

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ACE GROUP PITTSBURGH, LLC,

Plaintiff,

v.

Y HOTEL, LP, Y HOTEL MASTER
TENANT, LLC, PITTSBURGH URBAN
INITIATIVES SUB-CDE 8, LP, PNC CDE,
LP, PNC BANK, N.A., and JOHN DOE,

Defendants.

NOTICE TO PLEAD

To Plaintiff, Ace Group Pittsburgh LLC:

You are hereby notified to file a written response to the enclosed *New Matter and Counterclaims* within twenty (20) days from service hereof or a judgment will be entered against you.

By: /s/ Samuel A. Hornak

CIVIL DIVISION

Case No. GD-21-001310

**ANSWER AND NEW MATTER TO
COMPLAINT IN EQUITY AND
COUNTERCLAIMS**

Filed on behalf of Defendants,
Y Hotel, LP and Y Hotel Master Tenant, LLC

Counsel of Record for these Parties:

Danny P. Cerrone, Jr., Esquire
Pa. I.D. No. 201091

Samuel A. Hornak, Esquire
Pa. I.D. No. 312360

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

ACE GROUP PITTSBURGH, LLC,

CIVIL DIVISION

Plaintiff,

Case No. GD-21-001310

v.

Y HOTEL, LP, Y HOTEL MASTER TENANT,
LLC, PITTSBURGH URBAN INITIATIVES
SUB-CDE 8, LP, PNC CDE, LP, PNC BANK,
N.A., and JOHN DOE,

Defendants.

**DEFENDANTS, Y HOTEL, LP AND Y HOTEL MASTER TENANT, LLC'S
ANSWER AND NEW MATTER TO COMPLAINT IN EQUITY AND
COUNTERCLAIMS**

NOW COME Defendants, Y Hotel, LP (“Y Hotel”) and Y Hotel Master Tenant, LLC (“Master Tenant”) (collectively, the “Y Hotel Defendants”), by and through their undersigned counsel, and file the following Answer and New Matter to the Complaint in Equity (the “Complaint”) filed on behalf of Plaintiff, Ace Group Pittsburgh, LLC (“Ace Group”) and Counterclaims, and state as follows:

1. The allegations contained in Paragraph 1 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the Y Hotel Defendants deny any liability to Ace Group. The Y Hotel Defendants further deny that the entry of injunctive relief in favor of Ace Group and against the Y Hotel Defendants is warranted in connection with this action.

2. The allegations contained in Paragraph 2 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the Y

Hotel Defendants deny any liability to Ace Group. The Y Hotel Defendants further deny that the entry of injunctive relief in favor of Ace Group and against the Y Hotel Defendants is warranted in connection with this action. Additionally, the Y Hotel Defendants deny the existence of any right by Ace Group, contractual or otherwise, to manage the property subject to this action.

3. The allegations contained in Paragraph 3 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 3 of the Complaint pertain to a written document, filed of record, which speaks for itself. The Y Hotel Defendants deny any allegations inconsistent with such written document. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the Y Hotel Defendants deny any liability to Ace Group.

4. After reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint. Those allegations are denied and strict proof is demanded.

5. The allegations contained in Paragraph 5 of the Complaint are admitted in part and denied in part. It is admitted that Y Hotel is a Pennsylvania limited partnership. The remaining allegations are denied. The principal place of business for Y Hotel is 6015 Spirit Street, Pittsburgh, Pennsylvania 15206.

6. The allegations contained in Paragraph 6 of the Complaint are admitted in part and denied in part. It is admitted that Master Tenant is a Pennsylvania limited liability company. The remaining allegations are denied. The principal place of business for Master Tenant is 6015 Spirit Street, Pittsburgh, Pennsylvania 15206.

7. After reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 7 of the Complaint. Those allegations are denied and strict proof is demanded.

8. After reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 8 of the Complaint. Those allegations are denied and strict proof is demanded.

9. After reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 9 of the Complaint. Those allegations are denied and strict proof is demanded.

10. The allegations contained in Paragraph 10 of the Complaint are denied. The Property is not subject to a sales agreement.

11. The allegations contained in Paragraph 11 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded.

12. The allegations contained in Paragraph 12 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded.

13. After reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 13 of the Complaint. Those allegations are denied and strict proof is demanded.

14. The allegations contained in Paragraph 14 of the Complaint are admitted.

15. The allegations contained in Paragraph 15 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny all allegations inconsistent with that written document, and strict proof of the same is demanded.

16. The allegations contained in Paragraph 16 of the Complaint are denied. Defendant, PNC Bank, N.A., does not currently have a membership interest in Master Tenant.

17. The allegations contained in Paragraph 17 of the Complaint are admitted.

18. The allegations contained in the footnote to Paragraph 18 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 18 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded. To the extent that a response is deemed to be required to the allegations, those allegations are denied and strict proof is demanded.

19. The allegations contained in Paragraph 19 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 19 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

20. The allegations contained in Paragraph 20 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 20 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

21. The allegations contained Paragraph 21 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 21 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

22. The allegations contained Paragraph 22 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 22 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

23. The allegations contained in Paragraph 23 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

24. The allegations contained in Paragraph 24 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. Additionally, the allegations contained in Paragraph 24 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

25. The allegations contained in Paragraph 25 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. Additionally, the allegations contained in Paragraph 25 of the Complaint pertain to a written document, which speaks for itself. The Y

Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

26. The allegations contained in Paragraph 26 of the Complaint constitute conclusions of law, to which no response is required. Further, the allegations contained in Paragraph 26 of the Complaint pertain to a written document, which speaks for itself. The Y Hotel Defendants deny any and all allegations inconsistent with that written document, and strict proof of the same is demanded.

27. The allegations contained in Paragraph 27 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded

28. The allegations contained in Paragraph 28 of the Complaint are admitted in part and denied in part. It is admitted that Master Tenant declared Ace in default under the Hotel Management Agreement (the "HMA") and, on the basis of such defaults, terminated the HMA. The remaining allegations contained in Paragraph 28 of the Complaint are denied. The Notice that Master Tenant sent to Ace Group terminating the HMA on the basis of Ace Group's defaults (the "Termination Notice") was dated November 17, 2021.

29. The allegations contained in Paragraph 29 of the Complaint are denied. The Termination Notice was based upon Ace Group's defaults under the HMA, and the termination of the HMA was based upon Ace Group's non-compliance with, and default under, the HMA.

30. The allegations contained in Paragraph 30 of the Complaint are denied. The Property is not subject to a sales agreement. Neither the "Lenders," identified in the Complaint as Pittsburgh Urban Initiatives Sub-CDE 8, LP and PNC CDE 35, LP, nor PNC Bank, N.A. have forced Y Hotel to sell the Property.

31. The allegations contained in Paragraph 31 of the Complaint are denied. In April 2020, Master Tenant sent a Default Notice to Ace Group. Ace Group took no action to correct the defaults under the HMA. On or about November 17, 2020, Master Tenant provided notice of additional defaults under the HMA to Ace Group and also sent the Termination Notice in connection with Ace Group's default under the HMA. The Notice of Termination was valid and effective in all respects based upon Ace Group's defaults under the HMA.

32. The allegations contained in Paragraph 32 of the Complaint are denied. There is currently no contract between either of the Y Hotel Defendants and any third party for the sale of the Property. Based upon Ace Group's defaults underlying the Notice of Termination, with its attendant termination of the HMA, there is no basis in law or in fact for Ace Group to operate the Property as a hotel.

33. The allegations contained in Paragraph 33 of the Complaint are denied. There is currently no contract between either of the Y Hotel Defendants and any third party for the sale of the Property.

COUNT ONE
(Against Owner, Master Tenant, Lenders and PNC Bank, N.A.)

34. The Y Hotel Defendants incorporate Paragraphs 1 through 33 of the Complaint as though the same were fully set forth at length herein.

35. The allegations contained in Paragraph 35 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the Y Hotel Defendants deny that Ace Group has any right, pursuant to the Subordination, Nondisturbance and Attornment Agreement (the "SNDA") or otherwise, to manage a hotel on the Property.

36. The allegations contained in Paragraph 36 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the Y Hotel Defendants properly terminated the HMA following Ace Group's default under the HMA. The Property is not subject to a sales agreement.

37. The allegations contained in Paragraph 37 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded. By way of further response, the HMA provides Master Tenant with the ability to terminate the HMA for cause and/or for convenience. In the event that the HMA is terminated for convenience, Ace Group agreed to the receipt of a stipulated, monetary sum as a "Termination Fee."

38. The allegations contained in Paragraph 38 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, after reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the remaining allegations contained in Paragraph 38 of the Complaint. Those remaining allegations are denied and strict proof is demanded. By way of further response, the HMA provides Master Tenant with the ability to terminate the HMA for cause and/or for convenience. In the event that the HMA is terminated for convenience, Ace Group agreed to the receipt of a stipulated, monetary sum as a "Termination Fee."

39. The allegations contained in Paragraph 39 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, after reasonable investigation, the Y Hotel Defendants lack sufficient information to admit or deny the remaining allegations contained in Paragraph 39 of the Complaint. Those remaining

allegations are denied and strict proof is demanded. By way of further response, Ace Group abandoned management of the Property in August 2020, and no customer relationships currently exist. Furthermore, no customer has come to the Property since March 2020. All prior customer contracts have been terminated, and there are no current or future hotel bookings.

WHEREFORE, the Y Hotel Defendants respectfully request that this Court enter judgment in their favor, deny Ace Group's request for a preliminary and/or permanent injunction and/or a declaratory judgment in favor of Ace Group, as well as any other damages as may be determined at trial.

COUNT TWO
(Against Buyer)

40. The Y Hotel Defendants incorporate Paragraphs 1 through 39 of their Answer as though the same were fully set forth at length herein.

41. The allegations contained in Paragraph 41 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

42. The allegations contained in Paragraph 42 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

43. The allegations contained in Paragraph 43 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

44. The allegations contained in Paragraph 44 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

45. The allegations contained in Paragraph 45 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

46. The allegations contained in Paragraph 46 of the Complaint are directed against a different defendant and, therefore, no response from the Y Hotel Defendants is required. To the extent that a response from the Y Hotel Defendants is required, those allegations are denied and strict proof is demanded. The Y Hotel Defendants deny any and all liability to Ace Group.

WHEREFORE, the Y Hotel Defendants respectfully request that this Court enter judgment in their favor, deny Ace Group's request for a preliminary and/or permanent injunction and/or a declaratory judgment in favor of Ace Group, as well as any other damages as may be determined at trial.

COUNT THREE

47. The Y Hotel Defendants incorporate Paragraphs 1 through 46 of their Answer as if the same were fully set forth herein at length.

48. The allegations contained in Paragraph 48 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded.

49. The allegations contained in Paragraph 49 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded.

50. The allegations contained in Paragraph 50 of the Complaint constitute conclusions of law, to which no response is required. To the extent that a response is deemed to be required, those allegations are denied and strict proof is demanded.

WHEREFORE, the Y Hotel Defendants respectfully request that this Court enter judgment in their favor, deny Ace Group's request for a preliminary and/or permanent injunction and/or a declaratory judgment in favor of Ace Group, as well as any other damages as may be determined at trial.

NEW MATTER

1. Y Hotel is the fee owner of the property located at 120 South Whitfield Street, Pittsburgh, Pennsylvania 15206 (the "Property").

2. On or about May 29, 2014, Y Hotel (as Owner and Landlord) and Master Tenant entered into a Master Lease Agreement, pursuant to which Y Hotel leased the Property to Master Tenant.

3. On or about May 30, 2014, Ace Group and Master Tenant executed a Hotel Management Agreement (the "HMA"). *See* Complaint, Exhibit A, which is incorporated herein by reference.

4. The HMA is a personal services contract, as well as a principal-agent contract.

5. Section 13.1 of the HMA provides:

Except as otherwise specified in this [HMA], any dispute, controversy, or claim arising out of or relating to this Agreement shall be settled by arbitration in Pittsburgh, Pennsylvania, except to

the extent inconsistent with this Agreement, in accordance with the Rules of Arbitration of the International Chamber of Commerce....

See Complaint, Exhibit A at Section 13.1(a) (the “Arbitration Clause”).

6. In April 2020, Master Tenant sent a Default Notice to Ace Group.
7. Ace Group took no action to correct the defaults under the HMA.
8. On or about November 17, 2020, Master Tenant provided notice of additional defaults under the HMA to Ace Group and also sent the Termination Notice in connection with Ace Group’s default under the HMA.
9. Master Tenant’s termination of the HMA followed Ace Group’s defaults under the HMA, and constitutes a valid termination of the HMA, exercised within Master Tenant’s absolute power under applicable law.
10. On July 21, 2020, prior to Master Tenant’s termination of the HMA, Ace Group filed an arbitration proceeding before the International Chamber of Commerce, International Court of Arbitration (the “ICC”) at Docket Number 25507/PDP (the “Arbitration Proceeding”).
11. The Arbitration Proceeding was dismissed, without prejudice, on the basis of Ace Group’s failure to pay the required administrative costs, fees and expenses to the ICC, at the request of the ICC, following notification by the Y Hotel Defendants that the Y Hotel Defendants lacked sufficient funds to pay such costs, fees and expenses.
12. Ace Group is permitted to re-institute the Arbitration Proceeding, or another proceeding before the ICC wherein Ace Group asserts the same claims as in the Arbitration Proceeding, upon payment of such costs, fees and expenses.
13. Pursuant to the Arbitration Clause, the ICC is the appropriate and only forum for resolution of the disputes involving the HMA.

14. Defendants, Pittsburgh Urban Initiatives Sub-CDE 8, LP and PNC CDE 35, LP (collectively, the “Lenders”), made loans to Y Hotel that were secured by, *inter alia*, one or more mortgages, deeds of trust and/or assignments of leases and rents (the “Security Interest”) encumbering the Property.

15. In May 2014, Ace Group, Y Hotel, Master Tenant, PNC Bank, N.A. and the Lenders entered into a Subordination, Nondisturbance and Attornment Agreement (the “SNDA”). *See* Complaint at ¶23 and Exhibit B, which is incorporated herein by reference.

17. Section 3(a) of the SNDA provides as follows:

In the event of (a) the foreclosure of the Security Instrument (or the Borrower’s or Tenant’s leasehold interest), (b) a conveyance of the Hotel or the Master Lease Agreement in lieu thereof, or (c) any action by Lender to pursue its rights under the Security Instrument (any of foregoing a “Transfer”), then provided Manager is not in default under the [HMA] beyond any period given to Manager to cure such default) subject to the other limitations set forth in this Agreement, the rights of Manager under the Management Agreement shall not be disturbed by such Transfer, and the purchaser of the Hotel or transferee of the Master Lease Agreement in accordance with the Management Agreement, in such Transfer, including Lender if Lender steps into the responsibilities of Borrower or Tenant for the Hotel, as applicable, shall fully and completely recognize each other as parties under the Management Agreement for the balance of the term (and any renewal terms) thereafter accruing in accordance with the terms and conditions therein provided. The provisions of this subsection 3(a) shall be effective and self-operative without the execution of any further instrument, provided, however, that within ten (10) business days after written request by Manager, Lender shall execute and deliver to Manager a written instrument, in form reasonably satisfactory to Lender, confirming its assumption of the Management Agreement and its agreement hereunder to perform all of the obligations of Tenant under the Management Agreement existing at or accruing after the date of the Transfer.

See Complaint, Exhibit B at Section 3(a) (Emphasis Added), which is incorporated herein by reference.

19. Section 3(a) of the SNDA requires PNC and the Lenders to recognize Ace Group's rights under the HMA if a Transfer (as that term is explicitly defined in the SNDA) occurs and Ace Group is not in default under the HMA.

20. Section 3(a) of the SNDA requires PNC and the Lenders to recognize Ace Group's rights under the HMA if a Transfer (as that term is explicitly defined in the SNDA) occurs and Ace Group is not in default under the HMA.

21. Y Hotel and Master Tenant have no obligations to Ace Group under Sections 3(a) or 3(c) of the SNDA.

22. Section 3(a) of the SNDA does not apply to the dispute underlying this action because:

- a. Ace Group does not plead that PNC or the Lenders have foreclosed on the Property;
- b. Ace Group does not plead that PNC or the Lenders have executed a deed in lieu of foreclosure for the Property; and
- c. Ace Group does not plead that PNC or the Lenders have taken action to pursue their rights under the Security Interest.

23. Ace Group's allegations relating to the SNDA are inapposite because no event of Transfer occurred, prior to Master Tenant's termination of the HMA, and the issue of the applicability of the SNDA is not ripe for the Court's consideration.

24. In order for the SNDA to apply, an event of Transfer, as that term is explicitly defined under Section 3(a) of the SNDA, must have occurred prior to Ace Group's default under the HMA. Despite such requirement, no such event of Transfer has occurred.

25. Neither PNC nor the Lenders have (a) foreclosed on the Property, (b) executed a deed in lieu of foreclosure for the Property or (c) taken action to pursue their rights under the Security Interest, as required for such event of Transfer to occur.

26. Moreover, Section 3(a) of the SNDA provides that the SNDA does not apply if Ace Group is in default under the HMA.

27. In April 2020 and November 2020, Master Tenant declared Ace Group in default under the HMA; and, in November 2020, Master Tenant terminated the HMA. True and correct copies of the April 2020 and November 2020 notices of default (the “Default Notices”), and the November 17, 2020 Notice of Termination (the “Termination”) are attached hereto as Exhibits 1, 2 and 3, respectively.

28. There existed an agency relationship between Ace Group and Master Tenant under the HMA, and such agency relationship was revocable at will.

29. Exercising its permissible powers under governing law, Master Tenant revoked the agency relationship between itself and Ace Group through Master Tenant’s termination of the HMA.

30. Ace Group has failed to state a claim upon which relief can be granted against either of the Y Hotel Defendants.

31. Neither the HMA nor the SNDA bar the right of the Y Hotel Defendants to, inter alia, independently operate a hotel or lodging business at the Property.

32. Ace Group has not sustained any damages as a result of the acts or omissions alleged in the Complaint.

33. To the extent that Ace Group has sustained any damages as a result of the acts or omissions alleged in the Complaint, such damages are compensable by legal, monetary damages.

34. To the extent that Ace Group has sustained any damages as a result of the acts or omissions alleged in the Complaint, such damages are the result of the acts or omissions of parties over which the Y Hotel Defendants exercise no management, responsibility or control

35. To the extent that Ace Group has sustained any damages as a result of the acts or omissions alleged in the Complaint, such damages are the result of circumstances for which the Y Hotel Defendants are not responsible.

WHEREFORE, the Y Hotel Defendants respectfully request that this Court enter judgment in their favor, deny Ace Group's request for a preliminary and/or permanent injunction and/or a declaratory judgment in favor of Ace Group, as well as any other damages as may be determined at trial.

COUNTERCLAIM ONE
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
The Y Hotel Defendants v. Ace Group

1. Counterclaim Plaintiffs, the Y Hotel Defendants, incorporate all paragraphs of their Answer and New Matter, and all allegations contained in Counterclaims Two and Three, as though the same were fully set forth at length herein.

2. Following the Default Notices and Termination, and before the filing of the instant action, Y Hotel was party to a certain agreement to sell the Property (the "Sales Agreement") to a third-party (the "Purchaser").

3. The Sales Agreement constituted a valid and enforceable contract

4. In addition to the Sales Agreement, Y Hotel had been party to contractual negotiations with other parties for the potential purchase of the Property (the "Potential Purchasers").

5. The purpose of the filing of the instant action was to bar the sale of the Property to the Prospective Purchasers, and to stop any sale of the Property pursuant to the Sales Agreement.

6. In forestalling such potential or actual contractual relationships between Y Hotel and prospective purchasers of the Property through, *inter alia*, directly communicating with the Prospective Purchasers, Ace acted with the intent to cause harm to Y Hotel (the “Offending Conduct”).

7. Because the triggering events set forth in Section 3(a) of the SNDA do not apply to the facts at issue in this action, and because the HMA had been properly terminated, Ace Group had no basis, privilege or justification for the Offending Conduct.

8. The Offending Conduct was the proximate and legal cause of Y Hotel’s sustaining actual monetary damages through, *inter alia*, a prospective purchaser’s termination of the Sales Agreement and the Purchaser’s and Prospective Purchasers’ unwillingness to enter into contractual relations with Y Hotel for the purchase of the Property.

9. But for the Offending Conduct, Y Hotel would have (i) sold the Property and received monetary consideration for the same from either the parties to the Sales Agreement and/or from the Purchaser or from one of the Prospective Purchasers, and (ii) not been required to expend costs and fees through the litigation of the instant action and/or the Arbitration Proceeding.

WHEREFORE, Counterclaim Plaintiffs, the Y Hotel Defendants, demand judgment in their favor and against Counterclaim Defendant, Ace Group, for damages sustained, together with all expenses and costs incurred in pursuit of the within action and any and all other further relief the Court deems just and equitable.

COUNTERCLAIM TWO
DEFAMATION OF TITLE
The Y Hotel Defendants v. Ace Group

10. Counterclaim Plaintiffs, the Y Hotel Defendants, incorporate all paragraphs of their Answer and New Matter, and the foregoing allegations contained in Counterclaims One and Three, as though the same were fully set forth at length herein.

11. Because Ace Group was the agent of Master Tenant, Ace Group has possessed no interest in the Property.

12. On the basis of the Default Notices and the Termination, Master Tenant revoked Ace Group's agency relationship to manage the Hotel, effective November 17, 2020.

13. Despite having no interest in the Property, Ace Group has engaged in public statements and filings that constitute defamation upon the Y Hotel Defendants' right to quiet peace and enjoyment of the Property, including the right to operate and manage, or to sell, the Property.

14. Through the Offending Conduct, which occurred in both written and oral communications and publications, Ace has injured and damaged the rights and interests of the Y Hotel Defendants through malicious and false statements.

15. The Offending Conduct is comprised of false and malicious representations relating to the title or quality of the Y Hotel Defendants' interests in the Property.

16. The Offending Conduct pertains to the professional reputation of the Y Hotel Defendants and constitutes defamation *per se*.

17. The Offending Conduct has injured the reputation and business of the Y Hotel Defendants, and the Y Hotel Defendants have sustained actual monetary damages as a result of the Offending Conduct.

18. Because the HMA had been properly terminated, and because the triggering events set forth in Section 3(a) of the SNDA do not apply to the facts at issue in this action, Ace Group had no basis, privilege or justification for the Offending Conduct.

WHEREFORE, Counterclaim Plaintiffs, the Y Hotel Defendants, demand judgment in their favor and against Counterclaim Defendant, Ace Group, for damages sustained, together with all expenses and costs incurred in pursuit of the within action and any and all other further relief the Court deems just and equitable.

COUNTERCLAIM THREE
QUIET TITLE AND/OR DECLARATORY JUDGMENT
The Y Hotel Defendants v. Ace Group

19. Counterclaim Plaintiffs, the Y Hotel Defendants, incorporate all paragraphs of their Answer and New Matter, and the foregoing allegations contained in Counterclaims One and Two, as though the same were fully set forth at length herein.

20. This Court has jurisdiction over this matter pursuant to Pennsylvania Rules of Civil Procedure 1061, *et seq*

21. Venue is proper under Pennsylvania Rules of Civil Procedure 1006 and 1062 since the subject property is located in Allegheny County, Pennsylvania.

22. This is an action to quiet title pursuant to Pennsylvania Rules of Civil Procedure 1061(b)(2).

23. An action to quiet title may be brought under Rule 1061(b)(2) to determine any right, lien, title or interest in the land or to determine the validity or discharge of any document, obligation or deed affecting any right, lien, title or interest in land.

24. Additionally, an action for a declaratory judgment is available to obtain a declaration of existing legal rights, duties, or status of parties if such a declaration will aid in the determination of a genuine, justiciable controversy.

25. Y Hotel, the fee simple owner of the Property, and Master Tenant, as the tenant of the Property, are entitled to bring this action to quiet title under Rule 1061.

26. As the fee simple owner of the Property, Y Hotel's interest in the Property is direct, substantial and present.

27. As the tenant of record of the Property, Master Tenant's interest in the Property is direct, substantial and present.

28. An actual controversy exists which threatens the Y Hotel Defendants' legal rights in the Property.

29. The claims asserted by Ace Group through the Offending Conduct is prohibiting, hindering and harming Y Hotel's ability to use, develop or enjoy the Property.

30. Additionally, as a result of the Offending Conduct, the Y Hotel Defendants' ability to market and/or to operate the Property is damaged.

31. Given the nature of Ace Group's claims regarding its alleged interests in the Property, the Y Hotel Defendants have direct, immediate and substantial injuries that warrant the quieting of title to the Property.

32. Because Ace Group was the agent of Master Tenant, Ace Group has possessed no interest in the Property.

33. On the basis of the Default Notices and the Termination, Master Tenant revoked Ace Group's agency relationship to manage the Hotel, effective November 17, 2020.

34. Accordingly, because Ace Group has no interest in the Property, Ace Group must be barred from asserting and claims, rights or interest in the Property.

WHEREFORE, Counterclaim Plaintiffs, the Y Hotel Defendants, demand judgment in their favor and against Counterclaim Defendant, Ace Group, declaring that (1) the HMA was properly terminated; (2) the triggering events contained in Paragraph 3(a) of the SNDA are not applicable; (3) the Y Hotel Defendants own the Property in fee simple, and are entitled to quiet and peaceful possession of the Property, including but not limited to the right to lease, manage, sell and/or operate the Property without any adverse interests, rights, or claims on the part of Ace Group; and (4) permanently enjoining Ace Group from asserting and claims of any right or interest in the Property; along with any and all other further relief the Court deems just and equitable.

Date: June 1, 2021

Respectfully submitted,

CLARK HILL PLC

/s/ Samuel A. Hornak

Danny P. Cerrone, Jr., Esquire

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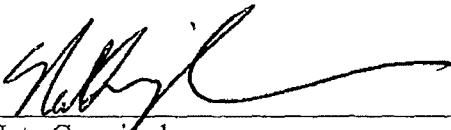
412-394-7711

VERIFICATION

I, Nate Cunningham, authorized representative Defendants, Y Hotel, LP and Y Hotel Master Tenant, LLC, have read the foregoing Answer and New Matter to Complaint in Equity and Counterclaims. The statements herein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: June 1st, 2021



Nate Cunningham.
Title: Authorized Representative
On behalf of Defendants, Y Hotel, LP and Y Hotel
Master Tenant, LLC

Sandy B Garfinkel
412 566 6868
sgarfinkel@eckertseamans.com

April 15, 2020

BY E-MAIL and FEDERAL EXPRESS OVERNIGHT

Ace Group Pittsburgh LLC
c/o Ace Group International LLC
7 West 30th, 12th Floor
New York, NY 10001
Attn: Brad Wilson
E-mail: *brad.wilson@acehotel.com*

Re: *Ace Hotel Pittsburgh Hotel Management Agreement*
Notice of Default

Dear Mr. Wilson:

Our firm represents Y Hotel Master Tenant LLC (“Master Tenant”) Reference is made to that certain Hotel Management Agreement by and between Master Tenant and Ace Group Pittsburgh LLC (“Manager”) dated May 20, 2014 (the “HMA”). This letter shall serve as notice of Manager’s default of its obligations under the HMA and is made pursuant to HMA Article 11, Section 11.1(c). Capitalized terms have the meanings ascribed herein or as defined within the HMA.

Manager is in breach of its obligations under the HMA as a result of its extensive current and past gross mismanagement of the Hotel, highlighted by Manager’s failure to (1) act (at all times) in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant’s assets (Section 2.4(n)), and (2) advance the business, interest, long-term profitability and future prospects of the Hotel (Section 2.4(u)).

Manager has committed the following breaches of the HMA in the nature of failures of Manager to perform, keep or fulfill certain covenants, undertakings or obligations set forth in the HMA:

- HMA Section 2.4(n): Manager failed to act in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant’s assets, as a result of its failure to properly budget and



accurately report the performance of the Hotel, including appropriate expense control as more fully described below.

- HMA Section 2.4(u): Manager failed to advance the business, interest, long-term profitability and future prospects of the Hotel, as a result of its failure (or inability) to properly budget and accurately report the performance of the Hotel, including appropriate expense control as more fully described below. For example, without limitation, Manager has never achieved a Net Operating Income in any Fiscal Year greater than 50% of the Pro Forma Net Operating Income, with the total Net Operating Income during Manager's exclusive management of the Hotel equal to 18.8% of Pro Forma Net Operating Income.
- HMA Section 2.5(c): Manager exceeded its authority by entering into multi-year contracts without Master Tenant's Approval, including contracts that do not contain the required 30-day termination right as contemplated under Section 2.5(c) of the HMA. Master Tenant is currently aware of at least two such contracts that have a detrimental financial impact on the Hotel, specifically the contract for internet service (Cogent) and a contract for e-commerce services (gcommerce). As a result of Manager's failure to properly report and keep Master Tenant apprised of all contracts requiring Master Tenant's consent under Section 2.5(c), Master Tenant is not fully informed as to all the contracts that currently exist that may violate Section 2.5(c), and therefore Master Tenant reserves its rights under the HMA with regards to all other such contracts currently in existence at the Hotel.
- HMA Section 3.3(g): For the Performance Test Period Fiscal Year 2019, Manager failed to timely provide the information that Master Tenant would need to calculate the Revenue Index for the Hotel. The Net Operating Income of the Hotel for that Fiscal Year was less than the Performance Termination Threshold, putting into question whether Manager failed the 2019 Performance Test Period. Manager is obligated under the HMA to provide Master Tenant with reporting such that Master Tenant can perform the calculations needed to enforce the terms of the HMA, including the necessary information to calculate both the Performance Termination Threshold and the Revenue Index Threshold. Such failure has and continues to prevent Master Tenant from having the ability to properly analyze the Revenue Index data against the Revenue Index Threshold for the 2019 Performance Test Period. Manager has also failed to provide required Revenue Index data for all prior Fiscal Years.
- HMA Section 4.1: Manager failed to submit all required supplementary materials detailed in 4.1(b) thru (f) for the 2020 Annual Operating Projection process, and continues to operate the Hotel in 2020 without an Approved Annual Operating

Projection, with no effort by Manager to comply with the contractually mandated requirements to obtain Approval of said Annual Operating Projection.

- HMA Section 4.1(b): Manager is obligated to prepare a separate estimate of Manager's Fees and Reimbursables as part of the Approved Annual Operating Projection. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement of the HMA in any Fiscal Year during the Term
- HMA Section 4.2: During periods in which Manager and Master Tenant are unable to agree on the Annual Operating Projection (or any component thereof), Manager is obligated to operate the Hotel on the basis of the last Approved Annual Operating Projection, subject to certain Approved modifications. Manager and Master Tenant did not agree on an Approved Annual Operating Projection for 2020 within the specified time frame, partially as a result of Master Tenant's failure to provide all required supplementary materials detailed in 4.1(b) thru (f) of the HMA, as more fully set forth above. Instead of following the agreed upon dispute resolution process, Manager instead opted to operate the Hotel in 2020 utilizing its previously submitted and unapproved Annual Operating Projection for 2020. Manager physically loaded the unapproved Annual Operating Projection into the Hotel's financial reporting system, and for the past 3 months submitted financial reports to Master Tenant using the unapproved Annual Operating Projection as the basis for its analysis in the financial reporting. Furthermore, Manager has made (and continues to make) expenditures based upon an invalid and unapproved 2020 Annual Operating Projection.
- HMA Section 4.2: Manager is required to expend Master Tenant's funds only in accordance with the Annual Approved Operating Projection. Such Annual Approved Operating Projection is to be continuously monitored by Manager and regularly adjusted to reflect fluctuations in Gross Revenues, and therefore, proportionate adjustments in variable expenses (Section 4.2(a)). Manager is given wide latitude in operating the Hotel, as Master Tenant's agent, but such latitude is strictly proscribed by the variance provisions and proportionate adjustment provisions of this Section, as well as its duty to act in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant's assets (Section 2.4(n)). Manager has failed in its duty to continuously monitor and adjust the Approved Annual Operating Projection, having never once prepared or submitted an adjustment for the expense portion of the Annual Operating Projection. Furthermore, Manager has exceeded its permitted variances under this Section in Fiscal Years 2016, 2017, and most recently, 2019
- HMA Section 4.5(iv): Manager is obligated as part of its monthly financial reporting to Master Tenant to provide a separate accounting of Manager's Fees and Reimbursable

Expenses, including a reconciliation and support of such amounts. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement.

- HMA Section 5.5: Manager is obligated to substantiate all Reimbursable Expenses charged to Master Tenant. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement, and continues to exceed its authority by paying itself unsubstantiated Reimbursable Expenses.

Pursuant to HMA Article 11, Section 11.1(c), Manager has 30 days from receipt of this notice in which to fully cure all defaults specified within this notice.

Nothing in this letter shall constitute a waiver or limitation of Master Tenant's rights and remedies under the HMA, at law or in equity, including without limitation those found in HMA Sections 3.3 and 11.2, and all such rights and remedies are expressly preserved.

We look forward to your timely action.

Very truly yours,

Sandy B. Garfinkel

Sandy B. Garfinkel

Cc by E-mail and Federal Express Overnight Delivery:

Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101
Attn: Matthew Le Master
E-mail: *MatthewLeMaster@dwt.com*

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Attn: Robert P. Alpert, Esq.
E-mail: *rpa@mmmlaw.com*

November 17, 2020

BY E-MAIL and FEDERAL EXPRESS OVERNIGHT

**Ace Group Pittsburgh LLC
c/o Ace Group International LLC
7 West 30th, 12th Floor
New York, NY 10001
Attn: Brad Wilson
E-mail: brad.wilson@acehotel.com**

*Re: Ace Hotel Pittsburgh Hotel Management Agreement
Uncured and Continuing Events of Default by Manager and Additional Notice of
New Events of Default by Manager*

Dear Mr. Wilson:

The letter is in reference to the Hotel Management Agreement dated May 30, 2013 (the “HMA”) between Master Tenant and Ace Group Pittsburgh, LLC (“Manager”) concerning the management of the Ace Hotel Pittsburgh (the “Hotel”).

This letter has 3 purposes:

1. To reiterate, point by point, the continuing and uncured nature of the Events of Default by Manager identified in Master Tenant’s first Notice of Default delivered on April 15, 2020;
2. To provide an additional Notice of Default related to Events of Default arising from the acts, omissions, and willful misconduct of Manager that have occurred since the date of Master Tenant’s first Notice of Default delivered on April 15, 2020; and
3. To document Manager’s abandonment of the HMA and its management duties and responsibilities thereunder.

Uncured and Continuing Events of Default; New Defaults

Please note that the response that we received from your legal counsel dated May 8, 2020 **did not** meaningfully address or satisfactorily cure any of the Events of Default identified in the Notice of Default delivered April 15, 2020. The 30 day period established in the HMA to cure such Events of Default expired on **May 16, 2020** without any of the Events of Default being



cured or any further communication from Manager. Furthermore, the HMA provides for a maximum time period of 120 days for curative action, such time period expired on **September 15, 2020**. During this time period Manager did not pursue any cure for the Events of Default with “all due diligence” as required by the HMA. In fact, Manager made no attempts at curative action and no further communication was received from Manager, other than Manager’s communication regarding its claim for alleged “past due fees”.

The following section contains: (1) Master Tenant’s description of each Event of Default by Manager in the Default Notice dated April 15, 2020 (in regular font); (2) the response sent by your counsel dated May 8, 2020 on behalf of Manager to each Event of Default (in *italicized* font), (3) Master Tenant’s reply to your response demonstrating why your response did not address and/or did not cure the Event of Default (in **bold** font); and, (4) Master Tenant’s identification of any new Events of Default that have transpired during the time period since the Notice of Default (in underlined font)

- HMA Section 2.4(n): Manager failed to act in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant’s assets, as a result of its failure to properly budget and accurately report the performance of the Hotel, including appropriate expense control as more fully described below.

You claim that Manager failed to act in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant’s assets. This could not be further from the truth. In fact, Manager has deferred taking its management fees for years (despite its entitlement to such fees under the HMA) in an effort to support the continued operation of the Hotel and to fund Hotel employee payroll. Manager has done this in the spirit of partnership despite the fact that Master Tenant is fully responsible under the HMA for funding the operation of the Hotel

Your assertion that Manager has deferred “its management fees” for years is disputed. In fact, Manager has paid to themselves from Master Tenant’s assets substantially more fees, in aggregate, than were ever represented to Master Tenant, its investors and its lenders in the pro formas prepared by Manager to induce Master Tenant to enter into the HMA. Master Tenant believes that Manager’s reference to deferred management fees must be referring to the certain “fees” that Master Tenant has consistently disputed. Master Tenant has objected to this characterization of unjust and improperly presented fees as “unpaid” in the past and continues to do so now. In any event, your response does not address the substance of the asserted default. Manager has mismanaged the Hotel. Manager’s alleged deferral of fees is not evidence of adequate management; to the contrary, it

demonstrates that Manager failed to manage the Hotel as required under HMA Section 2.4(n). Otherwise, the Hotel would have produced sufficient net operating revenue to fund payment of Manager's legitimate management fees.

We are now aware of continuing defaults by the Manager, whereby the Manager applied for and received Pandemic Assistance pursuant to the Paycheck Protection Program (PPP) monies taken and subsequently mismanaged the use of those funds in a manner that failed to support the operation of the Property.

Likewise, we have become aware of the magnitude of the Manager's malfeasance with respect to booking events and taking deposits for future events including weddings. We are now advised that the Manager failed to properly account for those deposits; failed to segregate those deposits; and mis-spent those deposits. Manager undertook all such conduct without consent of Y Hotel Master Tenant, LLC, and Manager appears to have intentionally placed an improper burden upon Master Tenant with respect to the unfulfilled demands for return of deposits. We are now also aware that Manager has undertaken further efforts to intentionally harm Master Tenant by making unsupported statements to the media, customers, enforcement agencies and others misrepresenting Master Tenant's alleged involvement in Manager's misappropriation of the customers' funds.

- HMA Section 2.4(u): Manager failed to advance the business, interest, long-term profitability and future prospects of the Hotel, as a result of its failure (or inability) to properly budget and accurately report the performance of the Hotel, including appropriate expense control as more fully described below. For example, without limitation, Manager has never achieved a Net Operating Income in any Fiscal Year greater than 50% of the Pro Forma Net Operating Income, with the total Net Operating Income during Manager's exclusive management of the Hotel equal to 18.8% of Pro Forma Net Operating Income.

You claim that Manager failed to advance the business, interest, long-term profitability and future prospects of the Hotel, as a result of its failure (or inability) to properly budget and accurately report the performance of the Hotel. This is simply not true. In fact, Manager prepared the Hotel Pro Forma relying on Master Tenant's misrepresentations of the surrounding neighborhood's imminent revival. Since commencing operations of the Hotel, neither Master Tenant nor Manager has relied on the Pro Forma to inform performance expectations

Master Tenant made no misrepresentations to Manager. Other managers have been successfully operating hotels in this market over the period of your client's

management of the Hotel. Moreover, the financial recovery of the corridor where the Property is located is without question. The influx of capital improvements in the immediate 10-block radius of the Property is obvious to any party who would take the time to visit the Hotel, not to mention the revival of the neighborhood as a whole. Regardless, Manager prepared all pro formas, and presumably checked that the data it used to do so was accurate and reliable. We see no “Notes”, “Qualifications”, “Exceptions”, “Conditions Precedent” or other such cautionary language in the Pro Formas that would support your latest contrived theory that your financial projections were somehow prepared in reliance on information supplied by Master Tenant. Indeed, the proclaimed experience and superior knowledge of ACE was precisely the expertise that Master Tenant and its investors relied upon when considering the future profitability of the property and when analyzing the expenditures for the development. By way of illustration, Manager solely prepared the operating pro formas that induced lenders, investors, and Y Hotel, LP to invest additional capital of more than \$3MM during construction to meet the ever evolving and inconsistently applied “Ace Standards”. I would also remind you that the Gross Revenues of the Hotel have been equal to or greater than the pro forma Gross Revenues, a fairly clear sign that Manager’s claim that the problems of the Hotel are related to a weakness in the neighborhood’s revival are without much merit. In contrast, during the same time period that Gross Revenues exceeded pro forma expectations, the Operating Expenses for the Hotel, an item solely under Manager’s exclusive control, exceeded pro forma operating expenses by more than \$8MM dollars or more than \$2MM dollars per year on average. It is also worth noting that, in addition to the pro formas, Manager prepared Annual Operating Projections in each year. Yet Manager failed to attain performance in accord with the Annual Operating Projections it created, year after year.

- HMA Section 2.5(c): Manager exceeded its authority by entering into multi-year contracts without Master Tenant’s Approval, including contracts that do not contain the required 30-day termination right as contemplated under Section 2.5(c) of the HMA. Master Tenant is currently aware of at least two such contracts that have a detrimental financial impact on the Hotel, specifically the contract for internet service (Cogent) and a contract for e-commerce services (gcommerce). As a result of Manager’s failure to properly report and keep Master Tenant apprised of all contracts requiring Master Tenant’s consent under Section 2.5(c), Master Tenant is not fully informed as to all the contracts that currently exist that may violate Section 2.5(c), and therefore Master Tenant reserves its rights under the HMA with regards to all other such contracts currently in existence at the Hotel.

You claim that Manager exceeded its authority by entering into multi-year contracts without Master Tenant's approval, including the contract for internet service (Cogent) and a contract for e-commerce services (gcommerce). While Manager disagrees with these allegations, the service contracts it has entered into have not negatively impacted the financial performance of the Hotel. In addition, the gcommerce contract is currently suspended and Manager is actively negotiating an exit from that agreement. Manager would be happy to discuss potentially changing the internet service contract for the Hotel if Master Tenant believes such a change would be beneficial.

You admit that Manager entered into the multi-year contracts with Cogent and gcommerce. You provide no evidence that Master Tenant approved these contracts (it did not), nor do you provide support for the assertion that the contracts had no negative impact on the financial performance of the Hotel (the terms of these contracts were unfavorable to the Hotel). Regardless, HMA Section 2.5(c) is not dependent upon Manager's subjective belief that the contracts aren't injurious to the Hotel; it requires approval of Master Tenant before entering such contracts, and failure to obtain such approval is a breach and an event of default. Finally, Master Tenant believes that there may be other such contracts entered into by Manager without Master Tenant's approval.

- **HMA Section 3.3(g)**: For the Performance Test Period Fiscal Year 2019, Manager failed to timely provide the information that Master Tenant would need to calculate the Revenue Index for the Hotel. The Net Operating Income of the Hotel for that Fiscal Year was less than the Performance Termination Threshold, putting into question whether Manager failed the 2019 Performance Test Period. Manager is obligated under the HMA to provide Master Tenant with reporting such that Master Tenant can perform the calculations needed to enforce the terms of the HMA, including the necessary information to calculate both the Performance Termination Threshold and the Revenue Index Threshold. Such failure has and continues to prevent Master Tenant from having the ability to properly analyze the Revenue Index data against the Revenue Index Threshold for the 2019 Performance Test Period. Manager has also failed to provide required Revenue Index data for all prior Fiscal Years.

You claim that for the Performance Test Period Fiscal Year 2019, Manager failed to timely provide the information that Master Tenant would need to calculate the Revenue Index for the Hotel. On the contrary, Manager has consistently provided timely financial reporting. In particular, information with respect to the performance of the competitive set, as necessary to calculate the Revenue Index Threshold, has been provided to Master Tenant and can also be independently secured by Master Tenant. Let us know if you would like us to re-send this information.

The only information Manager has provided to Master Tenant with respect to the performance of the competitive set is the monthly STR report, provided as a part of Manager's monthly financial reporting to Master Tenant. Using the STR publication provided by Manager along with its December 2019 year end financials, the 2019 Revenue Index for the Hotel, as calculated by Smith Travel Research and reported as the Revenue Generating Index was 86.1 and the hotel was ranked 7 out of 7, with the lowest RGI of all the hotels in its competitive set. This Revenue Index falls below the Revenue Index Threshold as stipulated in the HMA. We have since reviewed additional information that confirms that for the 2019 Performance Test Period, the Revenue Index of the Hotel was below the Revenue Index Threshold, and the Net Operating Income of the Hotel was below the Performance Termination Threshold.

Master Tenant is hereby notifying Manager of its termination of the HMA, under section 3.3(g) by reason of Manager's failure to meet the Performance Termination Threshold. This notice of termination for failure to meet the Performance Termination Threshold is in addition to and independent of all prior Notices.

- HMA Section 4.1: Manager failed to submit all required supplementary materials detailed in 4.1(b) thru (f) for the 2020 Annual Operating Projection process, and continues to operate the Hotel in 2020 without an Approved Annual Operating Projection, with no effort by Manager to comply with the contractually mandated requirements to obtain Approval of said Annual Operating Projection.

You claim that Manager failed to submit all required supplemental materials detailed in 4.1(b) through (f) for the 2020 Annual Operating Projection process, and continues to operate the Hotel in 2020 without an Approved Annual Operating Projection. However, Manager has provided Master Tenant with all materials detailed in 4.1(b) through 4.1(f) for every year in operation. Let us know if you would like Manager to re-send these materials. In addition, Manager has repeatedly requested meetings with Master Tenant to discuss the 2020 budget. Master Tenant has consistently rebuffed all of Manager's meeting requests. Master Tenant's failure to negotiate the 2020 budget in good faith as required by the HMA is the only reason why there is not an approved Annual Operating Projection for 2020.

You state that Manager has provided Master Tenant with all materials detailed in 4.1(b) through 4.1(f) for "every year in operation." The event of default alleged by Master Tenant includes the failure by Manager to provide such materials for 2020,

and as to 2020, those materials have not been provided by Manager. You admit that there is no approved operating budget for 2020, and further admit that Manager had operated the Hotel pursuant to the unapproved 2020 operating budget, in clear contravention of Section 4.2 of the HMA. Master Tenant did not rebuff requests for meetings by Manager. Rather, Master Tenant requested basic information from Manager in advance of such meetings in order to understand Manager's budget proposal, which materials were simply never provided by Manager. Additionally, Master Tenant communicated on multiple occasions that the draft operating budget, provided over email, was unacceptable and unapprovable in its current form and no revisions were ever made to the draft budget or submitted to Master Tenant.

Although performance in 2020 was no doubt influenced by the negative impacts of the COVID-19 Pandemic; the Manager's failures were ongoing for a period of years prior to 2020. We note that the conduct and malfeasance giving rise to the Manager's default continued into 2020, and included a failure to properly manage the impact of the Pandemic, and was manifested by the Manager's absolute refusal to prepare a budget that could be approved by Master Tenant. Manager continued to operate and expend funds with no approved operating projection. Manager then obtained and disbursed PPP loan funds without authorization from Master Tenant and acted with impunity, without consultation or regard for its fiduciary duty to Master Tenant, as the agent of Master Tenant. At all times, Manager appears to have acted in an effort to protect and maximize its own financial interests, without regard for Master Tenant.

- HMA Section 4.1(b): Manager is obligated to prepare a separate estimate of Manager's Fees and Reimbursables as part of the Approved Annual Operating Projection. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement of the HMA in any Fiscal Year during the Term.

You claim that Manager has failed to prepare a separate estimate of Manager's Fees and Reimbursable as part of the Approved Annual Operating Projection. On the contrary, Manager has always set forth an estimate of Manager's Fees and Reimbursable Expenses in each proposed budget. Manager's Fees are a specific line item, and Reimbursable Expenses are contained in the Sales and Marketing sheet. Master Tenant has never made any requests for further information with respect to the Manager Fees and Reimbursables. Let us know if you would like Manager to re-send these estimates or if you have any specific questions related to these estimates.

You state that "Master Tenant has never made any requests for further information with respect to the Manager Fees and Reimbursables." This is incorrect. Master

Tenant has made numerous such requests but the backup has never been provided by Manager. The line items alone do not establish that the expenses claimed to be Reimbursables are properly identified as such. The purpose of this requirement in the HMA for a separate and clear accounting of Reimbursable Expenses is to allow Master Tenant to confirm that the expenses claimed by Manager are valid Reimbursable Expenses, as defined in the HMA. Master Tenant believes that Manager may have intentionally obfuscated or mischaracterized some of these expenses so that Manager could pay itself for unauthorized expenses from Master Tenant's assets, which Manager had exclusive control of and in contravention of Manager's fiduciary duty to Master Tenant.

- **HMA Section 4.2:** During periods in which Manager and Master Tenant are unable to agree on the Annual Operating Projection (or any component thereof), Manager is obligated to operate the Hotel on the basis of the last Approved Annual Operating Projection, subject to certain Approved modifications. Manager and Master Tenant did not agree on an Approved Annual Operating Projection for 2020 within the specified time frame, partially as a result of Master Tenant's failure to provide all required supplementary materials detailed in 4.1(b) thru (f) of the HMA, as more fully set forth above. Instead of following the agreed upon dispute resolution process, Manager instead opted to operate the Hotel in 2020 utilizing its previously submitted and unapproved Annual Operating Projection for 2020. Manager physically loaded the unapproved Annual Operating Projection into the Hotel's financial reporting system, and for the past 3 months submitted financial reports to Master Tenant using the unapproved Annual Operating Projection as the basis for its analysis in the financial reporting. Furthermore, Manager has made (and continues to make) expenditures based upon an invalid and unapproved 2020 Annual Operating Projection.

You claim that Manager improperly opted to operate the Hotel in 2020 utilizing its previously submitted and unapproved Annual Operating Projection for 2020. However, Master Tenant has been well aware of Manager's use of the Annual Operating Projection for 2020 based on weekly calls with the property team, and has failed to object. Manager does not object to using the 2019 budget instead. Please let us know if you would like Manager to make that change. Manager is also willing to utilize the Expert Resolution Process for the Annual Operating Projection discussed in the HMA. Please let us know if Master Tenant agrees to proceed with expert resolution.

The assertion that Master Tenant failed to object to Manager's use of the unapproved 2020 Annual Operating Projection is false. HMA Section 4.2 clearly precludes use of an unapproved Annual Operating Projection, and Master Tenant has vocally objected to Manager's implementation of the unapproved 2020 budget

on multiple occasions. In fact, the on-site General Manager of the Hotel, who was Manager's employee, objected to the use of the unapproved 2020 Projection in January 2020, but was overruled by Manager's corporate personnel.

- HMA Section 4.2: Manager is required to expend Master Tenant's funds only in accordance with the Annual Approved Operating Projection. Such Annual Approved Operating Projection is to be continuously monitored by Manager and regularly adjusted to reflect fluctuations in Gross Revenues, and therefore, proportionate adjustments in variable expenses (Section 4.2(a)). Manager is given wide latitude in operating the Hotel, as Master Tenant's agent, but such latitude is strictly proscribed by the variance provisions and proportionate adjustment provisions of this Section, as well as its duty to act in good faith and fairness, and in a commercially reasonable manner, with respect to the operation and protection of and accounting for Master Tenant's assets (Section 2.4(n)). Manager has failed in its duty to continuously monitor and adjust the Approved Annual Operating Projection, having never once prepared or submitted an adjustment for the expense portion of the Annual Operating Projection. Furthermore, Manager has exceeded its permitted variances under this Section in Fiscal Years 2016, 2017, and most recently, 2019.

You claim that Manager has failed in its duty to continuously monitor and adjust the Approved Annual Operating Projection. On the contrary, Manager has actively managed the budget. In addition, Manager did not exceed the adverse variance threshold in 2019.

There is no support provided for this sweeping assertion that Manager actively managed the budget, in fact the overall poor performance of the Hotel directly undercuts it. The Hotel's poor performance was due primarily to Manager's failure to control expenses, as well as the numerous specific breaches of the HMA by Manager that we have detailed to you. Furthermore, Manager did exceed the adverse variance threshold in 2016, 2017 and 2019. We note that you omit to address 2016 and 2017 in your response, which we interpret as an admission that the adverse variance threshold in those years was exceeded.

Section 4.2(a) requires Manager to adjust expenses to reflect fluctuations in occupancy and use of the Hotel. Manager failed in this fundamental and central duty, as Master Tenant's fiduciary agent. Manager never once prepared or submitted an adjustment for the expense portion of the Annual Operating Projection, in any year of operation. Instead, Manager focused all of its marginal efforts on maximizing Gross Revenues, upon which its compensation was based, and attempted to charge and pay to itself additional disputed fees and Reimbursable Expenses from Master Tenant's assets, all while failing to properly control

operating expenses. This failure to maximize profitability of the property for Master Tenant, which was Manager's explicit obligation and primary duty, drove Master Tenant into economic ruin.

At all times, the HMA provided that Manager shall act solely for the account of Master Tenant and nothing in the HMA shall permit Manager to expend funds other than in accordance with the Approved Annual Operating Projection unless expressly provided by Master Tenant. Manager did NOT have an approved budget for 2020, so Manager, unilaterally and without approval by Master Tenant, decided to operate the Hotel based on an unapproved budget. Manager failed in their basic duty to reasonably revise their budget so that Master Tenant could approve the budget. Manager did not schedule or attend a single meeting with Master Tenant to cover what changes would make the budget approvable. The Manager's failure to prepare a budget for approval, and failure to properly review an Operating Projection for 2020 allowed Manager to perpetuate its obfuscation of the fees and assessments charged to Master Tenant, which Manager unilaterally paid to itself out of the bank accounts over which Manager had wrestled exclusive control. Simply put, Manager has been spending Master Tenant's money without approval.

Manager failed to properly manage their payroll expense to Master Tenant's detriment. Despite the closure of the property for months, Manager paid employees without requiring them to do work for the benefit of Master Tenant. In fact since there were no guests and no guests slated for the foreseeable future, there was no reason to be employing people at Master Tenant's cost for months at a time. In fact, the last employee who remained employed at Master Tenant's cost was performing a dual function for Ace Group International and was not even acting on Master Tenant's behalf.

- HMA Section 4.5(iv): Manager is obligated as part of its monthly financial reporting to Master Tenant to provide a separate accounting of Manager's Fees and Reimbursable Expenses, including a reconciliation and support of such amounts. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement.

You claim that Manager has not complied with its obligation to provide a separate accounting of Manager's Fees and Reimbursable Expenses. On the contrary, Manager has consistently provided a separate accounting to Master Tenant. The property team is also in possession of backup documentation for the Reimbursable Expenses, which Master Tenant has never previously requested. Let us know if you would like the property team to provide you with this documentation.

As previously stated above, Master Tenant requested the backup for the fees and reimbursable expenses, which Manager failed to provide. The separate accountings that you claim were provided by Manager were never provided to Master Tenant either in the past as required by the HMA or so as to address the Event of Default. Master Tenant believes that Manager never prepared or sent the required materials, which is why they have never been provided to Master Tenant and Manager has no record of providing this essential accounting and basic obligation of Manager in meeting its fiduciary duty as an agent of Master Tenant.

- **HMA Section 5.5:** Manager is obligated to substantiate all Reimbursable Expenses charged to Master Tenant. Despite repeated requests by Master Tenant over a multi-year period, Manager has never complied with this requirement, and continues to exceed its authority by paying itself unsubstantiated Reimbursable Expenses

You claim that Manager has failed to substantiate the Reimbursable Expenses charged to Master Tenant. Again, the property team has the backup documentation for the Reimbursable Expenses, which Master Tenant has never previously requested. Let us know if you would like the property team to provide you with this documentation. Manager is also well within its rights under the HMA to request Reimbursable Expenses, which are out-of-pocket costs for Manager. Master Tenant cannot realistically believe that Manager would be willing to both defer its fees and come out of pocket for the benefit of the Hotel.

Please see our response above regarding HMA Section 4.5(iv), which is incorporated here by reference.

Abandonment

Manager has long since abandoned your status as Master Tenant's agent and as manager of the property. All Ace Hotel Pittsburgh staff had either been terminated or quit by September 1st, 2020; you ceased management of the bookkeeping at the property, and abandoned all marketing, reservations, online travel relationships and the like in relation to the property. A traveler, for example, has no ability to book a room or any service for that matter, at the property. Rather, the online reservation system states that the ACE Hotel Pittsburgh has been "TERMINATED"; whatever that may be meant to convey.

Perhaps the most obvious example of Manager's abandonment is the written communications from Ace Group International staff to hotel clients, informing them that the Ace Hotel Pittsburgh property is permanently closed.

Manager's multi-year pattern of putting its own interests ahead of the interests of its principal progressed into behavior that could be characterized as willful misconduct and grossly negligent. You have consistently communicated with customers, media outlets, vendors and enforcement agencies, that you are no longer acting on behalf of Master Tenant. You have maintained to each such constituency that they must communicate directly with Master Tenant, and pursue all claims, questions or inquiries directly with Master Tenant since you are no longer acting as the Manager. Your conduct in doing so is a tacit, if not objective, abandonment of your role. Consistent with your behavior, you have similarly physically abandoned the property and your management role in the property.

During the deepening of the pandemic crisis, Manager actively sought to protect Manager's interests and assets, while wasting and expending Master Tenant's assets that Manager had been hired to steward.

Master Tenant believes that it is entitled to monetary damages arising from Manager's numerous breaches of the HMA and willful misconduct, which have resulted in diminution of the value of the Hotel and loss of substantial Net Operating Income over numerous years of mismanagement. Master Tenant is prepared to pursue its legal rights to compensation for those losses.

Nothing in this letter shall constitute a waiver or limitation of Master Tenant's rights and remedies under the HMA, at law or in equity, including without limitation those found in HMA Sections 3.3 and 11.2, and all such rights and remedies are expressly preserved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan R. Cunningham', with a long horizontal flourish extending to the right.

Nathan R Cunningham
Authorized Representative
Y Hotel Master Tenant, LLC

Cc by E-mail and Federal Express Overnight Delivery

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Attn: Robert P. Alpert, Esq.
E-mail: rpa@mmmlaw.com

November 17, 2020

BY E-MAIL and FEDERAL EXPRESS OVERNIGHT

Ace Group Pittsburgh LLC
c/o Ace Group International LLC
7 West 30th, 12th Floor
New York, NY 10001
Attn: Brad Wilson
E-mail: brad.wilson@acehotel.com

Re: *Ace Hotel Pittsburgh Hotel Management Agreement*
Notice of Termination

Dear Mr. Wilson:

Reference is made to that certain Hotel Management Agreement by and between Master Tenant and Ace Group Pittsburgh LLC (“Manager”) dated May 20, 2014 (the “HMA”). Reference is further made to Attorney Garfinkel’s letter to you dated April 15, 2020, “Notice of Default,” and my letter to you of today’s date “Uncured and Continuing Events of Default by Manager and Additional Notice of New Events of Default by Manager”, copies of which are attached for your reference. Capitalized terms have the meanings ascribed herein or as defined within the HMA.

This letter shall serve as Master Tenant’s **Notice of Termination** of the HMA pursuant to Sections 3.3 and 11.2 of the HMA, due to Manager’s failure to timely cure noticed defaults of Manager’s obligations under the HMA. In particular, Manager has failed to cure within the contractual cure period some or all of the defaults listed in Master Tenant’s April 15, 2020 Notice of Default. Furthermore, Manager has continued to operate so as to create additional Events of Default listed in Master Tenant’s letter of today’s date.

The HMA is hereby terminated, effective immediately.

Master Tenant expects that the parties will each fully comply with the Transition Procedures set forth in Section 3.4 of the HMA.

- Manager is requested to execute and deliver to Master Tenant all documents and instruments reasonably necessary to transfer (if transferable) to Master Tenant all

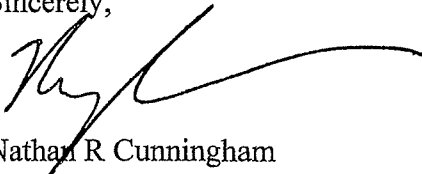


governmental permits and licenses held by Manager concerning the Hotel by Friday, November 20, 2020 at 5:00 p.m. Eastern Time.

- Manager is requested to turn over to Master Tenant all books and records for the Hotel kept by Manager pursuant to HMA Section 4.3 by Friday, November 20, 2020 at 5:00 p.m. Eastern Time.
- Manager is requested to turn over all original contracts, records, files and folios of every kind and description, whether relating to past, current or future bookings, tenants, customers, contracts, maintenance, repairs or otherwise and all other things, items or information reasonably necessary or appropriate to the continuing management, operation and maintenance of the Hotel in the ordinary course of business, except any and all matters which are proprietary in nature, by Friday, November 20, 2020 at 5:00 p.m.
- Master Tenant requests that Manager perform all of its other transition obligations under HMA Section 3.4 within the times specified for such obligations within the HMA.
- Master Tenant requests that Manager promptly provide a list of all items that Manager regards as “Ace Intellectual Property” so that Master Tenant may timely take such measures as are indicated in HMA Section 3.4.4.

Nothing in this letter shall constitute a waiver or limitation of Master Tenant’s rights and remedies under the HMA, at law or in equity, and all such rights and remedies are expressly preserved.

Sincerely,



Nathan R Cunningham
Authorized Representative
Y Hotel Master Tenant, LLC

Enclosure

Cc by E-mail and Federal Express Overnight Delivery, w/encl.:

Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Attn: Robert P. Alpert, Esq.
E-mail: rpa@mmlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER AND NEW MATTER TO COMPLAINT IN EQUITY AND COUNTERCLAIMS** has been served via electronic mail, this 1st day of June, 2021, upon the following parties and/or counsel of record:

Andrew J. Muha, Esquire
Reed Smith LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222

Gretchen E. Moore, Esquire
Strassburger McKenna Gutnick & Gefsky
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Atlanta, GA 30326

/s/ Samuel A. Hornak
Samuel A. Hornak