NFPA 1 and NFPA 101, by reference. *See* Fla Admin. Code § 69A-60.003, 69A-60.004.

24. NFPA 1, Section 4.5.7.1 provides that a change in occupancy classification is permitted only where a structure conforms with the requirements of the Fire Prevention Code that apply to new construction for the proposed new use.

25. By engaging in the operations set forth in Paragraph 7 above, Defendants changed the occupancy classification of the Tuscan Property from a residential single family dwelling to an assembly occupancy as defined at NFPA 101, Section 3.3.109.2.

26. Since commencing the operations set forth in Paragraph 7 above the Tuscan Property failed to satisfy the Fire Prevention Code requirements for new construction of assembly occupancies making this use of the property as an assembly occupancy an illegal, unsafe use.

27. Pursuant to section 420.112, Ord. Code, it is a violation for any person to operate any commercial business, establishment, enterprise or function on any property when doing so has been determined to be unsafe pursuant to Chapter 420, Ord. Code. Such a violation is punishable by a civil penalty in the amount of up to \$100 per day of violation.

28. Section 420.115, Ord. Code, provides further that it is unlawful and an offense against the City for any person to violate the terms of the FFPC or the City's supplemental Fire Prevention Code provisions codified in Chapter 420, Ord. Code, and that such violations may be enforced against by actions for declaratory judgment and injunctive relief.

WHEREFORE, the City respectfully requests that the Court enter judgment against Defendants:

- a. Imposing civil penalties in accordance with Section 420.112, Ord. Code;

- b. Temporarily and permanently enjoining the operations set forth in Paragraph 7 above and any other commercial operations at the Tuscan Property creating violations of the Florida Fire Prevention Code;
- c. Awarding the City its recoverable costs; and
- d. Granting such other relief as the Court deems just and proper.

Count IV – Fire Code / Lack of Permit for Place of Assembly

29. Paragraphs 1-8 above are re-alleged and incorporated herein by reference.

30. Section 420.212, Ord. Code, provides that “[n]o place of assembly, as defined herein, shall be maintained, operated or used as such without a permit except that no permit shall be required for a place of assembly used solely as a place of religious worship.

31. “Place of assembly” is defined in Section 420.212(b), Ord. Code, as “a room or space used for assembly or educational occupancy for 50 or more occupants used for these purposes. This room or space shall include any similar occupied connecting room or space in the same story or in a story or stories above or below where entrance is common to the rooms or spaces.”

32. By engaging in the operations set forth in Paragraph 7 above, the Defendants have operated a place of assembly without the permit required under Section 420.212, Ord. Code.

WHEREFORE, the City respectfully requests that the Court enter judgment against Defendants:

- a. Temporarily and permanently enjoining the operations set forth in Paragraph 7 above and any other commercial operations at the Tuscan Property creating violations of the Florida Fire Prevention Code;
- b. Awarding the City its recoverable costs; and
- c. Granting such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s Jeffery C. Close

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