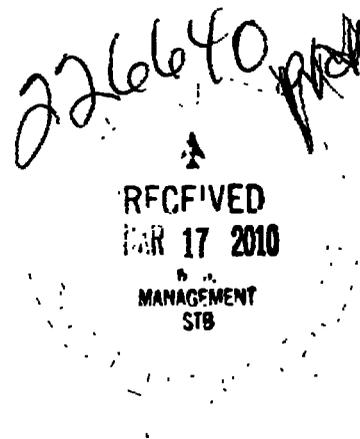


GANFER & SHORE, LLP

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NEW YORK, NEW YORK 10017

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Mark A. Berman, Esq.
Extension 266
E-mail: mberman@ganfershore.com



March 16, 2010

BY FEDERAL EXPRESS

Cynthia T. Brown, Esq.
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 "E" Street S.W.
Washington, D.C. 20423-001



Re: MC-F 21035, Stage Group plc and Coach USA, Inc., et al.
Acquisition of Control – Twin America LLC (the "STB Proceeding")

Continental Guest Services Corporation v. International Bus Services, Inc., et al, Index No. 600643/10 (N.Y. Sup. Ct.) (the "New York Action")

Dear Ms. Brown:

We write in furtherance of my conversation of today with Ann Newman of your office.

Please find ten copies of: (1) Continental Guest Services Corporation's ("CGSC") Order to Show Cause, with attachments, containing the Temporary Restraining Order issued by the Court in the New York Action; (2) the transcript of the oral argument held before the Court on March 12, 2010 on the application for a Temporary Restraining Order; (3) CGSC's Request for Judicial Intervention; (4) CGSC's Memorandum of Law; and (5) CGSC's Summons and Complaint.

As requested by Ms. Newman, we served today by federal express the following three parties in the STB Proceeding: David Coburn, Linda Stein and James Yoon. We enclose an affidavit of service attesting to such service.

Please feel free to call me if you have any questions concerning the enclosed.

Respectfully,

Mark A. Berman

cc: Ms. Ann Newman (by e-mail without encl.)
Ms. Betty Zhang (by e-mail)
Steven J. Shore, Esq.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK A. BERMAN, being duly sworn, deposes and says:

1. I am over 18 years of age, am not a party to this action, and reside in New York State.
2. On the 16th day of March, 2010, I served true copies of (1) Continental Guest Services Corporation's ("CGSC") Order to Show Cause, with attachments, containing the Temporary Restraining Order issued by the Court in the New York Action; (2) the transcript of the oral argument held before the Court on March 12, 2010 on the application for a Temporary Restraining Order; (3) CGSC's Request for Judicial Intervention; (4) CGSC's Memorandum of Law; and (5) CGSC's Summons and Complaint upon:

David H. Coburn, Esq.
1330 Connecticut Avenue NW
Washington DC 20026

Linda S. Stein, Esq.
1330 Connecticut Avenue NW
Washington DC 20026

James Yoon, Esq.
120 Broadway
Suite 26C
New York, New York 10271

3. Service was effectuated by delivering same to all of the above by Federal Express courier for standard overnight delivery, Airbill Nos.

- 7933 6027 0470 (David H. Coburn)
- 7984 8090 7863 (Linda S. Stein); and
- 7984 8095 1984 (James Yoon)


MARK A. BERMAN

Sworn to before me this
16th day of March, 2010


NOTARY PUBLIC

BELKIS MARTINEZ
Notary Public, State of New York
No. 01MA5064215
Qualified in Queens County
Commission Expires August 12, 2012

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. 600643/10

AFFIDAVIT OF SERVICE

I.A.S. Part 53

Hon. Charles E. Ramos, J.S.C.

Motion Seq. No. 1

ENTERED
Office of Proceedings

MAR 15 2010

Part of
Public Record

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANGELA WILLIAMS, being duly sworn, deposes and says:

1. I am over 18 years of age, am not a party to this action, and reside in New York State.
2. On the 12th day of March, 2010, I served true copies of the within Order to Show Cause, together with the papers on which it was based, along with Plaintiff's Amended Memorandum of Law in Support of its Motion for a Preliminary Injunction and Temporary Restraining Order, the Request for Judicial Intervention, the Amended Statement of Support of Request for Assignment to the Commercial Division, and the Amended Summons and Complaint in this action upon:

International Bus Services, Inc.
d/b/a Gray Line New York
1430 Broadway, 5th Floor
New York, New York 10036

City Sights Twin, LLC
d/b/a City Sights New York
1430 Broadway, 5th Floor
New York, New York 10036

Twin America, LLC
1430 Broadway, 5th Floor
New York, New York 10036

Highgate Hotels, L.P.
545 E. John Carpenter Freeway
Irving, Texas 75062

Battery Park Hotel Management, LLC,
102 North End Avenue
New York, New York 10281

Hampton Inn Times Square North
851 Eighth Avenue
New York, New York 10019

Hilton Garden Inn Times Square
790 Eighth Avenue
New York, New York 10019

New York West 35th Street HGI
63 West 35th Street
New York, New York 10001

On The Ave Hotel
2178 Broadway
New York, New York 10024

The Paramount Hotel New York
235 West 46th Street
New York, New York 10036

Park Central Hotel (DE), LLC
870 Seventh Avenue
New York, New York 10019

Thirty East 30th Street Owner, LLC
30 East 30th Street
New York, New York 10016

Times Square Operating Lessee LLC
1568 Broadway
New York, New York 10036

Lexington Hotel, LLC
511 Lexington Avenue
New York, New York 10017

W2001 Metropolitan Hotel Operating Lessee,
L.L.C.
569 Lexington Avenue
New York, New York 10022

3. Service was effectuated by delivering same to all of the above Defendants by Federal

Express courier for priority overnight delivery, Airbill Nos.

- 7933 5214 5710 (International Bus Services, Inc. d/b/a Gray Line New York);
- 7984 7276 9310 (City Sights Twin, LLC d/b/a City Sights New York);
- 7933 5216 7760 (Twin America, LLC);
- 7984 7279 0109 (Highgate Hotels, L.P);
- 7933 5218 2737 (Battery Park Hotel Management, LLC);
- 7984 7280 6075 (Hampton Inn Times Square North);

- 7933 5219 7660 (Hilton Garden Inn Times Square);
- 7933 5220 8638 (New York West 35th Street HGD);
- 7933 5214 9771 (On The Ave Hotel);
- 7933 5216 2850 (The Paramount Hotel New York);
- 7933 5217 1269 (Park Central Hotel (DE), LLC);
- 7933 5217 8767 (Thirty East 30th Street Owner, LLC);
- 7933 5218 6916 (Times Square Operating Lessee LLC);
- 7933 5219 4590 (Lexington Hotel, LLC); and
- 7984 7281 8274 (W2001 Metropolitan Hotel Operating Lessee, L.L.C), respectively.


ANGELA WILLIAMS

Sworn to before me this
15th day of March, 2010



NOTARY PUBLIC

MATTHEW R. MARON
Notary Public, State of New York
No. 02MA6141948
Qualified in New York County
Commission Expires 03/06/2010

2014



2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK : CIVIL TERM PART 53

4 -----X
CONTINENTAL GUEST SERVICES CORPORATION,
5 Plaintiff,

6 - against -

INDEX NO:600643/10

7 INTERNATIONAL BUS SERVICES, INC., D/B/A
8 GRAY LINE NEW YORK, CITY SIGHTS TWIN, LLC
9 D/B/A CITY SIGHTS NEW YORK, BATTERY PARK
10 HOTEL MANAGEMENT, LLC, HAMPTON INN TIMES
11 SQUARE NORTH, HILTON GARDEN INN TIMES
12 SQUARE, NEW YORK WEST 35TH STREET HGI, ON
THE AVE HOTEL, THE PARAMOUNT HOTEL NEW
YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001 METROPOLITAN
HOTEL OPERATING LESSEE, L.L.C. and
HIGHGATE HOTELS, L.P.,

Defendants.

13 -----X
14 60 Centre Street
15 New York, New York
16 March 12, 2010

17 BEFORE:

18 THE HON. CHARLES RAMOS, J.S.C.

19 APPEARANCES:

20 GANFER & SHORE, LLP
21 Attorneys for Plaintiff
22 360 Lexington Avenue
New York, New York 10017
BY: MARK A. BERMAN, ESQ.
GABRIEL LEVINSON, ESQ.

23
24
25 (Appearances continued)

2 APPEARANCES: (Continued)

3

4 SARETSKY KATZ DRANOFF & GLASS, L.L.P.
Attorneys for Defendant Twin America
5 475 Park Avenue South
New York, New York 10016
6 BY: ALAN G. KATZ, ESQ.

ENTERED
Office of Proceedings
MAR 17 2010
Part of
Public Record

7

8 SILLER WILK LLP
Attorneys for Defendant Hotels
9 675 Third Avenue
New York, New York 10017
10 BY: ALAN D. ZUCKERBROD, ESQ.

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JACK L. MORELLI
Senior Court Reporter

26

2 THE COURT: Good afternoon everyone.

3 MR. BERMAN: Good afternoon, Your Honor.

4 THE COURT: Plaintiff, tell me what the problem
5 is.

6 MR. BERMAN: Mark Berman for the law firm of
7 Ganfer & Shore, we represent the Plaintiff Continental
8 Guest Service Corporation.

9 Your Honor, Continental Guest Service
10 Corporation is a company that's been in existence over a
11 hundred years. And it leases travel tour concierge desks
12 in the hotels throughout the New York City. That is
13 where people buy theater tickets, sightseeing bus
14 tickets. That is what they have done for the last
15 hundred years. We have a perfect storm here, Your Honor.
16 This is an antitrust restraintive trade and unfair
17 competition case.

18 As a New Yorker, ubiquitous around the city are
19 the double decker tour buses that you see all over the
20 place. That has become one of the most popular, if you
21 will, things to do for tourists in the city.

22 THE COURT: How many companies are there doing
23 it now?

24 MR. BERMAN: Right now they're combined
25 represented by Twin America, one entity controlling over
26 90 percent of the market. They recently combined it was,

Colloquy

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2 if you will, Gray Line, Coach but in last year they
3 became one.

4 THE COURT: Was it merger, an acquisition, a
5 joint venture?

6 MR. BERMAN: They will speak more to that, but
7 it was a merger. And the New York Attorney General is
8 investigating their monopolistic issues, had subpoenaed,
9 sought documents. And it I think became a jurisdictional
10 fight because the new entity, Twin America, sought to
11 reclassify itself as an interstate company. So it went
12 the Department of Transportation in Washington. So New
13 York and Washington are currently having a jurisdictional
14 battle to look over the monopolization issues.

15 New York State Attorney General in response to
16 the petition of Twin America to be recognized as an
17 interstate bus company, filed their report in connection
18 with that jurisdictional dispute. And basically says,
19 Your Honor, and it's attached as Exhibit A to the
20 complaint, as Exhibit A, if you will, to the moving
21 affidavit, that they are very concerned, they believe
22 that there is an unfair, improper monopoly going on.

23 THE COURT: Now, I didn't follow what you said,
24 let me take a look at Exhibit A now.

25 MR. BERMAN: Look at Exhibit A, Your Honor.

26 THE COURT: Now, this is the comment from the

Colloquy

1 attorney general?

2 MR. BERMAN: This is the comment of the New
3 York Attorney General.

4 THE COURT: Who is going to decide the
5 jurisdictional issue?

6 MR. BERMAN: They are fighting right now and
7 New York has put it before Washington.

8 THE COURT: This is agency to agency right now?

9 MR. BERMAN: This is New York State on one
10 hand, the AG's office, and the United States Department
11 of Surface Transportation up there.

12 THE COURT: But they are dealing with it on
13 their own as an agency basis, they are not litigating yet
14 as to --

15 MR. BERMAN: It's a New York issue, they say
16 it's interstate issue.

17 THE COURT: Okay.

18 MR. BERMAN: Looking at the AG's report
19 comments, Your Honor, what they basically say, is this
20 monopoly, if you will, this merger creates restraintive
21 trade. It's 89 percent our client sales. It's more like
22 95 percent. But be that as it may, we have a perfect
23 storm. What they have created is one entity horizontally
24 controlling the double decker tour bus market which is
25 unique because of the price point. That's what everyone
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wants to do when they come into the city, is travel around, get on, get off.

THE COURT: And your client maintains a desk or office at each of these hotels?

MR. BERMAN: Let me move to the next step so you get the linkage between our client. What the bus company has admitted to our client, the joint merger company says, we want to make sure that other bus companies don't come into the city. We want to ensconce ourselves, we want to make sure that we're protected and not held hostage. How are they going to do that? They are going to go, they are going to monopolize vertically.

The largest consumer, seller of the double decker tour bus tickets are our clients in the 43 hotels. So they are going --

THE COURT: What does your client do, maintain a desk?

MR. BERMAN: Our client maintains a desk in each hotel. Our client average revenues run into the tens of millions of dollars a year. They sell millions of dollars worth of tickets.

THE COURT: In addition to the tour bus tickets what else does your client sell?

MR. BERMAN: Our client will do theater tickets and sporting good tickets. And sporting event tickets,

Colloquy

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2 restaurants. They are the travel tour concierge and they
3 have been doing this for 10, 20 --

4 THE COURT: What's your relationship with the
5 various hotels?

6 MR. BERMAN: We lease a desk there with quite a
7 substantial amount of money that we pay for the right to
8 provide tourists, guests, anything they want.

9 Now, we're a full service concierge tour and
10 travel company. If we cannot -- and they have said, you
11 guys get in our way taking over all of the desks, go to
12 the AG, interfere with us -- they have already since the
13 merger they have increased ticket prices by \$5, reduced
14 our commissions by 25 percent.

15 THE COURT: Is there a written contract between
16 your client and Twin America?

17 MR. BERMAN: No, there is an understanding,
18 there is no written, signed agreement, Your Honor. What
19 they have done is, payment terms have been 30 plus days,
20 now it's five days. You don't pay, we're going to shut
21 you off. Well, what we have done, they are going
22 after --

23 THE COURT: They shut off, let's say they are
24 unhappy with the plaintiff's manner of making payment,
25 they don't want you to have that 25 day float. How else
26 are they going to sell their tickets?

Colloquy

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2 MR. BERMAN: Well, what they are going to do
3 is, right now they have the guys on the street corners
4 selling them as you see walking around Manhattan. But
5 the goal here is to strangle us, don't give us the right
6 to sell their tickets. The general managers from the
7 hotel say you're at our concierge desks, all my desks,
8 this is what everybody wants; you're not full service.
9 We're going to terminate you. We're going to kick you
10 out. We're not going to renew.

11 And they this week created an entity. Now this
12 is a bus company that admits that they have never been in
13 the concierge business. They just opened up this week a
14 concierge bus division; a concierge tour desk division
15 going to take over, and their goal is to take over all
16 our spots.

17 Now, if they take over our spots, they have
18 squeezed us out. You think that they are going to sell
19 anything else other than their double decker tour bus
20 tickets? We're an independent, we do this, we do that.
21 We're not aligned with anybody else. So this perfect
22 storm they are going across and they are going up.

23 So far they have through investments in hotels
24 and management companies, our understanding is they have
25 sought to terminate 11 of our hotel concierge desk
26 leases. They have issued termination notices, the 30,

Colloquy

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2 60, 90, 120 days out depending on what the agreement is.
3 And in fact, some of them are for cause. That's
4 irrelevant to them. We're just, through their economic
5 pressure, their muscle, because this is Coach, this is
6 Stage Coach, this is Gray Line, they are humongous. And
7 they are coming down and saying we are going to take over
8 the primary distribution channel of our tickets. You're
9 going to be put out of business. We're taking over the
10 whole city. And we're going to sell, no doubt, only our
11 stuff and you're going to be gone. I mean, so they are
12 going across and up. And the attorney general in
13 there --

14 THE COURT: Wait. The attorney general hasn't
15 acted yet and we don't know if he's going to or not.
16 What, here there is no duty? What's the wrong that you
17 accuse the defendants of?

18 MR. BERMAN: The wrong are Donnelly Act
19 antitrust violations, both monopolization of the tour bus
20 market but attempted monopolization, restraint of trade.

21 THE COURT: What extent do you have a private
22 right of action under the Donnelly Act?

23 MR. BERMAN: We do have, that shouldn't be a
24 problem, Your Honor. And in fact, the case law says we
25 are to notify the AG's office that we --

26 THE COURT: Because they can step in if they

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want to.

MR. BERMAN: And we did so notify them.

THE COURT: Have they responded?

MR. BERMAN: No, they haven't. Because we did this today, we notified them yesterday. I have no doubt in my mind they will. I mean, I don't know, I haven't spoken to the assistant attorney general in charge of this matter who wrote or signed that report. They will be here.

Right now we are here on a TRO, preliminary injunction. We don't want them to shut off the sales of these tickets. No harm to them if you keep it a TRO in effect.

THE COURT: How imminent is the harm to your client?

MR. BERMAN: Very imminent. If today they shut off the spigot of the double decker tour bus tickets, the GMs, they are --

THE COURT: I want to know what is in the pipeline with a TRO. I need to know there is going to be some irreparable harm that's going to happen between today and the return date.

MR. BERMAN: Yes, Your Honor. The GM, what's going to happen is the customers, the people who go to purchase are going to go there and say, I want to do

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this; we don't sell this. What do you mean you don't sell this? GMS within a day or two, what do you mean you're not full service? We're terminating you. You're gone. You're not full service.

THE COURT: Today you're still selling the bus tickets, correct?

MR. BERMAN: As of when we sit here right now, to my knowledge they have not turned off the spigot. They have told us if we go to the authorities and go to the AG and get in the way, and we've written letters to the 11 hotels saying it's a breach of your agreement, unfair competition, you're colluding and partaking with this vertical and horizontal monopolization, and the termination are no force and effect.

THE COURT: The termination notices have already been served on your client?

MR. BERMAN: And we have responded accordingly by saying that we don't --

THE COURT: And the termination notices were served by the hotels that are identified here?

MR. BERMAN: They were served on the letterhead of either the hotel or management company that has ownership. There were 11 termination notices. Of course the case goes beyond just these 11 hotels, but we're sitting here today --

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THE COURT: Who is represented here today as far as the defendants are concerned?

MR. KATZ: Alan Katz, Your Honor, for Twin America, the bus company.

THE COURT: That's the bus companies?

MR. KATZ: Yes.

MR. ZUCKERBROD: Alan Zuckerbrod for the hotels.

THE COURT: So everybody is somewhat represented here, even though not everyone has a tie.

MR. ZUCKERBROD: It was Friday afternoon.

MR. KATZ: But the voices here will represent them.

MR. BERMAN: Just a couple, one thing to be clear. Ninety-five percent of my client's revenues come from these 43 concierge desks.

THE COURT: I understand.

MR. BERMAN: This is nowhere a little thing. This is, they lose the desks, they're gone, it's goodbye.

THE COURT: What do you need either by way of TRO or assurances that will keep everything in status quo between now and the return date?

MR. BERMAN: What I want is to ensure that they continue to permit us to sell their double decker sightseeing tour tickets. No change of terms. Whatever

Colloquy

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2 they are today, they remain until you hear it.

3 THE COURT: Let's see if we can -- I hate to
4 try to decide a case the first day I hear it. And right
5 now all I'm concerned about is the TRO.

6 I don't know to what extent you can speak for
7 your clients. But what I would like to do, if I can, is
8 to get an agreement that the status quo will be
9 maintained pending the return date. Just pick ourselves
10 a nice convenient return date.

11 MR. KATZ: There are two issues that they are
12 seeking the TRO on. They are seeking the TRO, and I
13 would like to respond eventually to what counsel said.
14 But seeking TRO to stop an imaginary stoppage of ticket
15 sales. But they are also seeking a TRO to prevent the
16 hotels from terminating.

17 MR. BERMAN: That was the second aspect.

18 MR. KATZ: And again, prevent my client from
19 starting their operation on the desks.

20 Your Honor, this is not an antitrust action.
21 This is an action for a TRO based upon contracts or not,
22 whether they exist or not. And amazingly in all the
23 papers, and we just got these today, so, amazingly the
24 papers that are before you, these contracts that
25 establish the rights are not attached or not presented to
26 the Court. So what we have here are contracts which the

Colloquy

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2 hotel has with a vendor to run a concierge desk which
3 have termination provisions.

4 The hotel has elected in the case of 11 hotels
5 to exercise those termination rights. And they entered
6 into an agreement with my client to run those concierge
7 desks.

8 I will represent to the Court that nowhere in
9 those contracts or anywhere has it ever been discussed
10 that at these concierge desks only Twin America products
11 are going to be sold. In fact, we're going to sell
12 products to the shows, to the sporting events and to the
13 other tourist related transactions.

14 The attorney general's action or investigation
15 has nothing to do with ticket selling. It has to do with
16 whether two companies can have a joint venture together
17 to operate a bus company.

18 THE COURT: I think to be fair to the attorney
19 general, that report was focused in on one particular
20 problem. But the plaintiff, the picture the plaintiff
21 has painted now is somewhat more complicated.

22 MR. KATZ: I understand that. But it's not the
23 picture that the attorney general has painted, it's what
24 this party --

25 THE COURT: I understand. He's relying, in
26 part, upon the attorney general's concerns.

Colloquy

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2 MR. KATZ: Your Honor, you know, I'm a
3 procedural type of person. We're here more than 30 days,
4 more than 30 days after the termination notices have been
5 sent and now they seek injunctive relief.

6 They are here after my client and their client
7 have sat down to try to negotiate the purchase and sale
8 of their business. In fact, a meeting with them was
9 scheduled to be next week to continue those discussions.
10 Obviously, they didn't like the tenor of the offer made
11 to purchase the business on the other hotels.

12 Your Honor, with all due respect, this is a
13 business dispute based upon contractual relationships
14 that aren't even before the Court.

15 THE COURT: I am concerned about the scope,
16 I'll say the breadth rather, of your client's alleged
17 domination of the market. Is it true that your clients
18 control about 90 percent of the tour bus, the double
19 decker tour business market?

20 MR. KATZ: Your Honor, I don't know the exact
21 percentages. There is no doubt that my clients have a
22 significant tour bus business.

23 THE COURT: You're combined, the blue --

24 MR. KATZ: The blue and the red you see in the
25 streets. I'm not an antitrust lawyer, they have
26 antitrust counsel they have retained that I'm sure will

Colloquy

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2 one day appear before you. But the argument is the bus.
3 It's not the buses that are the relevant market, it's the
4 tour industry. We're competing for dollars based upon
5 the Circle Line. We're competing for dollars based on
6 helicopter rides. We're competing for tourist dollars
7 for Madame Tussaud's. The market is just not limited
8 to --

9 THE COURT: My concern is the arguments being
10 made, and the cancellation notices would seem to back
11 them up, that losing the tour bus, double decker tour bus
12 market puts them out of business. And it does present us
13 with the horizontal and vertical domination of this
14 market. That is your clients will be in a position to
15 control not only the providing of the bus service itself,
16 but you'll also be able to control or your client will be
17 able to control the sales of tickets to, yes, the boat
18 tours, yes, the shows and the ball games. But also, and
19 more importantly to you, the sale of the bus tickets.

20 It's not mere happenstance, it would seem to me
21 that a bus company is interested in that, dominates the
22 market, is interested in dominating the secondary market
23 of its tickets. And that is I would assume the primary
24 manner in which these tickets get out to the public.

25 MR. KATZ: Your Honor, with all due respect, I
26 don't think that there is any prohibition for me to

Colloquy

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2 determine how I sell my own tickets.

3 THE COURT: But the Donnelly Act does impose a
4 screen through which we view these activities. And,
5 quite frankly, the allegations that I've seen so far
6 would hit a lot of the right buttons.

7 MR. KATZ: Your Honor, they are allegations,
8 not facts, not evidence before you. There is another
9 presentation, another story to make. But the point is
10 these, the plaintiff has only their contractual right to
11 be there.

12 THE COURT: No, they have the right to compete
13 in a market where the Donnelly Act is not violated.

14 MR. KATZ: We are not prohibiting them from
15 competing. They can sell, they have other hotel desks.
16 How many other hotel desks do you have, 40? We're just
17 talking about 11. They can compete. They can go, like
18 we do, they can sell on their website if they want. The
19 hotels determine, not me, who sells in their hotels.

20 MR. BERMAN: Your Honor, if I may for a couple
21 of moments.

22 THE COURT: Sure.

23 MR. BERMAN: In the attorney general's report
24 on page six, just to be clear, the attorney general's
25 report says, Coordinate action by direct competitors can
26 also limit a competition for marketing with ticket

Colloquy

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2 selling partners such as hotel concierges.

3 You asked the question before of counsel for
4 the defendant, would they agree not to stop selling the
5 tickets to my client. You did not hear an answer to your
6 very direct question. Why? Because this week they
7 opened up a competing concierge desk company. They say
8 we waited too long, there were negotiations, we were
9 going to meet next week. They just opened up the
10 competition this week.

11 THE COURT: Fellow, fellows.

12 MR. KATZ: You're wrong, counsel, you're wrong.

13 THE COURT: Guys, I'm granting the TRO as
14 prayed for. When do you want --

15 MR. KATZ: Your Honor.

16 MR. ZUCKERBROD: Your Honor.

17 THE COURT: Excuse me. I want to know when we
18 have this returnable. And make it as quickly as you
19 like.

20 MR. KATZ: It's one thing to grant the TRO as
21 far as us not taking the business away. But are you
22 granting the TRO preventing them, the hotels, from
23 terminating their agreements?

24 THE COURT: Yes, I thought I was pretty clear
25 when I said I was granting the TRO. When do you want
26 this returnable? You tell me, you're the opposition. I

Colloquy

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2 already got their papers, it's really up to you. And
3 you'll want it as quickly as possible so you don't have
4 any prejudice.

5 MR. KATZ: Well, except that we have retained,
6 we have hired, we have implemented two of the hotels to
7 take effect on Monday. And here we are three days --

8 THE COURT: I don't think that affects that it
9 all.

10 MR. BERMAN: Yes, it does.

11 THE COURT: Restraining from ceasing to sell?

12 MR. BERMAN: From terminating the agreements.

13 THE COURT: That's the hotels terminated, they
14 already terminated those agreements apparently.

15 MR. ZUCKERBROD: May I be heard on the behalf
16 of the hotels? You had asked a question, what's the
17 relationship between the hotels and the plaintiff.
18 They're a concessionaire. They have a desk and sell
19 tickets, bus tours, everything, dinner reservations.
20 Those are fairly simple agreements. Some are terminable
21 with cause, some without cause, some have expired.

22 Significantly, the plaintiff has brought this
23 application. As far as we're concerned it's a breach of
24 contract case in terms of our rights. They haven't
25 attached --

26 THE COURT: If you're right, you're going to

Colloquy

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2 win. If you're wrong, the Donnelly Act is going to start
3 punishing people.

4 MR. BERMAN: On termination we contend the
5 termination was improper, because the termination --

6 THE COURT: I understand, I understand. I'm
7 way ahead of you guys. All I want to know is when you
8 want this returnable.

9 MR. BERMAN: We should have a standstill on the
10 termination with those two hotels until --

11 THE COURT: You're getting a stay. If you work
12 out an agreement, God bless you. All I need to know is
13 when are you coming back, that's all I need to know. And
14 when do you want to get your opposing papers in. When
15 can you get your opposing papers in?

16 MR. KATZ: Two weeks.

17 THE COURT: So that's the 26th. We don't sit
18 on Fridays. You want to make this the 30th of March?

19 MR. ZUCKERBROD: Sure.

20 THE COURT: The 26th for the papers. And we
21 come back and see you on April 5th for the motion, 6th,
22 7th?

23 MR. KATZ: April 5th.

24 THE COURT: So your papers by the 28th.

25 MR. BERMAN: Do we have a chance to reply?

26 THE COURT: No. And you're on for the 5th of

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April. See you then, guys.

MR. LEVINSON: Is that 26 or 28?

THE COURT: The 26th for the papers. And I'm going to see you on the 5th. I don't want to do it that long. What about coming in on the 30th or 31st for the motion?

MR. KATZ: That's better.

THE COURT: Yes, make it a little quicker.

MR. KATZ: Which date?

THE COURT: Let's make it the 31st.

MR. BERMAN: What time, Your Honor?

THE COURT: 11:00.

MR. BERMAN: And you're accepting service of our papers today so we don't have to go through the razzmatazz of serving each hotel?

MR. ZUCKERBROD: Of course.

MR. BERMAN: Of course you're accepting?

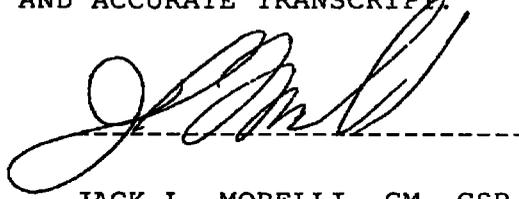
MR. ZUCKERBROD: Of course I'm accepting.

THE COURT: Of course. Today is the 12th so it gets served today, returnable on the 31st and papers on the 28th. Terrific. I'm looking forward to it already. You know, you can always settle this case between now and then.

Colloquy

* * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

A handwritten signature in cursive script, appearing to read 'J. Morelli', is written over a horizontal dashed line.

JACK L. MORELLI, CM, CSR

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REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT
INDEX NO. 090643/10

NEW YORK COUNTY
DATE PURCHASED: MARCH 12, 2010

For Clerk Only

PLAINTIFF: CONTINENTAL GUEST SERVICES CORPORATION,

IAS entry date

-against-

Judge Assigned

DEFENDANT: INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK et al.,

RJI Date:

(see Exhibit "A" hereto for full caption)

MARCH 12, 2010

Date issue joined: n/a Bill of particulars served (Y/N): [] Yes [X] No

NATURE OF JUDICIAL INTERVENTION (check **ONE** box only **AND** enter information)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Request for preliminary conference | <input type="checkbox"/> Notice of petition
Relief sought |
| <input type="checkbox"/> Note of issue and/or certificate of
readiness | <input type="checkbox"/> Notice of medical or dental malpractice action
(specify: _____) |
| <input type="checkbox"/> Notice of motion | <input type="checkbox"/> Statement of net worth |
| <input checked="" type="checkbox"/> Order to show cause
(clerk enter return date: _____)
Relief sought: <u>Temporary Restraining Order and
Preliminary Injunction</u> | <input type="checkbox"/> Writ of habeas corpus |
| <input type="checkbox"/> Other ex parte application (specify: _____) | <input type="checkbox"/> Other (specify: _____) |

NATURE OF ACTION OR PROCEEDING (Check **ONE** box only)

MATRIMONIAL

- Contested -CM
 Uncontested -UM

COMMERCIAL

- Contract -CONT
 Corporate -CORP
 Insurance (where insurer is a
party, except arbitration) -INS
 UCC (including sales, negotiable
instruments) -UCC
 *Other Commercial -OC

* Antitrust violations, unfair competition,
tortious interference, and breach of contract

REAL PROPERTY

- Tax Certiorari -TAX
 Foreclosure -FOR
 Condemnation -COND
 Landlord/Tenant -LT
 *Other Real Property -ORP

OTHER MATTERS

- _____ -OTH

* If asterisk used, please specify.

TORTS

- Malpractice
 Medical/Podiatric -MM
 Dental -DM
 *Other Professional -OPM
 Motor Vehicle -MV
 *Products Liability -PL
 Environmental -EN
 Asbestos -ASB
 Breast Implant -BI
 *Other Negligence -OTN

- *Other Tort (including intentional) -OT

SPECIAL PROCEEDINGS

- Art. 75 (Arbitration) -ART75
 Art. 77 (Trusts) -ART77
 Art. 78 -ART78
 Election Law -ELEC
 Guardianship (MHL Art. 81) -GUARD81
 *Other Mental Hygiene -MHYG

- *Other Special Proceeding -OSP

Check "YES" or "NO" for each of the following questions:

Is this action/proceeding against a

YES NO

Municipality
(Specify _____)

YES NO

Public Authority
(Specify _____)

YES NO

- Does this action/proceeding seek equitable relief?
- Does this action/proceeding seek recovery for personal injury?
- Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonial and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

Expedited: 0-8 months Standard: 9-12 months Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? No Yes, Date _____
 Was a Notice of No Necessity filed? No Yes, Date _____

ATTORNEYS FOR PLAINTIFF:

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
	Ganfer & Shore, LLP	360 Lexington Avenue, 14 th Floor New York, New York 10017	(212) 922-9250

ATTORNEYS FOR DEFENDANTS:

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
	(see Exhibit "B" hereto for list of all Defendants)		

*Self -Represented: parties representing themselves, without an attorney, should check the "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

N/A

RELATED CASES: (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of Relationship</u>
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NONE

I AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: March 12, 2010



 (SIGNATURE)

Mark A. Berman Esq.

 (PRINT OR TYPE NAME)

Ganfer & Shore, LLP

 ATTORNEYS FOR PLAINTIFF

ATTACH RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION

EXHIBIT "A"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN, LLC
D/B/A CITY SIGHTS NEW YORK, TWIN AMERICA,
LLC, BATTERY PARK HOTEL MANAGEMENT,
LLC, HAMPTON INN TIMES SQUARE NORTH,
HILTON GARDEN INN TIMES SQUARE, NEW
YORK WEST 35TH STREET HGI, ON THE AVE
HOTEL, THE PARAMOUNT HOTEL NEW YORK,
PARK CENTRAL HOTEL (DE), LLC, THIRTY EAST
30TH STREET OWNER, LLC, TIMES SQUARE
HOTEL OPERATING LESSEE LLC, LEXINGTON
HOTEL, LLC, W2001 METROPOLITAN HOTEL
OPERATING LESSEE, L.L.C, and HIGHGATE
HOTELS, L.P.,

Defendants.

EXHIBIT "B"

International Bus Services, Inc.
d/b/a Gray Line New York
1430 Broadway, 5th Floor
New York, New York 10036

On The Ave Hotel
2178 Broadway
New York, New York 10024

City Sights Twin, LLC
d/b/a City Sights New York
1430 Broadway, 5th Floor
New York, New York 10036

The Paramount Hotel New York
235 West 46th Street
New York, New York 10036

Twin America, LLC
1430 Broadway, 5th Floor
New York, New York 10036

Park Central Hotel (DE), LLC
870 Seventh Avenue
New York, New York 10019

Highgate Hotels, L.P.
545 E. John Carpenter Freeway,
Irving, Texas 75062

Thirty East 30th Street Owner, LLC
30 East 30th Street
New York, New York 10016

Battery Park Hotel Management, LLC,
102 North End Avenue
New York, New York 10281

Times Square Operating Lessee LLC
1568 Broadway
New York, New York 10036

Hampton Inn Times Square North
851 Eighth Avenue
New York, New York 10019

Lexington Hotel, LLC
511 Lexington Avenue
New York, New York 10017

Hilton Garden Inn Times Square
790 Eighth Avenue
New York, New York 10019

W2001 Metropolitan Hotel Operating Lessee,
L.L.C.
569 Lexington Avenue
New York, New York 10022

New York West 35th Street HGI
63 West 35th Street
New York, New York 10001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. 600643/10

**PLAINTIFF'S AMENDED MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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New York, New York 10017
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(212) 922-9335 (facsimile)
Attorneys for Plaintiff

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This Memorandum of Law is submitted on behalf of Plaintiff, Continental Guest Services Corporation ("Plaintiff" or "CGSC"), in support of Plaintiff's application, pending a determination of its motion for a preliminary injunction, for a: (1) temporary restraining order seeking to (i) restrain and enjoin Defendants International Bus Services, Inc. ("IBS"), City Sights Twin, LLC ("City Sights"), and Twin America, LLC ("Twin America") (IBS, City Sights, and Twin America are collectively referred to as the "Bus Company Defendants") and their related entities and individuals from ceasing to sell double-decker tour bus tickets to Plaintiff and from changing the current terms and conditions of the sale; and (ii) restrain and enjoin Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"), Highgate Hotels, L.P. ("Highgate") (the Hôtels and Highgate are collectively referred to as the "Hotel Defendants") from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel; and (2) a preliminary injunction restraining and enjoining the Bus Company Defendants and related companies and individuals from interfering with thirty-three other hotel concierge desk agreements that Plaintiff had entered into.

PRELIMINARY STATEMENT

The New York State Office of the Attorney General (the "Attorney General"), in a report dated November 2, 2009 (the "NYAG's Report")¹, agrees with Plaintiff's claims, and advised the United States Surface Transportation Board (the "STB") that it believes that IBS' and City Sights' joint venture agreement to form Twin America will, *inter alia*: (i) create an illegal monopoly; (ii)

¹ A copy of the NYAG's Report is annexed to the Affidavit of Betty Zhang, the President of CGSC, sworn to on March 11, 2010 (the "Zhang Aff."), as Exhibit "A". Also accompanying this brief is the Emergency Affidavit of Mark A. Berman, sworn to on March 12, 2010 (the "Berman Aff.").

illegally restrain trade and competition; and (iii) *allow the Bus Company Defendants to obtain vertical monopolistic control of other markets by eliminating competition in other markets, such as the Sightseeing Tour Bus Sales Market.*

More specifically, the Attorney General in his Report states that:

[c]oordinated action by [the Bus Companies] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6) (emphasis added). As demonstrated by Plaintiff, the Attorney General was on point about the Bus Company Defendants eliminating competition by controlling the "marketing" of sightseeing bus tour tickets through the monopolization of New York City's hotel concierge desks.

* * *

Plaintiff is one of the "ticket selling partners, such as hotel concierges" referred to above by the Attorney General. CGSC is an over one hundred year old New York City-based sightseeing and hospitality company that, among other things, sells tickets to double-decker sightseeing tours in New York City operated by the Bus Company Defendants through forty-three concierge desks Plaintiff leases located on the first floor of hotels located in New York City.

This application for a temporary restraining order and a preliminary injunction is predicated, in part, upon IBS' and City Sights' knowingly and intentionally entering into an agreement with each other in order to form Twin America to monopolize the double-decker sightseeing tour bus market in New York City (the "Sightseeing Tour Bus Market"), in violation of the Donnelly Act, in an unreasonable restraint of competition. The purpose of such

“agreement” was and is to completely control and dominate, curtail competition, and prevent the free exercise of consumer choice in the Sightseeing Tour Bus Market. The Bus Company Defendants now control approximately *ninety percent of such market, if not more.*

The Bus Company Defendants have used and are continuing to use their monopoly and market power in such market – the Sightseeing Tour Bus Market – to impede competition and to create a monopoly in another market – the sale of double-decker sightseeing tour bus tickets in New York City at hotels (the "Sightseeing Tour Bus Sales Market"), for which Plaintiff is the largest seller of the Bus Company Defendants’ services.

Specifically, the Bus Company Defendants have engaged and are continuing to engage in unfair competitive and otherwise predatory conduct in violation of the Donnelly Act with the intent of monopolizing the major distribution channel for the sale of their double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market by taking control of and over the hotel concierge desk distribution channel in New York City. By doing this, the Bus Company Defendants will ensure that no new double-decker sightseeing tour bus company could successfully enter the market, because they would control the major distribution channel for sale of such tour tickets, and would, of course, only sell their own tickets. On the other hand, CGSC is and will remain independent and would sell the product of any new reputable entrant into the Sightseeing Tour Bus Sales Market.

Initially, the Bus Company Defendants sought to accomplish this predatory scheme by seeking to purchase Plaintiff, but when Plaintiff declined to sell its company, the Bus Company Defendants advised that they would use their economic power and financial interests in hotels and hotel management companies to force Plaintiff out of such hotels in order to obtain control of all hotel concierge desks.

The fact is that Plaintiff's forty-three hotel concierge desks are the largest single source of double-decker sightseeing tour ticket sales for the Bus Company Defendants, and, accordingly, the largest single source of the Bus Company Defendants' revenue is through Plaintiff's high-volume sales of such tickets at Plaintiff's desks. The fact is that of the tens of millions of dollars in sales generated by CGSC in 2009, approximately ninety-five percent came from its hotel concierge desks, and without being able to sell double-decker sightseeing tour tickets, the Bus Company Defendants will destroy Plaintiff's business.

If the Bus Company Defendants are permitted to engage in the anti-competitive conduct, as set forth more fully in the Complaint, CGSC will be put of business. Moreover, and as set forth more fully below and in the Berman and Zhang Affidavits, Defendants' wrongful conduct has inflicted and continues to inflict irreparable harm upon CGSC.

The Bus Company Defendants have advised Plaintiff that if Plaintiff informed the Attorney General or any governmental entity about the Bus Company Defendants' anti-competitive and predatory conduct or in any way interfered with their plans to take control over their primary distribution channel, they would immediately prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services.

If the Bus Company Defendants stop providing their services and products to Plaintiff, which they have indicated they would do, then Plaintiff will be unable to operate its hotel concierge desks because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours and if CGSC is "cutoff" from being able to sell such tickets, Plaintiff will be unable to provide any alternative double-decker sightseeing tours to hotel guests. If CGSC is prevented from selling double-decker sightseeing bus tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either immediately

terminate their concierge desk agreements with Plaintiff or refuse to renew such agreements upon their expiration, and will enter into an agreement with the Bus Company Defendants or an affiliate, which can supply such tickets, destroying the goodwill and relationships that Plaintiff has built up for more than the past one hundred years.

By Plaintiff informing in writing yesterday that they are disputing the Hotel Defendants' wrongful cancellation of their concierge desk contracts with Plaintiff and due to the filing of this action and sending a copy of the instant Complaint to the Attorney General, CGSC has every reason to believe that, absent a temporary restraining order, the Bus Company Defendants will immediately prevent Plaintiff from selling their tickets and services, thereby putting Plaintiff out of business.

To further malevolently injure CGSC, the Bus Company Defendants have, *inter alia*: recently reduced the commissions paid to Plaintiff for selling their double-decker sightseeing ticket sales by over twenty-five percent; shortened the time period for Plaintiff to pay the Bus Company Defendants for Plaintiff's sale of such tickets from more than thirty days to five days; and threatened Plaintiff that if the Bus Company Defendants did not receive Plaintiff's payment for its sightseeing tickets within five days, they would preclude Plaintiff from selling any of their sightseeing services.

In addition to seeking to destroy Plaintiff by threatening not to sell to Plaintiff its products and services, the Bus Company Defendants and Highgate, the company that owns and/or manages the eleven Defendant Hotels where CGSC has agreements to operate concierge desks (the "Hotels"), have unlawfully interfered with Plaintiff's contractual relationships with those Hotels. As set forth more fully below and in the Zhang Affidavit, the Bus Company Defendants, through, among other things, their threats, wrongful economic coercion, direct

and/or indirect investments in Highgate and/or in the Hotels (Highgate and the Hotels are collectively referred to as the "Hotel Defendants"), have caused the Hotels to wrongfully terminate and breach their hotel concierge desk agreements with Plaintiff. In addition, the Bus Company Defendants are already in the process of poaching Plaintiff's employees who worked at such hotels to join the Bus Company Defendants in operating their hotel concierge desk business, of which they admittedly have no experience operating.

The Bus Company Defendants are also in the process of and are currently using their economic pressure from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause other hotels to cancel their hotel concierge desk agreements with Plaintiff, thereby eliminating Plaintiff's concierge desks throughout New York City.

Indeed, as set forth more fully in the Zhang Affidavits the Bus Company Defendants have admitted that they will "steal" all of CGSC's concierge desks in order to ensure that they any new tour bus competitor would have an impossible time entering the market. (Zhang Aff. ¶¶ 17, 20, 41, 42, 49) *The Bus Company Defendants then would control the sole distribution channel for tours tickets throughout New York City hotels, and only sell sightseeing tour tickets to their own companies.*

As a result, the Bus Company Defendants are on the verge wiping Plaintiff off the proverbial map and obtaining vertical, monopolistic control of the Sightseeing Tour Bus Sales Market through their control of hotel concierge desks. The Bus Company Defendants will soon own and control the largest consumer of their own product (the double-decker sightseeing tour bus tickets in New York City) or, in other words, the largest distribution channel for their product.

FACTS

For a complete discussion of the facts, the Court is respectfully referred to the accompanying Berman and Zhang Affidavits and the Complaint, dated March 12, 2010 (the "Complaint" or "Cplt.") submitted in support of Plaintiff's application for a temporary restraining order and a preliminary injunction, as well as other relief.

ARGUMENT

POINT I

PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Under New York law, as is demonstrated in Point II below, this Court should grant, as here, the requested temporary restraining order "pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before a hearing may be had." CPLR § 6301; see also CPLR § 6313(a).

Plaintiff has demonstrated that it has met each of the three elements required for the grant of a temporary restraining order and a preliminary injunction: (1) a likelihood of success on the merits, (2) irreparable injury absent the injunctive relief, and (3) a balancing of the equities in the movant's favor. See CPLR § 6301; see also Doe v. Axelrod, 73 N.Y.2d 748, 750, 536 N.Y.S.2d 44 (1988); American Para Professional Systems, Inc. v. Examination Management, Inc., 214 A.D.2d 413, 414, 625 N.Y.S.2d 33, 34 (1st Dep't 1995) (citing W.T. Grant Co. v. Srogi, 52 N.Y.2d 496, 517, 438 N.Y.S.2d 761, 771 (1981)).

As Plaintiff has satisfied each of these elements, it is entitled to the issuance of the requested temporary restraining order, as well as a preliminary injunction.

**I. Plaintiff Will Suffer Irreparable Injury
If The Requested Order Is Not Granted**

As a threshold matter, "the purpose of a preliminary injunction is to maintain the status quo pending a hearing on the merits, rather than to determine the parties' ultimate rights." 360 W. 11th LLC v. ACG Credit Co. II, LLC, 46 A.D.3d 367, 367, 847 N.Y.S.2d 198, 198 (1st Dep't 2007). This is precisely what Plaintiff seeks through the requested relief.

Irreparable harm exists for any "injury for which money damages are insufficient." McLaughlin, Piven, Vogel, Inc. v. W. J. Nolan & Co., 114 A.D.2d 165, 174, 498 N.Y.S.2d 146 (2d Dep't 1986). Irreparable harm, as here, exists where "the very viability of the plaintiff's business, or substantial losses of sales...have been threatened." Tom Doherty Associates, Inc. V. Saban Entertainment, Inc., 60 F.3d 27, 38 (2d Cir. 1995). The United States Court of Appeals for the Second Circuit has explained:

We believe the governing principle is as follows. Where the availability of a product is essential to the life of the business *or* increases business of the plaintiff beyond sales of that product – for example, by attracting customers who make purchases of other goods while buying the product in question – the damages caused by loss of the product will be far more difficult to quantify than where sales of one of many products is the sole loss. In such cases, injunctive relief is appropriate. This rule is necessary to avoid the unfairness of denying an injunction to a plaintiff on the ground that money damages are available, only to confront the plaintiff at a trial on the merits with the rule that damages must be based on more than speculation. Where the loss of a product with a sales record will not affect other aspects of a business, a plaintiff can generally prove damages on a basis other than speculation. **Where the loss of a product will cause the destruction of a business itself or indeterminate losses in other business, the availability of money damages may be a hollow promise and a preliminary injunction appropriate.**

Tom Doherty, 60 F.3d at 38. (emphasis added.)

Here, money damages would be ineffectual and insufficient, as Plaintiff is faced with the imminent prospect of losing its over one hundred-year old business. Ninety-five percent of Plaintiff's sales in 2009 came from its hotel concierge desks, and with the loss of being unable to

sell double-decker sightseeing tour tickets at such desks, Plaintiff's business will be destroyed. (Zhang Aff. ¶ 13) The fact is that the Bus Company Defendants have admitted that they intend on taking over all of Plaintiff's concierge desks, even though they have no experience in such business (Zhang Aff. ¶¶ 20, 41, 42, 49) So far the Bus Company Defendants and Highgate, through their anti-competitive actions, have already stolen over twenty-five percent of CGSC's hotel concierge desks (11 out of 43 hotel concierge desks), and the Bus Company Defendants have admitted that they intend to take over all of Plaintiff's hotel concierge desks. (Zhang Aff. ¶ 18, 20, 41, 42, 49)

The Bus Company Defendants know that their control of hotel concierge desks creates an impenetrable entry barrier to any new sightseeing tour bus company that would come into New York City (as the Bus Company Defendants would not sell such competitor's tour tickets), and have advised Plaintiff that they would "cutoff" the sale of their tickets and services to Plaintiff if Plaintiff took any affirmative action seeking to curtail their anti-competitive and predatory conduct. (Zhang Aff. ¶ 10) As indicated above, if the Bus Company Defendants stop providing their services and products to Plaintiff, Plaintiff will be unable to operate its concierge desks. Because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours, Plaintiff will thus be unable to provide any alternative double-decker sightseeing bus tours to hotel guests. Such tours are unique and the number one activity in New York City for tourists to do at such price point. Moreover, it is the double-decker sightseeing bus tours, because of their high visibility throughout New York City, that draw hotel guests and others to Plaintiff's concierge desks to purchase other services. (Zhang Aff. ¶ 15)

If Plaintiff cannot sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either terminate their

concierge desk agreements with Plaintiff or refuse to renew such agreements upon their expiration, and will enter into an agreement with the Bus Company Defendants or an affiliate, which can supply such tickets, thereby destroying Plaintiff's business and the goodwill and relationships that Plaintiff has built up for more than the past one hundred years.

In a further attempt to ensure that the Bus Company Defendants will be able to monopolize the market and put CGSC out of business, they have already, *inter alia*:

- (i) reduced the commissions paid to Plaintiff for selling their double-decker sightseeing ticket sales by over twenty-five percent;
- (ii) shortened the time period for Plaintiff to pay the Bus Company Defendants for Plaintiff's sale of their tickets from more than thirty days to five days;
- (iii) threatened Plaintiff that if the Bus Company Defendants did not receive Plaintiff's payment for its sightseeing tickets within five days, they would preclude Plaintiff from selling any of their sightseeing services;
- (iv) wrongfully caused no less than eleven hotels (the Hotels) to wrongfully cancel their concierge desk contracts with Plaintiff;
- (v) poached a number of Plaintiff's employees; and
- (vi) invested and continue to invest, either directly or indirectly, in other hotels to exert their economic and monopolistic leverage to cause such hotels to cancel their contracts with Plaintiff.

(Zhang Aff. ¶¶ 6, 11, 15, 17-20, 28, 35, 39, 52)

The Bus Company Defendants therefore have and will continue to cause Plaintiff numerous forms of irreparable harm – including, the loss of goodwill, loss of long-standing relationships, financial ruin – and absent injunctive relief, Plaintiff will be wiped off the proverbial map forever. See, e.g., A.D. Bedell Wholesale Co., Inc. v. Philip Morris Inc., 272 A.D.2d 854, 854, 708 N.Y.S.2d 226, 227 (4th Dep't 2000) (affirming the issuance of a temporary restraining order where the plaintiff demonstrated that it would suffer irreparable injury from the defendant's violation of the Donnelly Act); Gold Star Ice Cream Co., inc. v. Haagen-Dazs Ice

Cream, Inc., 1981 WL 11456 at *2 (Sup. Ct. Nassau Co. 1981) (the court granted a the plaintiff a preliminary injunction in connection with Donnelly Act violations because "[i]rreparable harm may come if defendant were permitted to effectively shut the plaintiff and other competitors out of certain areas of the market"); Tom Doherty, 60 F.3d at 38 (preliminary injunction affirmed where a party was threatened with the loss of a business and the party's goodwill associated with the business); Reuters Ltd. v. United Press Intern., Inc., 903 F.2d 904, 908 (2d Cir. 1990) (threatened loss of customers from a party's termination of the supply of a product constituted irreparable harm and warranted the issuance of a preliminary injunction). Accordingly, Plaintiff has established that it will suffer irreparable harm if injunctive relief is not granted.

II. Plaintiff Will Succeed On The Merits Of This Action

A party moving for a preliminary injunction need not establish a certainty of success (which Plaintiff is confident that it will), see e.g., Props for Today, Inc. v. Kaplan, 163 A.D.2d 177, 178, 558 N.Y.S.2d 38, 39 (1st Dep't 1990), Parkmed Company v. Pro-Life Counseling, Inc., 91 A.D.2d 551, 552, 457 N.Y.S.2d 27, 29 (1st Dep't 1982), but it is sufficient that the movant make a *prima facie* showing of entitlement to relief, which, as set forth below, it has. See Parkmed, supra. See also McLaughlin, 114 A.D.2d at 172-173, 498 N.Y.S.2d at 152.

A. The Bus Company Defendants and Highgate Have Violated The Donnelly Act and Engaged In Unfair Competition

The Donnelly Act is the New York State antitrust statute designed to protect competition and redress the anti-competitive effects of a variety of unlawful business practices in that it prohibits: (i) every contract, agreement, or arrangement (such as a conspiracy) whereby a monopoly may be established or maintained or whereby competition or the free exercise of a business activity may be restrained; (ii) anti-competitive conduct in any business, trade, or

commerce; and (iii) price-fixing of any business, trade, or commerce. See General Business Law § 340.

To assert a Donnelly Act² violation, a party is required to:

(1) identify the relevant product market, (2) describe the nature and effects of the purported conspiracy, (3) allege how the economic impact of that conspiracy is to restrain trade in the market in question, and (4) show a conspiracy or a reciprocal relationship between two or more entities.

Yankees Entertainment and Sports Network, L.L.C. v. Cablevision Systems Corporation and CSC Holdings, 224 F. Supp.2d 657, 678 (S.D.N.Y. 2002); Capitaland United Soccer Club Inc. v. Capital Dist. Sports & Entertainment Inc., 238 A.D.2d 777, 779, 656 N.Y.S.2d 465, 467 (3d Dep't 1997) (same).

Here, the two relevant product markets in which the lawful restraints and other anti-competitive conduct alleged herein have had and will continue to have anti-competitive effects are inextricably intertwined. The first is the market for double-decker sightseeing tour buses – the Sightseeing Tour Bus Market. Double-decker sightseeing tours in New York City allow passengers to board and un-board buses at short intervals along a tour route of historical sites, monuments, and other places of interest/sights, and allow passengers to board any bus at any interval along the tour route for the sightseeing tour that was purchased. The second market is the hotel concierge desk distribution channel for the sale of tickets to passengers for the double-decker sightseeing tours in New York City – the Sightseeing Tour Bus Sales Market. (Cplt. ¶ 36)

The relevant geographic market for the Sightseeing Tour Bus and Tour Bus Sales Markets for the purposes of this lawsuit is New York City. The major geographic routes for the Bus Company Defendants' double-decker sightseeing tours buses are located in the boroughs of

² The Donnelly Act has often been called a "Little Sherman Act" and should "generally be construed in light of Federal precedent". Anheuser-Busch, Inc. v. Abrams, 71 N.Y.2d 327, 335, 525 N.Y.S.2d 816, 820 (1988).

New York City, the buses only carry passengers that are allowed to board and un-board at locations that are only in New York City. Further, Plaintiff's sale to and customers' pick-up of tickets for the Bus Company Defendants' double-decker sightseeing tours are done at the hotel concierge desks only located in New York City. (Cplt. ¶ 40)

1. The Bus Company Defendants Have Monopolized The Sightseeing Tour Bus Market

From the time of their existence through the spring of 2009, the Bus Company Defendants were separate and distinct companies. In fact, through their respective trade names, they were direct and fierce competitors in the Sightseeing Tour Bus Market. (Zhang Aff. ¶ 22) Notwithstanding this fact, when IBS and City Sights were acting as separate and distinct entities and competitors, they each controlled approximately one half of more than ninety percent of the Sightseeing Tour Bus Market. (Zhang Aff. ¶ 24) For many years, the double-decker sightseeing tours buses from IBS and City Sights were the only buses that ran three out of the four major geographic routes in New York City. (Zhang Aff. ¶ 23; Ex. A)

No doubt, the Bus Company Defendants knew that, by forming Twin America, they could eliminate all competition, dominate, and obtain a monopoly over the entire Sightseeing Tour Bus Market by combining their forces and respective companies in order to control ninety percent of the market. (Zhang Aff. ¶ 25) Accordingly, in or about March 2009, Twin America was formed over the strong objections of the Attorney General. (Zhang Aff. ¶ 26; Ex. A) The Attorney General stated in his Report to the STB that, *inter alia*, the Bus Company Defendants had violated antitrust laws and eliminated fair competition in the Sightseeing Tour Bus Market, and therefore created an illegal monopoly. (Zhang Aff. ¶¶ 7-8; Ex. A)

This unlawful monopolization and restraint of trade by the Bus Company Defendants is a clear violation of the Donnelly Act. See Capitaland United Soccer Club Inc., 238 A.D.2d at 779,

656 N.Y.S.2d at 467 (conspiracy to curtail competition and economically impact the market violated General Business Law § 340); New York ex rel. Spitzer v. Saint Francis Hosp., 94 F. Supp. 2d 399, 411-414 (S.D.N.Y. 2000) (an agreement to eliminate competition, fix prices, and allocate market share violated General Business Law § 340); Global Reinsurance Corporation-U.S. Branch v. Equitas Ltd., 20 Misc. 3d 115(A), 867 N.Y.S.2d 16, 17, 2008 WL 2676805 (Sup. Ct. N.Y. Co. 2008) (former competitors that entered into a conspiracy to consolidate their market power, stifle competition, and fix prices below those that would prevail in a competitive market violated the Donnelly Act); People v. Wisch, 58 Misc. 2d 766, 768, 296 N.Y.S.2d 882, 885 (Sup. Ct. N.Y. Co. 1969) (even if the price fixed by a party is reasonable, it still violates the Donnelly Act "if the price was fixed on a horizontal level as the result of the unlawful combination and resulted in restraint of trade").

2. The Bus Company Defendants Have Attempted To Monopolize The Sightseeing Tour Bus Sales Market, Restrain Trade And Have Engaged In Unfair Competition

Plaintiff operates concierge desks in forty-three hotels providing hotel guests and other customers with, among other things, the Bus Company Defendants' double-decker sightseeing tour bus tickets. (Zhang Aff. ¶ 3) The Attorney General was prescient when he asserted in his Report that the Bus Company Defendants would obtain vertical monopolistic control of other markets by eliminating competition, such as in the Sightseeing Tour Bus Sales Market. This, in fact, is what has, is and will be occurring, because the Bus Company Defendants are engaging in predatory practices to ensure that they will control the largest distribution channel for the sale of sightseeing tour tickets if a new competing bus company would attempt to enter the New York City market, and, of course, only sell tickets to their own tours.

The Bus Company Defendants knew that they could take over the major distribution channel in the Sightseeing Bus Tour Sales Market for *their* ticket sales and dominate and obtain monopoly power over the Sightseeing Tour Bus Sales Market: (i) through their formation of Twin America; and (ii) by conspiring with each other to take over control of the major distribution channel of their double-decker sightseeing tour bus tickets (Plaintiff's hotel concierge desks). By putting Plaintiff out of business, the Bus Company Defendants would control the largest consumer of *their* own product and be able to only sell their own product and no new bus company would have a chance to compete.

IBS' and City Sights' agreement to form Twin America had the following immediate effects: (i) the Bus Company Defendants increased the price of their double-decker sightseeing tours to consumers on its main routes by Five Dollars; (ii) the Bus Company Defendants unilaterally reduced Plaintiff's commission on its sales of their sightseeing double-decker tour bus tickets by approximately twenty-five percent; (iii) the Bus Company Defendants unilaterally eliminated commissions paid to other vendors that sold their double-decker sightseeing tour tickets; (iv) the Bus Company Defendants revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the purchase price (net of commissions) for their sightseeing double-decker tour bus tickets and unilaterally made it five days; and (v) the Bus Company Defendants threatened Plaintiff that if it did not pay them for their double-decker sightseeing tour bus tickets within five days, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets. (Zhang Aff. ¶¶ 11, 39)

Furthermore, the Bus Company Defendants advised Plaintiff that if it informed the Attorney General or any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control over their primary distribution channel,

they would immediately prevent Plaintiff from being able to sell their tickets and services. (Zhang Aff. ¶ 10) As this has occurred, there is no doubt that the Bus Company Defendants will prohibit Plaintiff from selling their product. This is the epitome of unfair competition and is only further demonstrative of Defendants' wrongful conduct and predatory and retaliatory practices.

The Bus Company Defendants' predatory conduct has been nothing short of brazen. In late 2009, the Bus Company Defendants' representatives informed Plaintiff's representatives that they were going to take over each and every hotel concierge desk in the New York City, including those operated by Plaintiff, and thereby put Plaintiff out of business. (Zhang Aff. ¶¶ 20, 41, 42, 49) In addition, the Bus Company Defendants have been and continue to invest, either directly or indirectly, in Highgate and/or in the Hotels, as well as other hotels in New York City, in order to use their economic power and such investments as leverage to cause the long-standing relationships and contracts that Plaintiff had to operate hotel concierge desks to be cancelled.

As a result of their conspiratorial efforts, the Hotels have wrongfully terminated their concierge desk agreements entered into with Plaintiff. Indeed, Plaintiff has been advised by the Hotels that they have already entered into agreements with a company affiliated with the Bus Company Defendants to operate Plaintiff's concierge desks and they are "poaching" a number of Plaintiff's employees to operate the Bus Company Defendants' "new" concierge desks. (Zhang Aff. ¶¶ 18, 48)

The Bus Company Defendants' conspiracy has and will economically impact and illegally restrain trade and competition in the Sightseeing Tour Bus Sales Market by, *inter alia*:

- (i) increasing the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that controls the major distribution channel in the market;

- (ii) reducing commissions paid to Plaintiff for selling the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iii) eliminating commissions paid to other vendors that sell the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iv) fixing and raising prices for the Bus Company Defendants' customers, hotel guests, concierge desk users, consumers;
- (v) seeking to take over eleven hotel concierge desks operated by Plaintiff with the stated and admitted intent to take over additional hotel concierge desks;
- (vi) poaching Plaintiff's employees to operate the concierge desks at the Hotels;
- (vi) decreasing the overall quality of service provided at hotel concierge desks; and
- (vii) restricting the availability of other services formerly provided by Plaintiff to hotel guests, concierge desk users, and consumers at such hotel concierge desks.

(Zhang Aff. ¶¶ 6, 11, 15, 17-20, 28, 35, 39, 52; Cplt. ¶ 78)

The Bus Company Defendants' attempted vertical monopolization and restraint of trade of the Sightseeing Tour Bus Sales Market is a clear violation of the Donnelly Act. See, e.g., Anheuser-Busch, Inc., 71 N.Y.2d at 333, 525 N.Y.S.2d at 819 (vertical restraints on trade violate the Donnelly Act); Duane Jones Co. v. Burke, 306 N.Y. 172, 190, 117 N.E.2d 237, 246 (1954) (defendants' conspiracy to destroy the plaintiff's business by unlawfully "procuring others not to deal with him or by getting away his customers" was an actionable wrong); Anand v. Soni, 215 A.D.2d 420, 421, 626 N.Y.S.2d 830, 830-831 (1st Dep't 1995) (defendants' conspiracy to persuade and/or threaten a third party not to sell to the plaintiff violated the Donnelly Act); Carl Wagner and Sons v. Appendagez, Inc., 485 F.Supp. 762, 773 (S.D.N.Y. 1980) ("[w]here a supplier pressures a retailer into raising its prices...and follows through on those threats by cutting off the supply, a violation of...the Donnelly Act is established"); George Miller Brick Co., Inc. v. Stark Ceramics, Inc., 9 Misc.3d 151, 155, 801 N.Y.S.2d 120, 126 (Sup. Ct. Monroe Co. 2005) (a conspiracy to vertically fix prices violates the Donnelly Act).

The Bus Company Defendants entered into an agreement and/or conspiracy with Highgate to unreasonably restrain competition and the free exercise of business activity by engaging in unfair and anti-competitive conduct in order to ensconce the Bus Company Defendants in the Sightseeing Tour Bus Sales Market. This is being accomplished by creating a network of hotel concierge desks that would only sell double-decker sightseeing tour bus tickets to the Bus Company Defendants' own tours (while CGSC would sell the product of any new reputable entrants into market). Such agreement and/or conspiracy has and will increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Sales Market and has had the impact of allowing the Bus Company Defendants to raise prices and exclude competitors, thus harming: (i) Plaintiff, who sells double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market; and (ii) consumers, who purchase double-decker sightseeing tour bus tickets.

The Bus Company Defendants and Highgate, among other things, have:

- (i) wrongfully caused the Hotels to wrongfully cancel their written agreements with Plaintiff to permit Plaintiff to operate the concierge desks at the hotels owned by the Hotels;
- (ii) increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market;
- (iii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market;
- (iv) conspired to take over Plaintiff's eleven hotel concierge desks;
- (v) are currently taking Plaintiff's employees to eventually man the eleven hotel concierge desks at the Hotels (because the Bus Company Defendants admittedly do not know how to run hotel concierge desks);
- (vi) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and

- (vii) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the purchase and sale of double-decker sightseeing tours in New York City.

The agreements and/or conspiracies between and/or among the Bus Company Defendants and Highgate have had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Market and/or Sightseeing Tour Bus Sales Market. See, e.g., Duane Jones, 306 N.Y. at 190, 117 N.E.2d at 246 (unfair competitive practices such as destroying the plaintiff's business by unlawfully "procuring others not to deal with him or by getting away his customers" were an actionable wrong).

Accordingly, the Bus Company Defendants' and Highgate's restraint of competition and the free exercise of business activities, as well as their unfair and anti-competitive conduct, through their agreements and/or conspiracies, has unlawfully affected and continues to affect the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market.

B. The Bus Company Defendants Tortiously Interfered With Plaintiff's Contractual Relationship With The Hotels

To prove a claim for tortious interference with contract, plaintiff must demonstrate: (1) the existence of a valid contract between plaintiff and a third party, (2) defendant's knowledge of the contract, (3) defendant's intentional procurement of a breach of the contract or otherwise rendering performance of the contract impossible, (4) an actual breach of the contract, and (5) damages resulting from the breach. See, e.g., 330 Acquisition Co., LLC v. Regency Savings Bank, F.S.B., 293 A.D.2d 314, 315, 741 N.Y.S.2d 24, 26 (1st Dep't 2002); Lazzarino v. Warner Bros. Entertainment, Inc., Index No. 602029/05, 13 Misc. 3d 1230(A), 2006 WL 3069276, at *11 (Sup. Ct. N.Y. Co., Oct. 30, 2006).

Here, it is uncontroverted that Plaintiff has written agreements with the Hotels to operate their concierge desks. (Zhang Aff. ¶¶ 3, 29; Ex. B) It also cannot be controverted that the Bus Company Defendants had knowledge of these agreements where they, *inter alia*: have admitted knowledge of them and that they were and are going to take over the hotel concierge desk agreement that Plaintiff have, which necessarily include the eleven Hotels; intentionally sought to have Plaintiff's agreements with the Hotels and other hotels terminated; and have entered into new agreements with each such Hotel. (Zhang Aff. ¶¶ 42-45, 48)

The Bus Company Defendants' intentional procurement of the Hotel's breaches of their agreements with Plaintiff, the resulting actual breaches of such agreements, and the damages flowing therefrom are axiomatic. The Bus Company Defendants used their pressure, threats, and economic leverage to cause the Hotels to wrongfully cancel their agreements with Plaintiff through unfair competition in a blatant attempt to eliminate Plaintiff's concierge desks throughout New York City. (Zhang Aff. ¶¶ 42-46) It is no coincidence that the Hotels through Highgate and its affiliates all cancelled their eleven concierge desk agreements with Plaintiff by letters that were all dated either February 8 or 10, 2010. (Zhang Aff. ¶ 46) Indeed, despite the fact that Plaintiff has consistently, efficiently, and successfully operated their concierge desks to this very day, Plaintiff has been advised by the Hotels that they have already entered into agreements with a company affiliated with the Bus Company Defendants to operate their concierge desks. (Zhang Aff. ¶ 48) Accordingly, Plaintiff has proven each of the elements of its claim for tortious interference with its contracts with the Hotels.

C. The Contracting Hotels Wrongfully Breached Their Written Agreements With Plaintiff

It is well-settled that, to prove a claim for breach of contract, a plaintiff must demonstrate (1) the existence of a binding contract, (2) plaintiff's performance of its obligations under the

contract, (3) defendant's material breach of the contract, and (4) damages resulting from such breach. See e.g., ALJ Capital I, L.P. v. David J. Joseph Co., Index No. 601591/06, 15 Misc. 3d 1127(A), 2007 WL 1218355, at *4 (Sup. Ct. N.Y. Co., March 13, 2007); Wallace v. Merrill Lynch Capital Services, Inc., Index No. 602604/2005, 10 Misc. 3d 1062(A), 2005 WL 3487809, at *4 (Sup. Ct. N.Y. Co. Dec. 14, 2005), aff'd, 29 A.D.3d 382, 816 N.Y.S.2d 412 (1st Dep't. 2006).

Here, Plaintiff has written agreements with the Hotels to operate the concierge desks at their hotels, including the eleven Hotels. (Zhang Aff. ¶¶ 3, 29) As set forth more fully above and in the Zhang Affidavit, the Bus Company Defendants' and Highgate's economic leverage, threats, and/or conspiratorial efforts caused the Hotels to wrongfully cancel their eleven concierge desk agreements entered into with Plaintiff, so that they can be re-leased to the Bus Company Defendants or their affiliates. (Zhang Aff. ¶¶ 42-46, 48) :

Of particular interest, four of the hotels owned and/or managed by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites, and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination, pursuant to the agreements, could only be "for cause". No cause, however, was alleged or can be alleged. Accordingly, such terminations are of no force and effect. (Zhang Aff. ¶ 47) In addition to their direct breach of their agreements with Plaintiff, the Hotels have also breached the covenant of good faith and fair dealing that is implied as a matter of law in their agreements with Plaintiff.

Accordingly, Plaintiff has proven all of the elements of its claim for breach of contract against the Contracting Hotels.

III. The Balance Of The Equities Weigh In Plaintiff's Favor For A Preliminary Injunction

The courts recognize that where the "comparative harm to the plaintiffs ... is significantly greater than the harm to the defendants," a preliminary injunction should be granted. Borenstein v. Rochel Properties, Inc., 176 A.D.2d 171, 172, 574 N.Y.S.2d 192, 193 (1st Dep't 1991); see also Widenspiel v. Bernholz, 163 A.D.2d 774, 775, 558 N.Y.S.2d 739, 750 (1st Dep't 1990) (finding equities in favor of plaintiff since if no injunction were issued, he "could not be made whole should he prevail"); Kurtz v. Zion, 61 A.D.2d 778, 779, 402 N.Y.S.2d 402, 403 (1st Dep't 1978) (issuing preliminary injunction to maintain the status quo since in "[b]alancing the equities, it appears that the damage to plaintiffs from the denial of the preliminary injunction and delivery of stock out of escrow to defendants...would cause substantially greater harm to plaintiffs if they are ultimately proved right in this action, than the harm that would be caused to said defendants...if the defendants are ultimately proved right.").

Moreover, a balancing of the equities favors the movant where, as here, "the irreparable injury to be sustained by the plaintiff is more burdensome to it than the harm caused to defendant[s] through imposition of the injunction." Burmax Co. v. B & S Industries, 135 A.D.2d 599, 601, 522 N.Y.S.2d 177, 179 (2d Dep't 1987) (citation omitted); accord Kurtz, 61 A.D.2d at 779, 402 N.Y.S.2d at 403.

Candidly, there are no equities here if Defendants destroy Plaintiff's independent, family-owned sightseeing company that has been in the industry for over one hundred years. *A fortiori*, a balancing of the equities clearly tips in favor of Plaintiff with respect to granting it a preliminary injunction.

If the relief requested by Plaintiff is granted, the Bus Company Defendants will simply have to continue to allow the largest single source of their revenue – Plaintiff (through its high-

volume sales of the Bus Company Defendants' double-decker sightseeing tour bus tickets at Plaintiff's hotel concierge desks) – to continue to be a distribution channel for the sale of their double-decker sightseeing tour bus tickets and they will not be damaged.

To the extent that the Bus Company Defendants and related entities are not restrained and enjoined from interfering and preventing Plaintiff from selling their double-decker sightseeing tour bus tickets, Plaintiff will be harmed due to its inability to provide full-service hotel concierge desks, and thus will lose such contracts and go out of business, and consumers concomitantly will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market and Sightseeing Tour Bus Sales Market through, among other things, increases in price and a reduced selection of tour company choices.

In addition, if the Bus Company Defendants and related entities are not restrained and enjoined from interfering with the hotel concierge desks Plaintiff leases at forty-three hotels in New York City, they will vertically monopolize the distribution channel of double-decker sightseeing tours in New York City and vendors, distributors, customers, and consumers of double-decker sightseeing tours in New York City will not be paying competitive prices for such tours and be deprived of an open and competitive market for such tours. The Bus Company Defendants and related entities, however, will not be harmed if they are required to stop denying Plaintiff access to the Sightseeing Tour Bus Sales Market; stop reducing choice; stop suppressing and eliminating competition; and stop destroying Plaintiff's business by concomitantly controlling the largest distribution channel for the sale of double-decker sightseeing tour bus tickets.

Moreover, if the Bus Company Defendants, Highgate and the Hotels are not restrained and enjoined from interfering with and/or from terminating Plaintiff's hotel concierge desk

agreements, they will not be harmed because, *inter alia*, Plaintiff has consistently, efficiently, and successfully operated their forty-three hotel concierge desks to this very day (and, accordingly, prices for double-decker sightseeing tours are not higher than those that would be charged had Defendants engaged in their anti-competitive behavior).

To the extent that the Bus Company Defendants, Highgate, and the Hotels are not enjoined, Plaintiff will be harmed and fatally damaged by the elimination of its concierge desk leases, along with the goodwill and relationships that Plaintiff had built up for more than the past one hundred years.

Accordingly, a balancing of the equities visibly tips in Plaintiff's favor with respect to the Court granting Plaintiff a temporary restraining order.

POINT II

PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER SHOULD BE GRANTED

A temporary restraining order pending the hearing and determination of its motion for a preliminary injunction should be issued. CPLR § 6313(a) states, in pertinent part, that "on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be held, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time."

This Court should issue an immediate temporary restraining order restraining and enjoining the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets, and otherwise restraining them from not

changing the current terms and conditions of the sale of such products and services until a hearing on the merits is held.

Because representatives of the Bus Company Defendants advised Plaintiff that if Plaintiff interfered with their plans to take control over *their* primary distribution channel of *their* own tour tickets, which Plaintiff now has done, they will immediately prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services, it will be all over if they are permitted to effectuate their threats. CGSC will lose its hotel concierge desks, and will go out of business. (Zhang Aff. ¶ 10) Accordingly, a temporary restraining order should be issued to prevent the destruction of Plaintiff's business. See, e.g., A.D. Bedell, 272 A.D.2d at 854, 708 N.Y.S.2d at 227 (affirming the issuance of a temporary restraining order from the defendant's violation of the Donnelly Act).

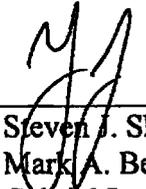
CONCLUSION

For the foregoing reasons and for the reasons set forth in Plaintiff's Moving Affidavits, it is respectfully submitted that Plaintiff's application for a temporary restraining order and preliminary injunction should be granted.

Dated: New York, New York
March 12, 2010

GANFER & SHORE, LLP
*Attorneys for Plaintiff, Continental Guest
Services Corporation*

By: _____


Steven J. Shore
Mark A. Berman
Gabriel Levinson

360 Lexington Avenue
New York, New York 10017
(212) 922-9250

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. 600643 /10

Date of Filing:
March 12, 2010

AMENDED SUMMONS

MAR 12 2010
NOT RECORDED
WITH COPY FILED

TO: THE ABOVE-NAMED DEFENDANTS:

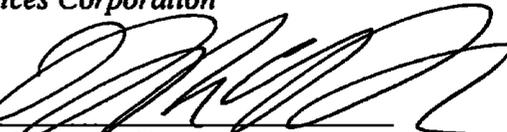
YOU ARE HEREBY SUMMONED to answer the Complaint of Plaintiff in this action and to serve a copy of your Answer on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

In accordance with CPLR § 503(a), the basis of the venue designated is the residence of the parties in New York County.

Dated: New York, New York
March 12, 2010

GANFER & SHORE, LLP
*Attorneys for Plaintiff, Continental Guest
Services Corporation*

By:



Steven J. Shore

Mark A. Berman

Gabriel Levinson

360 Lexington Avenue
New York, New York 10017
(212) 922-9250

TO:

International Bus Services, Inc.
d/b/a Gray Line New York
1430 Broadway, 5th Floor
New York, New York 10036

On The Ave Hotel
2178 Broadway
New York, New York 10024

City Sights Twin, LLC
d/b/a City Sights New York
1430 Broadway, 5th Floor
New York, New York 10036

The Paramount Hotel New York
235 West 46th Street
New York, New York 10036

Twin America, LLC
1430 Broadway, 5th Floor
New York, New York 10036

Park Central Hotel (DE), LLC
870 Seventh Avenue
New York, New York 10019

Highgate Hotels, L.P.
545 E. John Carpenter Freeway
Irving, Texas 75062

Thirty East 30th Street Owner, LLC
30 East 30th Street
New York, New York 10016

Battery Park Hotel Management, LLC,
102 North End Avenue
New York, New York 10281

Times Square Operating Lessee LLC
1568 Broadway
New York, New York 10036

Hampton Inn Times Square North
851 Eighth Avenue
New York, New York 10019

Lexington Hotel, LLC
511 Lexington Avenue
New York, New York 10017

**Hilton Garden Inn Times Square
790 Eighth Avenue
New York, New York 10019**

**W2001 Metropolitan Hotel Operating Lessee,
L.L.C.
569 Lexington Avenue
New York, New York 10022**

**New York West 35th Street HGI
63 West 35th Street
New York, New York 10001**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. _____/10

COMPLAINT

Plaintiff, Continental Guest Services Corporation ("Plaintiff" or "CGSC"), by its undersigned attorneys, as and for its Complaint against Defendants International Bus Services, Inc. d/b/a Gray Line New York ("IBS"), City Sights Twin, LLC d/b/a City Sights New York ("City Sights"), Twin America, LLC ("Twin America") (collectively, with IBS, City Sights and Twin America, the "Bus Company Defendants") and Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"),

Highgate Hotels, L.P. ("Highgate") (the Hotels and Highgate are collectively referred to as the "Hotel Defendants") (the Bus Company Defendants and the Hotel Defendants are collectively referred to as "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, for over one hundred years, has been an independent, family-owned and operated sightseeing and hospitality company located in New York City, that, among other things, sells tickets for double-decker sightseeing tours in New York City operated by the Bus Company Defendants through concierge, travel or tour desks ("Concierge Desks") Plaintiff leases that are located in forty-three hotels located in New York City.

2. Defendant IBS is a company that, among other things, operates double-decker sightseeing tour buses in New York City through its trade name Gray Line New York ("Gray Line"). Defendant City Sights is a company that similarly operates double-decker sightseeing tour buses in New York City through its trade name City Sights New York. It is IBS, City Sights and Twin America and all of their related entities (collectively referred to herein as the "Bus Company Defendants") that have engaged in a concerted plan to: (i) take over and control and monopolize the double-decker sightseeing bus tour market in New York City; and (ii) then vertically monopolize such market's primary distribution channel of ticketing, which is comprised of the hotel Concierge Desks located in hotels throughout New York City, and which anticompetitive and unfair competition, as demonstrated below, are putting Plaintiff out of business.

3. More specifically, IBS and City Sights have entered into an agreement among and between each other, effectuated through their recent, joint formation of Twin America, to completely control and dominate, curtail competition, and prevent the free exercise of choice in

the double-decker sightseeing tour bus market in New York City (the "Sightseeing Tour Bus Market"), which they have jointly accomplished through their now combined control of ninety percent, if not more, of such market. In addition, in order to impede competition and to create a monopoly in another market – the sale of sightseeing tour bus tickets in New York City (the "Sightseeing Tour Bus Sales Market"), and to prevent any new entities into the Sightseeing Tour Bus Sales Market - the Bus Company Defendants are engaged and continue to engage in illegal predatory conduct with the intent of monopolizing the distribution channel for the sale of *their* double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market by taking control of the hotel Concierge Desk distribution channel in New York City. Moreover, with their horizontal control of the Sightseeing Tour Bus Market, the Bus Company Defendants have raised prices, lowered commissions, and otherwise used their monopoly to gain financial advantages and harm the public and companies like Plaintiff.

4. The New York State Attorney General (the "Attorney General") commenced proceedings against the Bus Company Defendants which they sought to stop by re-registering in Washington D.C. with the United States Surface Transportation Board ("STB"). In proceedings before the STB, the Attorney General has asserted that the Bus Company Defendants are engaging in antitrust violations because their control of the double-decker sightseeing tours in New York City would, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) allow the Bus Company Defendants to obtain vertical monopolistic control of other markets by eliminating competition in other markets, such as the Sightseeing Tour Bus Sales Market. A copy of the Attorney General's submission to the STB, dated November 2, 2009, which is discussed in more detail below, is annexed hereto as Exhibit "A" (the "NYAG Report").

5. More specifically, the Attorney General in the Report states that:

[c]oordinated action by [the Bus Company Defendants] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6) (Emphasis added).

6. The Attorney General's concerns about what the Bus Company Defendants would do to eliminate competition in the Sightseeing Tour Bus Sales Market were well founded and the Bus Company Defendants are now attempting to do exactly what the Attorney General predicted.

7. CGSC is the largest operator of hotel Concierge Desks in New York City and is, among other things, the largest single source of ticket sales for double-decker sightseeing tours in New York City. Upon information and belief, the Bus Company Defendants determined that they needed to control CGSC's concierge business, among other reasons, in order to ensure that there would be no new entrants into the double-decker sightseeing bus tours market, since by controlling the Concierge Desks they would be able to choose which bus company on which to book hotel guests.

8. In furtherance of their efforts to control on which bus companies CGSC booked its customers, the Bus Company Defendants initially attempted to purchase a forty-nine interest in Plaintiff. When Plaintiff declined, the Bus Company Defendants advised Plaintiff that they would use their financial interests in the Hotels to force Plaintiff out and steal its business so they could control the hotel Concierge Desks.

9. Seeking to destroy CGSC, the Bus Company Defendants and Highgate, the entity that owns and/or manages eleven of the forty-three hotels that have Concierge Desk agreements with Plaintiff, have unlawfully interfered with Plaintiff's contractual relationships with such

eleven Hotels. The Bus Company Defendants, through, among other things, their direct and indirect investments in Highgate and/or in the eleven Hotels and wrongful economic coercion, have caused Highgate and the Hotels to wrongfully terminate Plaintiff's hotel Concierge Desk agreements, many of which only permit termination "for cause" (though, as set forth more fully below, no such "cause" has been alleged).

10. The Hotels, through Highgate, in furtherance of the Bus Company Defendants' wrongful and anti-competitive scheme, have notified Plaintiff that they are terminating Plaintiff's operation of the Concierge Desks in eleven Hotels. In many instances such purported termination notices were in breach of the contracts between Plaintiff and the Hotels and, in all instances, such termination notices were a result of the Bus Company Defendants' economic interests in Highgate and/or in the Hotels and in furtherance of the Bus Company Defendants' scheme to steal Plaintiff's business and control its Concierge Desks to ensure the maintenance of the Bus Company Defendants' monopolization of the double-decker sightseeing tour bus business.

11. In addition to causing the termination of the eleven Hotel contracts, the Bus Company Defendants have used their economic pressure from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause and are in the process of seeking to cause other hotels to cancel their hotel Concierge Desk agreements with Plaintiff. Such efforts are ongoing and will continue unless enjoined by the Court.

12. In furtherance of their efforts to steal Plaintiff's business, the Bus Company Defendants, as more fully discussed below, have been attempting to hire away Plaintiff's employees, notwithstanding non-solicitation agreements and non-compete agreements of which, upon information and belief, the Bus Company Defendants are aware.

13. As a result of the above, the Bus Company Defendants are on the verge wiping Plaintiff off the proverbial map and obtaining vertical, monopolistic control of the Sightseeing Tour Bus Sales Market through their control of hotel Concierge Desks. The Bus Company Defendants are seeking to soon own and control the largest consumer of their own product (the double-decker sightseeing tour bus tickets in New York City) or, in other words, the largest distribution channel for their product. The economic impact of the Bus Company Defendants' conspiracy has restrained trade in the Sightseeing Tour Bus Sales Market.

14. Based on Defendants' wrongful conduct, Plaintiff asserts claims for antitrust violations, unfair competition, tortious interference and breach of contract. The antitrust violations assert anti-competitive conduct on the part of the Bus Company Defendants, including a conspiracy to monopolize, an attempted monopolization, and an illegal conspiracy to restrain trade and competition all in violation of New York's Donnelly Act, General Business Law § 340 (the "Donnelly Act"). The unfair competition claim is predicated upon the Bus Company Defendants (and their related entities) improperly causing Highgate and/or the Hotels to terminate Plaintiff's Concierge Desk agreements that Plaintiff entered into, which the Hotels have now re-leased to the Bus Company Defendants or companies related to them. Plaintiff's tortious interference claim is based on the Bus Company Defendants' tortious and intentional interference with the agreements Plaintiff has with the Hotels. Finally, Plaintiff alleges that the Hotels wrongfully breached their written Concierge Desk agreements with Plaintiff.

15. Predicated on such anti-competitive conduct, Plaintiff brings this action alleging the following causes of action:

- (i) preliminary injunctive relief to:
 - restraining and enjoining the Bus Company Defendants and their related entities and individuals from ceasing to sell their products

and services to Plaintiff and, in particular, double-decker sightseeing tour tickets, and from changing the current terms and conditions of the sale;

- restraining and enjoining the Bus Company Defendants and their related companies and individuals and/or Highgate and its related entities and individuals from interfering with or causing hotels to terminate Plaintiff's concierge, tour or travel desk agreements with each such hotel; and
- restraining and enjoining the Hotel Defendants from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

(ii) permanent injunctive relief to:

- restrain and enjoin the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market;
- restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services;
- restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and
- restrain and enjoin the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

(iii) monopolization of the Sightseeing Tour Bus Market;

(iv) attempted monopolization of the Sightseeing Tour Bus Market;

(v) attempted monopolization of the Sightseeing Tour Bus Sales Market;

(vi) unlawful restraint of trade of the Sightseeing Tour Bus Market;

- (vii) conspiracy in the unlawful restraint of trade of the Sightseeing Tour Bus Sale Market;
- (viii) common law unfair competition;
- (ix) tortious interference; and
- (x) breach of contract.

THE PARTIES

16. Plaintiff, Continental Guest Services Corporation, is a New York corporation, authorized to do business in New York, and has its principal place of business at 1501 Broadway, New York, New York. For over one hundred years, Plaintiff has been an independent, family-owned and operated sightseeing and hospitality company that has been based in New York.

17. Upon information and belief, Defendant IBS is a New York domestic business corporation, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. IBS, through its trade name Gray Line, operating double-decker sightseeing bus tours in New York City.

18. Upon information and belief, Defendant City Sights is a New York domestic limited liability company, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. City Sights, through its trade name NY Sights, operating double-decker sightseeing bus tours in New York City.

19. Upon information and belief, Defendant Twin America is a New York domestic limited liability company, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. Twin America is a “joint venture” entered into by IBS and City Sights.

20. Upon information and belief, Defendant Highgate is a hotel ownership and/or management company, authorized to do business in New York, and has its principal place of business at 545 E. John Carpenter Freeway, Irving, Texas. Upon information and belief, Highgate owns and/or manages the eleven Hotels.

21. Upon information and belief, Defendant Battery Park Hotel Management, LLC (“Embassy Suites Hotel New York”) is located at 102 North End Avenue, Manhattan, New York.

22. Upon information and belief, Defendant Hampton Inn Times Square North (“Hampton Inn Times Square North”) is located at 851 Eighth Avenue, Manhattan, New York.

23. Upon information and belief, Defendant Hilton Garden Inn Times Square (“Hilton Garden Inn Times Square”) is located at 790 Eighth Avenue, New York.

24. Upon information and belief, Defendant New York West 35th Street HGI (“Hilton Garden Inn”) is located at 63 West 35th Street, Manhattan, New York.

25. Upon information and belief, Defendant On The Ave Hotel (“On The Ave Hotel”) is located at 2178 Broadway, Manhattan, New York.

26. Upon information and belief, Defendant The Paramount Hotel New York (“Paramount”) is located at 235 West 46th Street, Manhattan, New York.

27. Upon information and belief, Defendant Park Central Hotel (DE), LLC (“Park Central”) is located at 870 Seventh Avenue, Manhattan, New York.

28. Upon information and belief, Defendant Thirty East 30th Street Owner, LLC (“Hotel 30 30”) is located at 30 East 30th Street, Manhattan, New York.

29. Upon information and belief, Defendant Times Square Operating Lessee LLC (the “Doubletree Guest Suites Times Square”), is located at 1568 Broadway, Manhattan, New York.

30. Upon information and belief, Defendant Lexington Hotel, LLC (“Radisson Lexington”) is located at 511 Lexington Avenue, Manhattan, New York.

31. Upon information and belief, Defendant W2001 Metropolitan Hotel Operating Lessee, L.L.C. (“Doubletree Metropolitan Hotel”) is located at 569 Lexington Avenue, Manhattan, New York.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this action pursuant to CPLR §§ 301 and 302(a) in that Plaintiff’s principal place of business is in the State of New York, IBS’s principal place of business is in the State of New York, City Sights’s principal place of business is in the State of New York, Twin America’s principal place of business is in the State of New York, and the acts complained of occurred in the City and State of New York.

33. Venue in the County of New York is proper pursuant to CPLR § 503 based on the residence of the parties in New York County.

34. The New York State Office of The Attorney General has been provided prior notice of this action.

RELEVANT MARKET

35. The relevant market consists of the following relevant product market(s) and the relevant geographic market.

36. The two relevant product markets in which the restraints and other anti-competitive conduct alleged herein have had and will continue to have anti-competitive effects

are inextricably intertwined. The first is the market for double-decker sightseeing tour buses – the Sightseeing Tour Bus Market. Double-decker sightseeing bus tours in New York City allow passengers to board and un-board buses at short intervals along a tour route of historical sites, monuments, and other places of interest/sights, and allow passengers to board any bus at any interval along the tour route for the sightseeing tour that was purchased. The second market is the hotel Concierge Desk distribution channel for the sale of tickets to passengers for the double-decker sightseeing tours in New York City – the Sightseeing Tour Bus Sales Market.

37. There are significant barriers to entering the Sightseeing Tour Bus and Tour Bus Sales Markets because of, *inter alia*: (i) the expense of purchasing and maintaining a fleet of buses, let alone double-decker buses that appeal to tourists; (ii) the economies of scope and scale in developing an efficient and wide distribution channel for the sale of sightseeing bus tour tickets; (iii) the time, expense, and difficulties of obtaining the necessary approvals from either the state or the municipality to operate sightseeing tours; (iv) the time and expense of finding and convincing a hotel to lease its lucrative Concierge Desk at one of the finite number of hotels in New York City and the economies of scope and scale (including the development of a reliable and durable network of hotel Concierge Desk specialists who man such desks); (v) the inherent difficulties of establishing a reputation in the New York sightseeing and hospitality industry, let alone a reputation for quality and reliability; and (vi) the complexities associated with attracting and building a customer base.

38. Both markets are inherently localized because the historical sites, monuments, and other places of interest/sights are located in a single city, such as New York City, and the tours emanate solely from New York City and are limited to New York City. *A fortiori*, the

passengers must be visiting or located in such city in order to go on the tours to see such city's historical sites, monuments, and other places of interest/sights.

39. The sales of tickets for double-decker sightseeing tours are solely directed to the city that has these historical sites, monuments, and other places of interest/sights. The primary customers that purchase tickets to go on double-decker sightseeing tours are therefore either tourists or locals who enjoy visiting and/or re-visiting the historical sites, monuments, and other places of interest/sights in New York City,

40. The relevant geographic market for the Sightseeing Tour Bus and Tour Bus Sales Markets for the purposes of this lawsuit is New York City. The major geographic routes for the Bus Company Defendants' double-decker sightseeing tours buses are located in the boroughs of New York City. They are the: (i) Downtown Loop; (ii) Uptown Loop; (iii) All Around Town Loop; and (iv) Brooklyn Loop. The Bus Company Defendants' double-decker sightseeing tours buses only carry passengers in New York City, and the buses only allow passengers to board and un-board at specified locations along a specified tour route in New York City. Plaintiff's sale to and customers' pick-up of tickets for the Bus Company Defendants' double-decker sightseeing tours are done at the hotel Concierge Desks only located in New York City. Due to the inherent nature of sightseeing double-decker tours, competitors from outside this geographic area cannot effectively compete in such New York City market.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Bus Company Defendants' Unlawful Monopolization And Restraint Of Trade Of The Sightseeing Tour Bus Market

41. From the time of their existence through the Spring of 2009, IBS and City Sights were separate and distinct companies. Through their respective trade names (Gray Line and NY Sights), they were direct and fierce competitors in the Sightseeing Tour Bus Market. Indeed,

IBS and City Sights: (i) had different price points for their respective double-decker sightseeing tour tickets in New York City; (ii) utilized different pricing packages for their customers; (iii) maintained different bus stops; (iv) provided different information during their respective tours; (iv) used different personnel, such as tour guides; and (v) used different buses.

42. Upon information and belief, as competitors, IBS and City Sights controlled the overwhelming market share of the Sightseeing Tour Bus Market. Upon further information and belief, for many years, the double-decker sightseeing tours buses from IBS and City Sights were the only buses that ran three out of the four major geographic routes in New York City: the Uptown Town Loop; the All Around Town Loop; and the Brooklyn Loop. With respect to the remaining geographic route, the Downtown Loop, the only other competitor to IBS and City Sights was a company named Big Taxi Tours – and despite the presence of Big Taxi Tours, upon information and belief, IBS and City Sights controls the vast majority of the Downtown Loop.

43. Upon information and belief, when IBS and City Sights were acting as separate and distinct entities and competitors, the estimated market share in the Sightseeing Tour Bus Market for each company was, respectively, a staggering 44.5% of the market. Put differently, IBS and City Sights independently controlled approximately 89% of the Sightseeing Tour Bus Market (and Big Taxi Tours controlled approximately 11% of the market through its limited participation in the Downtown Loop), which Plaintiff asserts is even higher.

44. Upon information and belief, IBS and City Sights recognized that they could eliminate all competition, dominate the entire Sightseeing Tour Bus Market, and obtain monopoly power over the entire Sightseeing Tour Bus Market by combining their forces and respective companies. Upon further information and belief, IBS and City Sights were well aware that by coming to an 'arrangement' or a 'reciprocal relationship of commitment' with each other,

they could, *inter alia*: increase the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with a combined entity with control of 90% of the market, if not more; maximize their profits by fixing and/or raising prices for their customers; increase their profits by implementing cost saving alternatives such as reducing the number of buses and/or the frequency of tours; boost their profit margins by generally reducing output, quality, and other services; reduce commissions paid to outside booking vendors, such as Plaintiff, for selling IBS' and City Sights' double-decker sightseeing tours; and reduce the time frame for outside vendors, such as Plaintiff, to pay IBS and City Sights for their sightseeing tickets.

45. In furtherance of their anti-competitive scheme, in or about March 2009, IBS and City Sights entered into a "joint venture" agreement and, by this agreement, formed Twin America. IBS and City Sights, through such agreement, controlled all of the voting and economic rights in Twin America. Twin America began operations as a joint venture in the Sightseeing Tour Bus Market on or about March 31, 2009.

46. IBS' and City Sights' formation of Twin America created an improper consolidation of market power in the Sightseeing Tour Bus Market by creating an illegal monopoly in that market – **IBS and City Sights together now control 90% of the market, if not more.** Moreover, as set forth more fully below, the Bus Company Defendants' monopoly illegally restrains trade and competition in the Sightseeing Tour Bus Market.

47. The Attorney General expressed his grave concern that the formation of Twin America violates New York's antitrust laws and eliminated fair competition in the Sightseeing Tour Bus Market by sending out subpoenas to IBS and City Sights on or about July 31, 2009 for the production of documents relating to their antitrust and anti-competitive conduct. IBS and

City Sights responded on August 19, 2009 by making an application to the United States STB for the registration of Twin America and asserting that the NYAG did not have jurisdiction over them.

48. The Attorney General in his Report advised the STB that it believed IBS' and City Sights' control of Twin America would, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) allow IBS and City Sights to obtain vertical monopolistic control of other markets by eliminating competition in such markets, such as the Sightseeing Tour Bus Sales Market. The NYAG's Report made the following points:

- IBS' and City Sights' agreement to form Twin America would strengthen their market power to a degree that would "raise price above or reduce output, quality, service, or innovation below what would likely prevail in the absence of [the Bus Company Defendants' monopoly]";
- IBS' and City Sights' agreement to form Twin America will cause "a monopoly in three out of the four major [geographic] routes [in New York City];
- IBS' and City Sights' agreement to form Twin America "would likely significantly increase the barriers of entry into the [Sightseeing Tour Bus Market] by putting potential entrants in competition with an incumbent with control of 90% of the market, if not more, and with the ability to benefit from volume discounts that further enhance its competitive position in the 'double-decker' market";
- "[a]ny cost savings, if any, would only benefit [the Bus Company Defendants]";
- The Bus Company Defendants will "strive to maximize their profits" and "would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices";
- IBS' and City Sights' agreement to form Twin America may "reduc[e] the hours or wages of Twin America's employees"; and
- IBS' and City Sights' agreement to form Twin America may "reduce[e] the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route".

(Ex. A.)

49. The Attorney General's assessment of IBS' and City Sights' agreement to form Twin America was correct. In addition to illegally forming a monopoly, upon information and belief, the Bus Company Defendants' anti-competitive conduct has had the direct, intended, and reasonably foreseeable effect of reducing the output of services, while increasing the cost to consumers for same in the Sightseeing Tour Bus Market, reducing consumer welfare, and/or transferring wealth from consumers to the Bus Company Defendants in that:

- (i) actual and potential competition in the Sightseeing Tour Bus Market has been, and will continue to be limited, reduced, restrained, suppressed, and substantially foreclosed;
- (ii) instead of free, open, and competitive markets for double-decker sightseeing tours in New York City, a monopoly has been established and will be maintained;
- (iii) other double-decker sightseeing tour companies will be effectively foreclosed from competing on the merits to the fullest extent possible in the Sightseeing Tour Bus Market, and will be injured in their business and property;
- (iv) vendors, distributors, and other customers, as well as ultimate consumers, have paid, and will pay in the future, artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and
- (v) vendors, distributors, and other customers, as well as ultimate consumers, have been, and will be, deprived of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

50. Furthermore, upon information and belief, IBS' and City Sights' formation of Twin America has already economically impacted and illegally restrained trade and competition in the Sightseeing Tour Bus Market by, *inter alia*:

- (i) increasing the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90%, if not more, of the market;
- (ii) fixing and raising the double-decker sightseeing tour prices for the Bus Company Defendants' customers by an average of Five Dollars per tour;
- (iii) reducing the number of buses and/or the frequency of tours;

- (iv) decreasing the overall quality of the Bus Company Defendants' double-decker sightseeing tours;
- (v) restricting other services formerly provided to the Bus Company Defendants' customers on their sightseeing double-decker tours;
- (vi) reducing the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; and
- (vii) reducing the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets.

51. Consumers in the Sightseeing Tour Bus Market have been injured by the resulting lack of competition that other sightseeing double-decker tour companies would have provided but for such restraint of trade and, as a result, have fewer choices for double-decker sightseeing tours and pay more for fewer services than they would have paid had the Bus Company Defendants not engaged in their anti-competitive behavior, and as noted above, CGSC has had its commissions drastically reduced.

B. The Bus Company Defendants' Unlawful Attempted Monopolization And Restraint Of Trade Of The Sightseeing Tour Bus Sales Market Resulting In Their And Highgate's Unfair And Anti-Competitive Conduct And The Hotel's Wrongful Cancellation Of Their Agreements With Plaintiff As Well As The Bus Company Defendants Seeking To Terminate Other Concierge Desk Agreements With Plaintiff

52. Plaintiff leases space in forty-three hotels in New York City and operates the Concierge Desk in these hotels seven days a week pursuant to written agreements with those hotels, such as the Hotels. In furtherance of these written agreements, Plaintiff provides hotel guests and other customers with, among other things, various sightseeing services. Such services specifically include the sale of the Bus Company Defendants' double-decker sightseeing tour bus tickets.

53. Specifically, Plaintiff has long-standing relationships and agreements to operate Concierge Desks at the following forty-three hotels: Affinia Manhattan, Affinia 50, Affinia

Dumont, Affinia Shelburne, Belvedere Hotel, Courtyard By Marriott Midtown East, Courtyard By Marriott Times Sq., Crowne Plaza Times Square, **Doubletree Guest Suites Time Square**, The Edison Hotel, **Embassy Suites New York**, The Excelsior Hotel, Fairfield Inn, Four Points by Sheraton Midtown Times Square, The Grand Hyatt Hotel, **Hampton Inn Times Square North**, **Hilton Garden Inn Times Square**, **Hilton Garden Inn**, Holiday Inn Midtown 57th St, The New York Hilton, The Lucerne Hotel, Marriott at Brooklyn Bridge, Marriott East Side Hotel, **Doubletree Metropolitan**, The Millennium Broadway, The Millennium Hilton, The Millennium UN, The New Yorker Hotel, **On the Ave Hotel**, **Paramount**, **Park Central**, Hotel Pennsylvania, **Radisson Lexington**, Residence Inn, The Roosevelt Hotel, Sheraton Manhattan, Sheraton New York, **Hotel 30 30**, Tudor, The Waldorf Astoria, West 57th By Hilton Club, Westin Times Square, and Wyndham Garden Inn. In addition, the Milford Plaza is also a Highgate-controlled hotel at which Plaintiff leased a Concierge Desk, which has been closed for renovation. But for Defendants' wrongful conduct, such hotel upon reopening would have entered into a new Concierge Desk agreement with Plaintiff. Those hotels noted above in bold are the Hotels.

54. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to IBS' and City Sights' formation of Twin America), Plaintiff was the single largest customer of IBS and City Sights through its high-volume sales of their double-decker sightseeing tour bus tickets in New York City at Plaintiff's forty-three hotel Concierge Desks. Plaintiff generated millions in revenues for IBS and City Sights from the sale of sightseeing bus tour tickets.

55. Further, prior to IBS' and City Sights' formation of Twin America, IBS and City Sights: (i) each paid Plaintiff an agreed upon commission on its sales of their double-decker

sightseeing tour bus tickets; and (ii) agreed that Plaintiff would have more than thirty days to remit to IBS and City Sights the net price (less commissions) of their double-decker sightseeing tour bus tickets that Plaintiff sold.

56. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to their formation of Twin America), Plaintiff, the major distribution channel in the Sightseeing Bus Tour Sales Market for their sales, was able to operate its Concierge Desks at forty-three hotels in New York City in an independent, free, open, and competitive market without any trade restrictions (concomitantly, during this time Plaintiff's relationship with Highgate, the Hotels and all of Plaintiff's other hotels where it maintained Concierge Desks was positive and mutually beneficial). Accordingly, hotel guests, users, consumers, and Plaintiff's customers benefited and had more choices in the types and cost of tours than they do now after the formation of Twin America.

57. Upon information and belief, IBS and City Sights recognized that they could dominate and obtain monopoly power over the Sightseeing Tour Bus Sales Market through their formation of Twin America. IBS and City Sights were also well aware that by conspiring with each other, they could, *inter alia*, use their monopoly power in the Sightseeing Tour Bus Market to create a monopoly in the Sightseeing Bus Tour Sales Market by taking over the major distribution channel of their double-decker sightseeing tour bus tickets at hotel Concierge Desks throughout New York City (including those operated by Plaintiff). By taking over control of Plaintiff's hotel desks, and thereby putting Plaintiff out of business, the Bus Company Defendants would control the largest consumer of their own product. Such unlawful restraint in trade would increase the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that would exclusively sell the Bus Company

Defendants' product, and which distribution channel, currently operated by Plaintiff, sells product of companies not associated with the Bus Company Defendants, and could sell the product of any new reputable entrants into the Sightseeing Tour Bus Sales Market.

58. The Bus Company Defendants' wrongful actions will no doubt result in their further fixing and raising prices for customers, hotel guests, and users of Concierge Desk services something that the Bus Company Defendants have already done as demonstrated above.

59. The Attorney General was prescient when he asserted that the Bus Company Defendants were conspiring to monopolize, restrain trade, and engage in anti-competitive conduct in the Sightseeing Tour Bus Sales Market. The NYAG's Report reads in relevant part:

Coordinated action by [the Bus Company Defendants] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6)

60. The Attorney General was on point again about the Bus Company Defendants eliminating competition by controlling the "marketing" of sightseeing bus tour tickets through the monopolization of New York City's hotel Concierge Desks. After IBS and City Sights formed Twin America, the Bus Company Defendants conspired with each other to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by, among other things, seeking to put Plaintiff out of business and to take direct control of the hotel Concierge Desks throughout New York City.

61. The Bus Company Defendants' conspiracy have already: (i) increased the price of their double-decker sightseeing tours to consumers on its main routes by Five Dollars; (ii) unilaterally reduced Plaintiff's commission on its sales of their sightseeing double-decker tour

bus tickets by approximately twenty-five percent; (iii) unilaterally eliminated commissions paid to other vendors that sold their double-decker sightseeing tour tickets; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the purchase price (net of commissions) for the Bus Company Defendants' sightseeing double-decker tour bus tickets and unilaterally made it five days; and (iv) threatened Plaintiff that if it did not pay them for their double-decker sightseeing tour bus tickets within five days, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets.

62. The Bus Company Defendants should not be permitted to change the current terms and conditions of their products and services to Plaintiff's detriment (such as by eliminating any commissions Plaintiff may receive).

63. The Bus Company Defendants also advised Plaintiff that if Plaintiff informed the NYAG or any governmental entity about the Bus Company Defendants' anti-competitive and predatory conduct or in any way interfered with their plans to take control over their primary distribution channel, they would immediately prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services.

64. If the Bus Company Defendants stop providing Plaintiff with tickets to their services, then Plaintiff will be unable to operate its Concierge Desks in hotels because they hold the monopoly on double-decker sightseeing bus tours and if CGSC is "cutoff" from being able to sell such tickets, Plaintiff will be unable to provide any alternative double-decker sightseeing tours to hotel guests. Double-decker sightseeing tours are unique and the number one activity in New York City for tourists to do at such price point. Indeed, it is also the double-decker sightseeing bus tours, because of their high visibility throughout New York City that draws hotel guests and others to Plaintiff's Concierge Desks to purchase other services. If Plaintiff cannot

sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either seek to terminate its Concierge Desk agreements or refuse to renew such agreements upon their expiration, destroying the good will and relationships that Plaintiff has built up for more than the past one hundred years.

65. In furtherance of their efforts to control the Sightseeing Tour Bus Sales Market, the Bus Company Defendants initially sought to acquire a forty-nine percent interest in Plaintiff. Beginning in the fall of 2009 and on behalf of the Bus Company Defendants, Mark Marmustein ("Marmustein"), the president of City Sights and now the Chief Executive Officer of Twin America, made a series of overtures to purchase such interest. Plaintiff declined such overtures.

66. On or about February 19, 22, and 23, 2010, Plaintiff's representatives met with the Bus Company Defendants' representatives, and were, in effect, advised that if they did not sell Plaintiff's company to the Bus Company Defendants, the Bus Company Defendants would use their economic power to take over control of all the hotel Concierge Desks in New York City. The Bus Company Defendants indicated that they wanted to control the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks (even though they admitted that they do not know how to run hotel Concierge Desks), in order to ensconce their position in the double-decker sightseeing tour market in order to prevent any new bus company from being able to come into the market. The Bus Company Defendants' representatives made the following admissions:

- The Bus Company Defendants were concerned that a new player in the Sightseeing Tour Bus Sales Market would come in and they needed to "protect" themselves;
- The Bus Company Defendants wanted to be "secure" by "locking up" Plaintiff's hotel Concierge Desks and thereby prevent any new competitor from entering the Sightseeing Tour Bus Sales Market;

- Marmustein (and thereby the Bus Company Defendants) is in the process of taking over each of the forty-three hotel Concierge Desks operated by Plaintiff in order to prevent another competitor from entering the Sightseeing Tour Bus Sales Market;
- Marmustein (and thereby the Bus Company Defendants) had a direct and/or indirect interest in many hotels which have long-standing relationships and contracts with Plaintiff to operate hotels' Concierge Desks, and the Bus Company Defendants seek to control at least twenty of Plaintiff's Concierge Desks by the end of 2010;
- Marmustein (and thereby the Bus Company Defendants) "does not want to be held hostage" by Plaintiff, their largest customer in the Sightseeing Tour Bus Sales Market, for fear that they might decide to do business, exclusive or otherwise, with any new tour bus competitor that might decide to come into the Sightseeing Tour Bus Sales Market; and
- Marmustein (and thereby the Bus Company Defendants) seeks to own Plaintiff or take its hotel Concierge Desks in order to control the Bus Company Defendants' major distribution channel for the sale of double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market.

67. The Bus Company Defendants, through Marmustein, informed Plaintiff that because Plaintiff would not sell its company to the Bus Company Defendants, they were going to take over each and every hotel Concierge Desk in the New York City, including those operated by Plaintiff, and thereby put Plaintiff out of business.

68. Upon information and belief, the Bus Company Defendants have been and continue to invest, either directly or indirectly, in Highgate and/or in the Hotels, as well as in other hotels in New York City, in order to use such investments as economic leverage to cause the long-standing relationships and contracts that Plaintiff had to operate hotel Concierge Desks to be wrongfully cancelled.

69. Highgate's and the Hotels' newfound "arrangement" with the Bus Company Defendants, through their direct or indirect investment in Highgate and/or in the Hotels, is nothing short of an agreement and/or conspiracy to unlawfully restrain competition and the free exercise of business activity in the Sightseeing Tour Bus Sales Market. The improper tying

relationship between the Bus Company Defendants and Highgate violates the Donnelly Act as demonstrative of Defendants' unfair competition.

70. Upon information and belief, in addition to causing Highgate and the Hotels to terminate Plaintiff's Concierge Desk contracts, the Bus Company Defendants are using their economic leverage from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause and are in the process of causing other hotels to wrongfully cancel their contracts with Plaintiff, thereby eliminating Plaintiff's Concierge Desks throughout New York City.

71. Upon information and belief, the Bus Company Defendants have entered into an agreement and/or conspiracy with Highgate (which controls the Hotels) and the Hotels to cause the Hotels to cancel their contracts with Plaintiff, and through such efforts they have already caused Highgate and the Hotels to wrongfully cancel eleven Concierge Desk agreements entered into with Plaintiff. These Hotels have succumbed to the strong-armed, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants and/or Highgate and have sought to wrongfully cancel their contracts with Plaintiff, all by letters dated February 8, 2010.

72. On March 11, 2010, Plaintiff's counsel notified Highgate and/or each of the Hotels that Plaintiff disputed their purported terminations of the Concierge Desk agreements.

73. Of particular interest, four of the hotels owned and/or managed by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination, pursuant to the agreements, could only be "for cause". No cause, however, has been alleged, and none could be because Plaintiff has consistently, efficiently, and successfully

operated their Concierge Desks to this very day. (Copies of the eleven termination letters concerning the Hotels are annexed hereto as Exhibit "B".)

74. Having caused the Hotels to cancel their Concierge Desk contracts with Plaintiff, the Bus Company Defendants, through an affiliate, have now entered into agreements with the Hotels to operate their Concierge Desks.

75. In furtherance of their efforts to steal Plaintiff's business, the Bus Company Defendants have been attempting to hire away Plaintiff's employees, notwithstanding non-solicitation agreements and non-compete agreements of which, upon information and belief, the Bus Company Defendants were aware.

76. It is readily apparent that the Bus Company Defendants, if allowed to continue their predatory, restrictive, and anti-competitive conduct, will continue to irreparably harm Plaintiff by taking over the Concierge Desks at all of the hotels where Plaintiff has leases to operate same.

77. In addition to illegally attempting to form a monopoly, the Bus Company Defendants' anti-competitive conduct has the direct, intended, and reasonably foreseeable effect of reducing the output of services provided to consumers, while increasing the cost for same in the Sightseeing Tour Bus Sales Market, reducing consumer welfare, and/or transferring wealth from consumers to the Bus Company Defendants in that:

- (i) actual and potential competition in the Sightseeing Tour Bus Sales Market has been, and will continue to be, limited, reduced, restrained, suppressed, and substantially foreclosed;
- (ii) instead of free, open, and competitive markets for the sales of double-decker sightseeing tours in New York City, a monopoly has been established and maintained;
- (iii) other companies that sell double-decker sightseeing tours in New York City will be effectively foreclosed from competing on the merits to the fullest extent possible in the Sightseeing Tour Bus Sales Market, and will be injured in their business and property;

(iv) vendors, distributors, and other customers, as well as ultimate consumers, have paid, and will pay in the future, artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and

(vi) vendors, distributors, and other customers, as well as ultimate consumers, have been, and will be, deprived of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

78. The Bus Company Defendants' conspiracy has and will economically impact and illegally restrain trade and competition in the Sightseeing Tour Bus Sales Market by, *inter alia*:

- (i) increasing the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that controls the major distribution channel in the market;
- (ii) reducing commissions paid to Plaintiff for selling the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iii) eliminating commissions paid to other vendors that sell the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iv) fixing and raising prices for the Bus Company Defendants' customers, hotel guests, Concierge Desk users, consumers;
- (v) seeking to take over eleven hotel Concierge Desks operated by Plaintiff with the stated and admitted intent to take over additional hotel Concierge Desks;
- (vi) decreasing the overall quality of service provided at hotel Concierge Desks; and
- (vii) restricting the availability of other services formerly provided by Plaintiff to hotel guests, Concierge Desk users, and consumers at such hotel Concierge Desks.

79. Moreover, CGSC and consumers in the Sightseeing Tour Bus Sales Market have been injured by the resulting lack of competition that other companies that sell double-decker sightseeing tours in New York City would have provided and, as a result, CGSC has had its commissions drastically reduced and Concierge Desks eliminated and consumers have fewer choices for purchasing double-decker sightseeing tours and pay more for fewer services than

they would have paid had the Bus Company Defendants not engaged in their anti-competitive behavior.

AS AND FOR A FIRST CAUSE OF ACTION

**(For Permanent Injunctive Relief
Against The Bus Company Defendants And The Hotel Defendants)**

80. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

81. As set forth above, Plaintiff has suffered irreparable harm and will continue to suffer irreparable harm, which cannot be compensated with money damages, if: (i) the Bus Company Defendants and related companies and individuals are permitted to monopolize, attempt to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market; (ii) the Bus Company Defendants and the Hotel Defendants do not immediately stop their conspiratorial, predatory, monopolistic, restrictive, and anti-competitive conduct of using economic pressure and threats to cause hotels with which Plaintiff has concierge Desk Contracts agreements to terminate them, thereby destroying Plaintiff's business and the good will and relationships that Plaintiff has built up for more than the past one hundred years.

82. In addition, if the Bus Company Defendants stop providing to Plaintiff its services and products, as they have threatened to do, then Plaintiff will be unable to operate its Concierge Desks at any of its hotels. Because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours, Plaintiff will be unable to provide any alternative double-decker tours from another company to hotel guests, its customers or Concierge Desk users. If Plaintiff cannot sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either terminate their Concierge Desk agreements with Plaintiff or refuse to renew such agreements upon their expiration, and enter

into an agreement with the Bus Company Defendants and/or an affiliate, which can supply such tickets, destroying the good will and relationships that Plaintiff has built up for more than the past one hundred years.

83. The above allegations demonstrate that Plaintiff will prevail on the merits of its claims.

84. The balancing of the equities clearly weighs in favor of Plaintiff.

85. Plaintiff has no adequate remedy at law.

86. By reason of the foregoing, Plaintiff is entitled to permanent injunctive relief restraining and enjoining: (i) the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market; (ii) the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services; (iii) the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and (iv) the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

AS AND FOR A SECOND CAUSE OF ACTION

**(For Monopolization Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

87. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

88. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

89. The relevant geographic market is New York City as set forth in Paragraph 38 above.

90. The Bus Company Defendants possess monopoly power in the Sightseeing Tour Bus Market.

91. The Bus Company Defendants have willfully acquired, maintained, and exercised monopoly power in the Sightseeing Tour Bus Market.

92. The Bus Company Defendants' anti-competitive conduct, as described above, is in violation of the Donnelly Act. The Bus Company Defendants have acted to acquire, maintain, and exercise its monopoly power and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) control 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (vi) reduced the number of buses

and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus Company Defendants paid other outside vendors for selling their double-decker sightseeing tours; (xi) reduced the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

93. The Bus Company Defendants have excluded competitors from the Sightseeing Tour Bus Market.

94. There are no justifications for the Bus Company Defendants' conduct.

95. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

96. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive actions.

97. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive behavior.

98. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

99. The Bus Company Defendants acted with specific intent to monopolize the Sightseeing Tour Bus Market.

100. The wrongful conduct described above impacted competition.

101. Consumers are being and will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market, which will enable the Bus Company Defendants to charge even higher artificially inflated supra-competitive prices.

102. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' IBS' conduct unlawful.

103. As a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

104. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION

**(For Attempted Monopolization Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

105. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

106. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

107. The relevant geographic market is New York City as set forth in Paragraph 38 above.

108. The Bus Company Defendants' anti-competitive conduct, as described above, in violation of the Donnelly Act, is a willful attempt to acquire and exert monopoly power. The Bus Company Defendants have excluded all competitors from lawfully competing in the Sightseeing Tour Bus Market by and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) control 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (vi) reduced the number of buses and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus

Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) reduced the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

109. The Bus Company Defendants have excluded competitors from the Sightseeing Tour Bus Market.

110. There are no justifications for the Bus Company Defendants' conduct.

111. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

112. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of its anti-competitive actions.

113. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had they not engaged in their anti-competitive behavior.

114. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

115. The Bus Company Defendants acted with specific intent to monopolize the Sightseeing Tour Bus Market.

116. The Bus Company Defendants currently control 90%, if not more, of the Sightseeing Tour Bus Market.

117. Through the above described conduct, the Bus Company Defendants created a dangerous possibility of achieving a monopoly in violation of the Donnelly Act.

118. The Bus Company Defendants' wrongful conduct has impacted competition.

119. Consumers are being and will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market, which will enable them to charge even higher artificially inflated supra-competitive prices.

120. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

121. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

122. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION

**(For Attempted Monopolization Of The Sightseeing
Tour Bus Sales Market Against The Bus Company Defendants)**

123. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

124. The relevant product market is the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

125. The relevant geographic market is New York City as set forth in Paragraph 38 above.

126. The Bus Company Defendants' anti-competitive conduct, as described above, in violation of the Donnelly Act, is a willful attempt to acquire and exert monopoly power. The Bus Company Defendants are excluding all competitors from lawfully competing in the Sightseeing Tour Bus Sales Market and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by putting Plaintiff out of business; (iii) unilaterally reduced Plaintiff's commission on its sales of the Bus Company Defendants' sightseeing double-decker tour bus tickets by twenty-five percent; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the Bus Company Defendants for the cost of their sightseeing double-decker tour bus tickets' after Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) threatened Plaintiff that if it did not pay the Bus Company Defendants for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets; (vi) increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (vii) eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling the Bus Company' sightseeing double-decker tours; (viii) taking over eleven Concierge Desks operated by Plaintiff; (ix) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-

competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (x) eliminated the commissions the Bus Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) conspired to fix and/or raise prices for the Bus Company Defendants' customers, hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xii) conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xiii) conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market; (xv) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xvi) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

127. The Bus Company Defendant's conspiracy has excluded competitors from the Sightseeing Tour Bus Sales Market.

128. There are no justifications for the Bus Company Defendants' conspiratorial conduct.

129. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

130. The Bus Company Defendants are able to sell supra-competitive tickets for double-decker sightseeing tours in New York City as a result of their anti-competitive conspiratorial actions.

131. The Bus Company Defendants' prices for tickets of double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive conspiratorial behavior.

132. Denying access to the Sightseeing Tour Bus Sales Market has reduced choice for double-decker sightseeing tours in New York City.

133. The Bus Company Defendants, though their conspiracy, acted with specific intent to monopolize the Sightseeing Tour Bus Sales Market.

134. Upon information and belief, the Bus Company Defendants currently control a sizeable percentage of the Sightseeing Tour Bus Sales Market, and this percentage is increasing with each day that passes.

135. Through the conspiracy described above, the Bus Company Defendants created a dangerous possibility of achieving a monopoly in violation of the Donnelly Act.

136. The conspiracy described above impacted competition.

137. Consumers are being and will be injured by the Bus Company Defendants' conspiracy to monopolize the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to sell even higher artificially inflated supra-competitive tickets.

138. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conspiracy unlawful.

139. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive and unlawful conspiracy, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

140. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION

**(For Unlawful Restraint Of Trade Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

141. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

142. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

143. The relevant geographic market is New York City as set forth in Paragraph 38 above.

144. IBS and City Sights entered into an agreement with each other in or about March 2009 to unlawfully restrain trade and eliminate competition in violation of the Donnelly Act.

145. IBS and City Sights entered into this agreement with each other to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Market. The Bus Company Defendants' conduct has unreasonably restrained trade and has had the impact of allowing the Bus Company Defendants to raise prices and exclude competitors, thus harming consumers who purchase double-decker sightseeing tour bus tickets in New York City.

146. The Bus Company Defendants' anti-competitive conduct is described above. The Bus Company Defendants, *inter alia*: (i) entered into a "joint venture" agreement with each

other in or about March 2009; (ii) controlled 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) immediately threatened to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of their major distribution channel of product; (vi) reduced the number of buses and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside booking vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) reducing the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

147. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive actions.

148. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive behavior.

149. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

150. The Bus Company Defendants' restraints on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

151. The Bus Company Defendants' restraints serve no legitimate business reason and have no pro-competitive benefits.

152. The agreement by and between the Bus Company Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Market, and these effects are not *de minimus* or minute, but substantial and significant.

153. As set forth above, the agreement by and between the Bus Company Defendants to inhibit, reduce, and eliminate competition has affected and continues to affect the Sightseeing Tour Bus Market.

154. Consumers are being and will be injured by the Bus Company Defendants' illegal restraint of the Sightseeing Tour Bus Market, which will enable the Bus Company Defendants to charge even higher artificially inflated supra-competitive prices.

155. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

156. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

157. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION

**(For Conspiracy In The Unlawful Restraint Of Trade Of The
Sightseeing Tour Bus Sales Market Against The Bus Company Defendants)**

158. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

159. The relevant product market is the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

160. The relevant geographic market is New York City as set forth in Paragraph 38 above.

161. The Bus Company Defendants entered into a conspiracy with each other to unlawfully restrain trade and eliminate competition in violation of the Donnelly Act.

162. The Bus Company Defendants entered into this conspiracy with each other to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Sales Market. The Bus Company Defendants' conduct has unreasonably restrained trade and has had the impact of allowing the Bus Company Defendants to control their ticket sales and exclude competitors, thus harming Plaintiff, other competitors, and consumers who purchase double-decker sightseeing tour bus tickets in New York City.

163. The Bus Company Defendants' anti-competitive conspiratorial conduct is described above. The Bus Company Defendants, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by putting Plaintiff out of business; (iii) unilaterally reduced Plaintiff's commission on its sales of the Bus Company Defendants' sightseeing double-decker tour bus tickets by twenty-five percent; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the Bus Company Defendants for the cost of their sightseeing double-decker tour bus tickets after Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) threatened Plaintiff that if it did not pay the Bus Company Defendants for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets; (vi) increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (vii) eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling the Bus Company' sightseeing double-decker tours; (viii) conspired to take over eleven Concierge Desks operated by Plaintiff; (ix) immediately threatened to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (x) eliminated the commissions the Bus Company Defendants paid other outside vendors for selling their double-decker sightseeing tours; (xi) conspired to fix and/or raise prices for the Bus Company Defendants' customers, hotel

guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xii) conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xiii) conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market; (xv) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xvi) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

164. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive conspiracy.

165. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had IBS and City Sights not engaged in their anti-competitive conspiracy.

166. Denying access to the Sightseeing Tour Bus Sales Market has reduced choice for other vendors of double-decker sightseeing tours in New York City.

167. The Bus Company Defendants' restraints, through their conspiracy, on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

168. The Bus Company Defendants' restraints serve no legitimate business reason and have no pro-competitive benefits.

169. The conspiracy by and between the Bus Company Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Sales Market, and these effects are not *de minimus* or minute but substantial and significant.

170. The conspiracy by and between the Bus Company Defendants to inhibit, reduce, and eliminate competition has affected and continues to affect the Sightseeing Tour Bus Sales Market, as described above.

171. Consumers are being and will be injured by the Bus Company Defendants' illegal restraint of the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to further ensconce their position in the double-decker sightseeing tour market by concomitantly controlling the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks.

172. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

173. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conspiracy, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

174. The Bus Company Defendants' conspiracy has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION

**(For Common Law Unfair Competition
Against The Bus Company Defendants And The Hotel Defendants)**

175. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

176. The relevant product markets are the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

177. The relevant geographic market is New York City as set forth in Paragraph 38 above.

178. The Bus Company Defendants entered into an agreement with each other in March 2009 and entered into a conspiracy with each other to unlawfully restrain trade, to restrain competition and the free exercise of a business activity, and to and engage in unfair and anti-competitive conduct.

179. The Bus Company Defendants entered into this agreement and conspiracy to restrain competition and the free exercise of business activity as well as to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market.

180. Upon information and belief, the Bus Company Defendants thereafter entered into an agreement and/or conspiracy with Hotel Defendants to unlawfully restrain trade, to restrain competition and the free exercise of a business activity, and to and engage in unfair and anti-competitive conduct, in violation of the Donnelly Act.

181. The Bus Company Defendants and the Hotel Defendants entered into this agreement and/or conspiracy to restrain competition and the free exercise of business activity as

well as to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Sales Market.

182. The conduct of the Bus Company Defendants and the Hotel Defendants has unreasonably restrained competition and the free exercise of business activity and has had the impact of allowing the Bus Company Defendants to raise prices and exclude competitors, thus harming: (i) Plaintiff, who sells double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market; and (ii) consumers, who purchase double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Market.

183. The Bus Company Defendants' and the Hotel Defendants' unlawful restraint of competition and the free exercise of business activities in the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market are described above. Among other things: (i) the Bus Company Defendants entered into a "joint venture" agreement with each other in or about March 2009; (ii) the Bus Company Defendants entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to illegally restrain competition and the free exercise of business activities in the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market by, *inter alia*, putting Plaintiff out of business; (iii) the Bus Company Defendants and the Hotel Defendants thereafter entered into an agreement and/or conspiracy with each other to illegally restrain competition and the free exercise of business activities in the Sightseeing Tour Bus Sales Market by, *inter alia*, putting Plaintiff out of business; (iv) the Bus Company Defendants unilaterally reduced Plaintiff's commission on its sales of their sightseeing double-decker tour bus tickets by twenty-five percent; (v) the Bus Company Defendants revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay them for the cost of their sightseeing double-decker tour bus tickets after

Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) the Bus Company Defendants and Highgate wrongfully caused the Hotels to wrongfully cancel their written agreements with Plaintiff to permit Plaintiff to operate the Concierge Desks at the hotels owned by the Hotels; (vi) the Bus Company Defendants threatened Plaintiff that if it did not pay them for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, they would no longer allow Plaintiff to sell their tickets; (vii) the Bus Company Defendants and the Hotel Defendants increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (viii) the Bus Company Defendants increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (ix) the Bus Company Defendants eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling their sightseeing double-decker tours; (x) the Bus Company Defendants have taken over eleven Concierge Desks operated by Plaintiff; (xi) the Bus Company Defendants threatened immediately to prevent Plaintiff from being able to sell their tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take channel of the their major distribution channel of product; (xii) the Bus Company Defendants eliminated the commissions they paid other outside booking vendors for selling their double-decker sightseeing tours; (xiii) the Bus Company Defendants has conspired to fix and/or raise prices for their customers, hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) the Bus Company Defendants fixed and/or raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (xv) the Bus Company

Defendants reduced the number of buses and/or frequency of tours; (xvi) the Bus Company Defendants decreased the overall quality of their double-decker sightseeing tours; (xvii) the Bus Company Defendants restricted other services formerly provided to their customers on their double-decker sightseeing tours; (xviii) the Bus Company Defendants have conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xix) the Bus Company Defendants have conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xx) the Bus Company Defendants and the Hotel Defendants limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market and/or the Sightseeing Tour Bus Sales Market; (xxi) the Bus Company Defendants and the Hotel Defendants caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xxii) the Bus Company Defendants and the Hotel Defendants deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the purchase and sale of double-decker sightseeing tours in New York City

184. In addition, the Bus Company Defendants engaged in unfair competition to steal Plaintiff's business by improperly seeking to hire away former employees of CGSC, notwithstanding non-solicitation agreements and non-compete agreements of which the Bus Company Defendants were aware.

185. The Bus Company Defendants are able to charge supra-competitive prices and exclude competition for double-decker sightseeing tours in New York City as a result of their

restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct and/or conspiracy.

186. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants and the Hotel Defendants not engaged in their anti-competitive conduct, agreements and/or conspiracy.

187. The Bus Company Defendants' and the Hotel Defendants' denial of access to the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market has reduced choice for purchasers, Plaintiff, and other vendors of double-decker sightseeing tours in New York City.

188. The Bus Company Defendants' and the Hotel Defendants' restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct, through their agreements and/or conspiracies, on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

189. The Bus Company Defendants' and the Hotel Defendants' restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct and/or conspiracy serve no legitimate business reason and have no pro-competitive benefits.

190. The agreements and/or conspiracies between and/or among the Bus Company Defendants and the Hotel Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Market and/or Sightseeing Tour Bus Sales Market, and these effects are not *de minimus* or minute but substantial and significant.

191. The agreements and/or conspiracies between and/or among the Bus Company Defendants and the Hotel Defendants to inhibit, reduce, and eliminate competition has affected

and continues to affect the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market, as described above.

192. Consumers are being and will be injured by the Bus Company Defendants' and the Hotel Defendants' illegal restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct in the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to further ensconce their position in these markets by concomitantly controlling the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks.

193. As set forth above, as a direct result of the Bus Company Defendants' and the Hotel Defendants' unfair and anti-competitive agreements and/or conspiracies, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

194. The Bus Company Defendants' and the Hotel Defendants' agreements and/or conspiracies have proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A EIGHTH CAUSE OF ACTION

(For Tortious Interference Against the Bus Company Defendants)

195. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

196. Plaintiff has and had a contractual relationship with the Hotels wherein Plaintiff leases Concierge Desks in the eleven Hotels in order to, *inter alia*, sell tickets to the Bus Company Defendants' double-decker sightseeing bus tours.

197. Upon information and belief, the Bus Company Defendants have entered into an agreement and/or conspiracy between and/or among each other, knowing of the Hotel's

agreements with Plaintiff, to cause the Hotels to terminate such agreements in breach of the terms therein.

198. Upon information and belief, the Bus Company Defendants' efforts have already caused the Hotels to intentionally and wrongfully terminate their Concierge Desk agreements entered into with Plaintiff. These hotels have succumbed to the strong-armed, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants, either independently or through Highgate, and have sought to wrongfully intentionally terminate their contracts with Plaintiff, all by letters dated February 8, 2010.

199. Of particular interest, four of the hotels owned and/or managed by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination could only be "for cause". No cause, however, has been alleged, and none could be because Plaintiff has consistently, efficiently, and successfully operated their Concierge Desks to this very day. (See Ex. B)

200. Moreover, the Hotels have re-leased their Concierge Desks to the Bus Company Defendants and/or their affiliates.

201. The conduct of the Bus Company Defendants constituted a wrongful interference with Plaintiff's actual contractual and business relationships with the Hotels through the use of wrongful and unfair means.

202. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

203. In addition, because the Bus Company Defendant's conduct were undertaken willfully and with a high degree of moral culpability, the Bus Company Defendants and

Highgate should be ordered to pay Plaintiff punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR A NINTH CAUSE OF ACTION

(For Breach of Contract Against The Hotels)

204. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

205. Plaintiff has been damaged in that the Hotels have breached their written agreements with Plaintiff, which Plaintiff duly performed under by, *inter alia*:

- wrongfully terminating their agreements with Plaintiff; and
- wrongfully entering into agreements with companies affiliated with the Bus Company Defendants for them to operate the Hotels' eleven hotel Concierge Desks.

206. As a matter of law, every contract and agreement, including but not limited to the written agreements between the Hotels and Plaintiff, has an implied covenant of good faith and fair dealing.

207. Plaintiff has duly performed the obligations to be performed by it pursuant to its written agreements with the Hotels.

208. Plaintiff has suffered actual injury and will continue to suffer damages as a direct result of the Hotels' breaches of their contractual obligations and their breach of the implied covenant of good faith and fair dealing to Plaintiff.

209. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff requests that judgment be entered as follows:

(a) On the First Cause of Action against the Defendants awarding Plaintiff permanent injunctive relief to:

(1) restrain and enjoin: restrain and enjoin the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market;

(2) restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services;

(3) restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and

(4) restrain and enjoin the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

(b) On the Second Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(c) On the Third Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(d) On the Fourth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(e) On the Fifth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(f) On the Sixth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(g) On the Seventh Cause of Action against the Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(h) On the Eighth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory and punitive damages in an amount to be determined at trial;

(i) On the Ninth Cause of Action against the Hotels, awarding Plaintiff compensatory damages in an amount to be determined at trial;

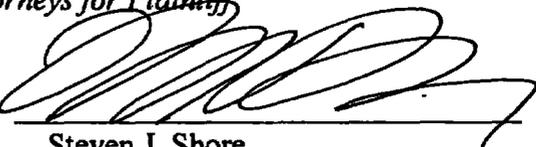
(j) Awarding Plaintiff treble damages as provided by law;

(k) Awarding Plaintiff its reasonable costs, disbursements, and attorneys' fees of this action as provided by law; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 12, 2010

GANFER & SHORE, LLP
Attorneys for Plaintiff

By: 

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Exhibit A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. MC-F-21035

**STAGECOACH GROUP PLC AND COACH USA, INC., ET AL. --
ACQUISITION OF CONTROL--TWIN AMERICA, LLC**

COMMENT OF THE STATE OF NEW YORK

The State of New York ("NYSAG") respectfully submits the following comments to the Surface Transportation Board ("STB") in connection with the above captioned STB Docket No. MC-F-21035 ("Application"). By decision and order dated September 15, 2009 ("Decision"), the STB did not grant applicants tentative authority under 49 CFR 1182.4(b) and instead instituted a proceeding to address certain matters and to determine the merits of the parties application.

The NYSAG currently has an open antitrust investigation concerning Twin America, LLC and its formation. That investigation is ongoing so our comments are made using publicly available information and the parties' Application to the STB. Nevertheless, commenting on certain key issues may be beneficial in addressing certain matters and determining the merits of the application.

The NYSAG submits these comments to emphasize the competitive importance to New York, its consumers and tourists visiting New York City. We urge the STB to take a particularly close look at the Application of the parties to ensure that there is fair competition for sightseeing tours of New York City by double-decker buses and to the integrity of the STB application process.

BACKGROUND

The New York State Attorney General subpoenaed Stagecoach Group plc and Coach USA, Inc. on July 31, 2009. City Sights LLC, City Sights Twin LLC, and Twin America, LLC ("Twin America") were subpoenaed on August 3, 2009.

The subpoenas concerned a "joint venture" agreement entered into by International Bus Services, Inc. ("IBS"), a subsidiary of Coach USA, Inc. ("Coach USA") and City Sights Twin, LLC ("City Sights Twin") in March, 2009 for the formation of Twin America, LLC ("Twin America") We believe the joint venture concerned the parties' respective business of a sightseeing hop-on/hop-off tour primarily by double-decker and other vehicles in the 5 boroughs of New York City. Twin America, LLC began operations as a joint venture on March 31, 2009.

After we issued subpoenas to the parties, the parties made an application to the STB on August 19, 2009, about 4½ months after the joint venture began, for control of Twin America

under 49 U.S.C. § 14303 ("Application"). Also after our subpoenas, on August 10, 2009, Twin America applied to the Federal Motor Carrier Safety Administration ("FMCSA") for appropriate operating authority to become a regulated motor carrier.

We met with the parties on August 19, 2009,¹ the same day the parties filed their Application to the STB. The parties asserted that they believed the NYSAG did not have jurisdiction over the parties and we disagreed. Without waiving jurisdiction, the parties and the NYSAG agreed to a voluntary production of documents. The parties are currently in the initial stages of voluntarily producing documents to us.

On August 27, 2009, the NYSAG filed its Notice of Intent to Participate in this STB proceeding as a party of record to receive any filings by the parties. This was done without conceding the NYSAG's jurisdiction over the parties.

ANTITRUST CONCERNS

In the view of the NYSAG, the Application to control Twin America by two direct competitors of tour guided sightseeing tours by hop-on/hop-off double-decker buses in New York City raises significant competitive concerns. The NYSAG makes these comments without passing judgment as to the legality of Twin America, LLC at this time.

a. Approval of the Application Would Strengthen Market Power and Create a Monopolist in Major Routes

Market shares determine the likelihood that a joint control agreement will create or increase market power or facilitate its exercise. "The creation, increase, or facilitation of market power will likely increase the ability and incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement." (see Antitrust Guidelines for Collaborations Among Competitors). To assess the impact on market power of the Application filed on August 19, 2009, it is necessary to go back and examine the change in market shares that occurred before and after the parties entered into the joint venture agreement in March, 2009. It is necessary to look back because the joint venture agreement in March, 2009, resulted in a major consolidation of market power in at least one of the primary product segment markets in which Twin America operates. Hence, this raises potential antitrust issues, and the STB's approval of the Application would have the effect of exempting the applicants from both state and federal antitrust law under 49 U.S.C. § 14303.

The starting point for estimating market share is identifying the relevant markets. Twin America was formed by (i) IBS, which is associated with both Stagecoach plc and Coach USA, and (ii) City Sights.² IBS was operating under the trade name Gray Line New York ("Gray

¹ After several postponements by the parties, we were finally able to schedule a meeting for August 19, 2009. To our great surprise, the parties informed us during our initial meeting that they were making a filing to the STB for the acquisition of Twin America, LLC that same day.

² For purposes of this discussion, we will call City Sights LLC and City Sights Twin as "City Sights" because "Twin America was formed in March 2009 in recognition of the fact that IBS and CitySights LLC, the previous operator of transportation services now provided by City Sights Twin..." (Application, pg. 10).

Line”) before entering into the joint agreement. Both Gray Line and City Sights provided and competed on various transportation and tour services. Tour services included double-decker buses and other vehicles before the parties entered into the joint venture agreement.

Both IBS and City Sights served various product segment markets instead of one product market that includes all transportation and tour services. For example, the market for the hop-on/hop-off double-decker tour bus business segment is not the same kind of bus business segment as carrying passengers from New York City to Washington, DC or Boston, MA. The sightseeing double-decker tour buses allow passengers to board and un-board (hop-on/hop-off) the buses at short intervals along a tour route and allow ticketed passengers to board any bus along the tour route for the sightseeing tour purchased.

To further explain why Twin America operates in various relevant product segment markets, instead of a single product market that includes all transportation and tour services, it is helpful to understand the different market segments in which Twin America’s competitors participate and the particular products which they provide. For example, both On Board New York Tours and Big Taxi Tours were identified by the applicants as Twin America competitors in the Application (Application, pg. 11). On Board New York Tours serves in the destination-specific shuttle bus tour segment market and Big Taxi Tours serves the double-decker bus tour market. That is, customers using the double-decker product would be able to catch any double-decker bus at any of the designated tour stops with an average waiting time of about 15 minutes, while the shuttles for the On Board New York Tours are scheduled to leave roughly 4 times a day and customers stay on the same bus and do not have the option to decide how long to stop at a particular destination. Hence, Twin America services various product segment markets instead of one product market that includes all transportation and tour services.

With access to only limited information on the various product market segments which IBS and City Sights-service, market shares are only calculated for the “double-decker” market as an illustration of the impact on market power of approving the Application. According to the Application, both IBS and City Sights were active participants in the “double-decker” product segment market. (Application, pg. 11). Applicants state that Twin America was formed because of “a declining revenue base due to a drop-off in tourism in the New York City area.” (Application, pg. 10). Thus, the market share calculation treats New York City as the geographic market.

Without any financial information from the applicants and any of its competitors in the market, the market shares were estimated using the number of major geographic routes,³ which are covered by providers in the market. The major geographic routes are the (i) Downtown Loop, (ii) Uptown Town Loop, (iii) All Around Town Loop, and (iv) Brooklyn Loop. The estimated market shares indicate that even without the approval of the joint control, Stagecoach already owns roughly 44.5% of the market through its association with Gray Line, while City Sights owns about 44.5% of the market. The remaining 11% of the market is owned by Big Taxi Tours. The approval of the Application will solidify the applicants’ control to approximately 89% of the market share (See summary Tables 1 and 2 below with the estimates of market share). Additionally, approval of the Application will endorse a monopoly in three out of the four major

³ Information was collected from each of the provider’s internet websites. City Sights. October 23, 2009. <http://www.citysightsny.com>. Grey Line New York. October 23, 2009. <http://www.newyorkightseeing.com>. Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

routes. That is, the Uptown Loop, All Around Town Loop and Brooklyn Loop will be controlled by the applicants alone, with the majority of the Downtown Loop controlled by the applicants as well.

Table 1:

	<u>CitySights</u>	<u>Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Loop</u>
Downtown Loop	1	1	1	3
Uptown Loop	1	1		2
All Around Town Loop	1	1		2
Brooklyn Loop	1	1		
Total by Company	4	4	1	9
Estimated Market Share	44.5%	44.5%	11%	100%

Sources:

City Sights. October 23, 2009. <http://www.citysightsny.com>

Gray Line New York. October 23, 2009. <http://www.newyorkstightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

Table 2:

	<u>CitySights & Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Tour Type</u>
Downtown Loop	2	1	3
Uptown Loop	2		2
All Around Town Loop	2		2
Brooklyn Loop	2		2
Total by Company	8	1	9
Estimated Market Share	89%	11%	100%

Sources:

City Sights. October 23, 2009. <http://www.citysightsny.com/>

Gray Line New York. October 23, 2009 <http://www.newyorkstightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

b. Approval of the Application Would Increase Barriers to Entry and/or Assert Negative Impacts on Employees

The applicants claim that the joint control would allow them to achieve significant economies and cost savings by combining their common management and purchasing activities. The applicants claim that they have already achieved savings on purchases of fuel and spare parts since entering into the joint venture agreement and that they are also expecting to save on insurance and advertising costs in the future (Application, pg. 10). Unless the applicants lowered the number of buses running and/or reduced current employee levels after consolidating their operations, the reported cost savings in fuel, spare parts and insurance purchases could probably only have been generated by receiving volume discounts. This indicates that the approval of the application would likely significantly increase the barriers to entry into the market by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts that further enhance its competitive position in the "double-decker" market.

As for the anticipated savings on advertising costs suggested by the applicants, these could likely be achieved either by consolidating the number of advertisements, or by firing advertising/field sales personnel who are currently employed by Twin America. The applicants further suggest that the joint control could eliminate duplicative "back office" administrative functions, including accounting, sales, and IT functions. Unless these back office functions are currently out sourced rather than performed in house by Twin America employees, eliminating these function will likely mean layoffs of Twin America employees.

Any cost savings, if any, would only benefit the applicants and not the consumers unless the applicants were to pass on the savings to consumers in the form of lower prices for their products. Economic theory suggests that businesses strive to maximize their profits. Businesses would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices. That is, the likelihood of passing on cost savings increases with the level of competition. This suggests the approval of the Application will lower the applicants' incentive to pass on any cost savings in the double-decker market since the approval will affirm the applicants' control of nearly 90% of the market as explained in the previous section. Hence, the applicants anticipated cost savings in the double-decker market come from the cost of (i) increased barriers to entry through volume discount contracts; (ii) firing of Twin America's employees and/or reducing the hours or wages of Twin America's employees; and/or (iii) reducing the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route.

c. Horizontal Agreement By Competitors of Sightseeing Hop-on/Hop-off Tours Primarily By Double Decker Buses

The joint venture as structured in March, 2009 gave IBS, a subsidiary of Coach USA and City Sights Twin each a 50 percent share of the voting rights in Twin America. The joint venture gave Coach USA a 60 percent share and City Sights Twin a 40 percent share of the economic rights.⁴

⁴ Article from www.busrider.com, "Stagecoach Group, CitySights NY form Twin America in joint venture," March 18, 2009 and parties' Application, pg. 3.

Currently, the joint operation by two direct competitors of tour guided sightseeing hop-on/hop-off tours primarily by double-decker buses in New York City gives the entities the power to restrict competition for double-decker bus tour ticket prices and marketing to customers. Dividing profits by competitors are a disincentive to compete on price. Both competitors can remain static on price or have price differentials relative to each other but the profits would always be divided the same, 60/40 amongst the two direct competitors.

Coordinated action by two direct competitors can also eliminate competition for marketing with ticket selling partners such as hotel concierges, museums, helicopter and boat tour operators, etc. Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

JURISDICTION

With due deference to the STB, the NYSAG disagrees with the applicants' assertion that the NYSAG does not have jurisdiction over the parties under the present facts.

a. Twin America, Inc., CitySights LLC and City Sights Twin Are Not Interstate Passenger Carriers

As the STB recognized in its Sept. 15, 2009 Decision, the parties do not provide specific information detailing the authority under which the various interstate transportation services operate. Although Twin America recently filed with the FMCSA to obtain appropriate operating authority after our subpoenas, we are not aware of CitySights LLC or City Sights Twin as having had appropriate interstate operating authority either. Applicants state that City Sights Twin, a non-carrier, now provides interstate transportation services previously provided by CitySights LLC.

We are not persuaded that CitySights, LLC, City Sights Twin and Twin America were interstate passenger carriers when we subpoenaed the parties. Although Coach USA and its parent Stagecoach plc controlled interstate passenger carriers, the joint venture they entered into with City Sights Twin in March, 2009, did not involve interstate transportation because the parties' sightseeing double-decker tour buses in New York City did not carry passengers interstate. Also, the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate.

We believe Twin America was formed by the parties to jointly operate their respective sightseeing hop-on/hop-off tours primarily by double-decker buses and other vehicles in the 5 boroughs of New York City.

b. The March, 2009 "Joint Venture" Transaction is Not Interstate

The parties' respective hop-on/hop-off double-decker bus sightseeing tours of New York City did not carry passengers interstate.

As noted above, the hop-on/hop-off double-decker bus sightseeing service is not the same service as transportation services carrying passengers interstate. The sightseeing double-decker

tour buses in New York City allow passengers to board and un-board the double-decker buses at specific tourist attractions along a specified tour route, at short intervals. The New York City sightseeing tours by double-decker buses did not carry passengers out of New York State, let alone New York City.

Although the parties enumerate various services as part of Twin America's tourism services to give the semblance of interstate transportation, such as garaging buses in New Jersey, we believe the crux of the joint venture concerned the sightseeing hop-on/hop-off tours primarily by double-decker buses in the 5 boroughs of New York City. Characterizing a New York City transaction as an interstate motor passenger carrier transaction should not trigger STB jurisdiction and avoid antitrust scrutiny.

c. Approval of the Application is Not in the Public Interest

The parties state in their Application that "a grant of this Application will not only comport with the requirements of section 14303, but underscore the role of the Board in connection with transactions of the sort that led to the formation of Twin America." (Application pgs. 15-16).

While underscoring the role of the STB, we are not aware of any filing made to the STB by the parties or any approval by the STB for the March, 2009, joint venture formation of Twin America under 49 USC § 14302, if such a filing were required for the pooling and division of transportation or earnings. The role of the STB may have been critical at that juncture had a filing been made because one of the standards for approval by the STB under 49 U.S.C. § 14302 is whether the transaction will not unreasonably restrain competition. While the parties have now filed the Application under 49 U.S.C. § 14303 and state that the transaction is consistent with the public interest, we disagree. The elimination of competition is not in the public interest.

A signed copy of the March, 2009 joint venture agreement and its exhibits may already have been submitted by the parties for STB review.

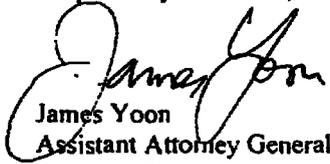
d. Jurisdictional Issues Not Resolved

"Applicants submit that the Transaction is subject to the Board's exclusive jurisdiction and will be pursuing that issue with the New York Attorney General." (Application, pg. 15). At present, since our meeting with the parties on August 19, 2009, we have only agreed to disagree as to jurisdiction. We believe that we have jurisdiction over the parties conduct concerning the formation and the subsequent joint activities of Twin America.

Consequently, the NYSAG believes the STB should find that under the present facts, the NYSAG has jurisdiction and should deny the parties' Application for control of Twin America LLC and restore competition for tour guided sightseeing by double-decker buses in New York City. In the alternative, the STB should condition the approval of the Application by ordering a divestiture of the tour guided sightseeing business by double-decker buses in the 5 boroughs of New York City from the transaction.

DATED: November 2, 2009

Respectfully submitted,


James Yoon
Assistant Attorney General
Antitrust Bureau

Kitty Kay Chan
Director of Economics
Antitrust Bureau

State of New York
Office of the Attorney General
Antitrust Bureau
120 Broadway, Suite 26C
New York, NY 10271
Tel: (212) 416-8822
Fax: (212) 416-6015

For ANDREW M. CUOMO
Attorney General
State of New York

Exhibit B

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Expedia Traveldesk License Agreement (the "Agreement"), dated December 30, 2005 as amended by the Novation Agreement (the "Novation") dated December 2006 by and between Continental Guest Services Corp ("CGS") successor to Travelscape, LLC d/b/a Expedia Travel ("Expedia") and Lexington Hotel, LLC as successor to Lexington Hotel Operating Lessee, LLC (the "Operator") with respect to the property commonly known as Radisson Lexington with an address of 511 Lexington Avenue, New York, NY 10017 (the "Property")

Ladies and Gentlemen:

Highgate Oxford Management Company, LLC manages the Radisson Lexington Hotel for Operator and this letter is written on behalf of Operator.

Operator exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Donald Sheneman at 212-755-4400 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

By: 

Name: Steve Barick

Title: Chief Operating Officer

cc: Donald Sheneman
Steve Barick
Sam Bhadha
Kurien Jacob

1568 BROADWAY HOTEL MANAGEMENT, LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
New York, NY 10036

Re: Termination of License Agreement (the "Agreement"), dated April 11, 2007, by and between Times Square Hotel Operating Lessee LLC (the "Licensor") and Continental Guest Services, Corp. (the "Licensee") with respect to the property commonly known as Doubletree Guest Suites Times Square, New York, NY (the "Hotel").

Ladies & Gentlemen:

1568 Broadway Hotel Management LLC manages the Hotel on behalf of Licensor.

Licensor hereby exercises its right to terminate the Agreement effective March 15, 2010.

Please contact Sam Grabush at 212-403-6310 if you have any questions.

Sincerely,

1568 Broadway Hotel Management, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

BATTERY PARK HOTEL MANAGEMENT, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated October 2, 2006, by and between Battery Park Hotel Management, LLC (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Embassy Suites Hotel with an address of 102 North End Avenue, New York, NY (the "Property")

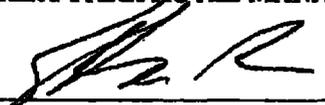
Ladies and Gentlemen:

Battery Park Hotel Management, LLC, hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Mark Miller @ 646-769-4416 if you have any questions.

Sincerely,

BATTERY PARK HOTEL MANAGEMENT, LLC

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc: -----

Mark Miller
Geoffrey Mills
Steve Barick
Kurien Jacob

PARK CENTRAL MANAGEMENT LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Lease Agreement (the "Agreement") dated November 22, 2005, by and between Park Central Hotel (PCH), LLC (the "Landlord") and Continental Guest Services Corp. (the "Tenant") with respect to the property commonly known as Park Central Hotel with an address of 870 7th Avenue @ 66th Street, New York, NY (the "Hotel")

Ladies & Gentlemen:

Park Central Management LLC, d/b/a Park Central Halifax Management LLC manages the Hotel for Landlord and this letter is written on behalf of Landlord.

Landlord hereby exercises its right to terminate the Agreement effective May 15, 2010

Please contact Mickey Schneider at 212-707-5028 if you have any questions.

Sincerely,

Park Central Management, LLC d/b/a
Park Central Halifax Management, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Mickey Schneider
Steve Barick
Kurien Jacob

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

February 8, 2010

**VIA OVERNIGHT COURIER AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Continental Guest Services Desk License Agreement (the "Agreement"), by and between W2001 Metropolitan Hotel Operating Lessee, LLC (the "Hotel Operator") and Continental Guest Services Corporation (the "Operator") dated May 1, 2007, with respect to the property commonly known as Doubletree Metropolitan Hotel (the "Hotel") with an address of 669 Lexington Avenue, New York, NY 10022

Ladies and Gentlemen:

Highgate Oxford Management Company II, LLC manages the Hotel on behalf of the Hotel Operator and this letter is written on behalf of the Hotel Operator.

Hotel Operator hereby elects to terminate the Agreement effective May 15, 2010.

Please contact Mauricio Patino at 212-350-6004 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Mauricio Patino
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), by and between New York West 35th Street HGI (the "Hilton Garden Inn") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hilton Garden Inn 35th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

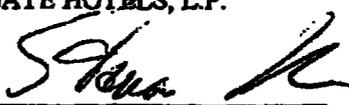
Highgate Hotels, L.P. manages the hotel for RLJ III – HGN Manhattan Lessee, LLC, d/b/a New York West 35th Street HGI ("HGI") and this letter is written on behalf of HGI.

The above referenced agreement expired January 29, 2010 and HGI hereby elects not to renew the agreement and demands that you vacate the premises by March 15, 2010.

Please contact Hilda Garvey @ 212-609-1030 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Hilda Garvey
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of License and Concierge Services Agreement (the "Agreement"), dated January 1, 2009, by and between Thirty East 30th Street Owner, LLC (the "Hotel") and Continental Guest Services Corporation (the "Operator") with respect to the property commonly known as Hotel 30 30 with an address of 30 East 30th Street, New York, NY (the "Property")

Ladies & Gentlemen:

Highgate Hotels, L.P. manages the Property for Hotel and this letter is written on Hotel's behalf. Hotel hereby elects to exercise its right to terminate the Agreement effective April 15, 2010.

Please contact Florencio Ferrao at 212-651-3880 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc: Florencio Ferrao
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Chief Executive Officer

Re: Termination of The Paramount Hotel New York and Continental Guest Services Corp. (the "Agreement"), by and between The Paramount Hotel New York (the "PH") and Continental Guest Services, Corp. (the "CGS") with respect to the property commonly known as The Paramount Hotel with an address of 235 West 46th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

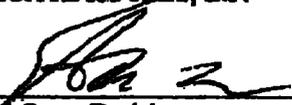
Highgate Hotels, L.P. manages the hotel for Becker-Paramount Fee, LLC, d/b/a The Paramount Hotel ("PH") and this letter is written on behalf of PH.

PH hereby exercises its right to terminate the Agreement effective April 15, 2010.

Please contact Geoffrey Mills at 212-827-4174 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Geoffrey Mills
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hilton Garden Inn Times Square (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019

Ladies and Gentlemen:

Highgate Hotels, L.P. manages the hotel for RPH Hotels 48th Street Owner, LLC, d/b/a Hilton Garden Inn Times Square (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Timothy Dowd at 646-710-5710 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc:

Timothy Dowd
Dennis Lanners
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hampton Inn Times Square North (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019 (the "Property")

Ladies and Gentlemen:

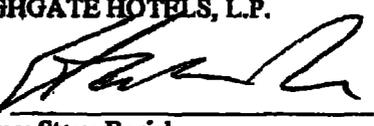
Highgate Hotels, L.P. manages the property for RPH Hotels 51st Street Owner, LLC, d/b/a Hampton Inn Times Square North (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Kaizad Charna at 646-710-5840 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc: _____

Kaizad Charna
Dennis Lanners
Steve Barick
Kurien Jacob

July 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated July 11, 2007, by and between OTA Hotel Owner, L.P. d/b/a On The Avenue Hotel (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as On The Avenue Hotel, New York, NY (the "Property").

Ladies & Gentlemen:

Highgate Hotels, L.P. manages the Property on behalf of Hotel and this letter is written on behalf of the Hotel.

Hotel hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Richard Hotter at 212-651-3308 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

cc: Richard Hotter
Dennis Lammers
Steve Barick
Kurien Jacob

ORIGIN

STATE OF NEW YORK

APPROVED

COMMERCIAL DIVISION
SUPPORT OFFICE

EMOT X-M T

[Signature]

CLERK'S
INITIALS

At IAS Part 53 of the Supreme Court of the State of New York, County of New York, at the Courthouse, 60 Centre Street, New York, New York, on the 12th day of March, 2010

PRESENT:

Honorable *Charles E. Ramo*, J.S.C.

MOTION SEQUENCE # 001

003798

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A GRAY LINE NEW YORK, CITY SIGHTS TWIN, LLC D/B/A CITY SIGHTS NEW YORK, TWIN AMERICA, LLC, BATTERY PARK HOTEL MANAGEMENT, LLC, HAMPTON INN TIMES SQUARE NORTH, HILTON GARDEN INN TIMES SQUARE, NEW YORK WEST 35TH STREET HGI, ON THE AVE HOTEL, THE PARAMOUNT HOTEL NEW YORK, PARK CENTRAL HOTEL (DE), LLC, THIRTY EAST 30TH STREET OWNER, LLC, TIMES SQUARE HOTEL OPERATING LESSEE LLC, LEXINGTON HOTEL, LLC, W2001 METROPOLITAN HOTEL OPERATING LESSEE, L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. 600643 /10

00705270

**ORDER TO SHOW CAUSE
WITH TEMPORARY
RESTRAINING ORDER.**

FEE PAID

MAR 12 2010

NEW YORK
COUNTY CLERK'S OFFICE

UPON the Emergency Affidavit of Mark A. Berman, Esq., sworn to on March 12, 2010; the Affidavit of Betty Zhang, sworn to on March 11, 2010, with the exhibits thereto; and the

This document has
NOT been
E-Filed

accompanying Summons and Complaint, dated March 12, 2010, and for good cause shown, it is hereby

ORDERED, that Defendants, International Bus Services, Inc. d/b/a Gray Line New York ("IBS"), City Sights Twin, LLC d/b/a City Sights New York ("City Sights"), Twin America, LLC ("Twin America") (collectively, with IBS, City Sights and Twin America, the "Bus Company Defendants") and Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"), Highgate Hotels, L.P. ("Highgate") (the Hotels and Highgate are collectively referred to as the "Hotel Defendants") (the Bus Company Defendants and the Hotel Defendants are collectively referred to as "Defendants"), show cause before me, at I.A.S. Part 53 of this Court, in Room 238 ✓ of the Courthouse, 60 Centre Street, New York, New York, on the 31st day of March, 2010, at 11:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why an order should not be made and entered granting a preliminary injunction: ✓

- (i) restraining and enjoining the Bus Company Defendants and their related entities and individuals from ceasing to sell their products and services to Plaintiff and, in particular, double-decker sightseeing tour tickets, and from changing the current terms and conditions of the sale;
- (ii) restraining and enjoining the Bus Company Defendants and their related companies and individuals and/or Highgate and its related entities and individuals from interfering with or causing hotels to terminate Plaintiff's concierge, tour or travel desk agreements with each such hotel; and
- (iii) restraining and enjoining the Hotel Defendants from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

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JSC

IT IS FURTHER ORDERED that pending the hearing and ~~determination~~ of this motion:

- (i) restraining and enjoining the Bus Company Defendants and their related entities and individuals from ceasing to sell double-decker tour bus tickets to Plaintiff and from changing the current terms and conditions of the sale; and
- (ii) restraining and enjoining the Hotel Defendants from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

IT IS FURTHER ORDERED that service of conformed copies of this Order To Show Cause and the papers upon which it is based, together with the Summons and Complaint, by Federal Express upon IBS, located at 1430 Broadway, 5th Floor, New York, New York 10036; City Sights, located at 1430 Broadway, 5th Floor, New York, New York 10036; Twin America, located at 1430 Broadway, 5th Floor, New York, New York 10036; Highgate, located at 545 E. John Carpenter Freeway, Irving, Texas 75062; Battery Park Hotel Management, LLC, located at 102 North End Avenue, New York, New York 10281; Hampton Inn Times Square North, located at 851 Eighth Avenue, New York, New York 10019; Hilton Garden Inn Times Square, located at 790 Eighth Avenue, New York, New York 10019 New York West 35th Street HGI, located at 63 West 35th Street, New York, New York 10001; On The Ave Hotel, located at 2178 Broadway, New York, New York 10024; The Paramount Hotel New York, located at 235 West 46th Street, New York, New York 10036; Park Central Hotel (DE), LLC, located at 870 Seventh Avenue, New York, New York 10019; Thirty East 30th Street Owner, LLC, located at 30 East 30th Street, New York, New York 10016; Times Square Operating Lessee LLC, located at 1568 Broadway, New York, New York 10036; Lexington Hotel, LLC, located at 511 Lexington Avenue, New York, New York 10017; and W2001 Metropolitan Hotel Operating Lessee, L.L.C., located at 569 Lexington Avenue, New York, New York 10022, on or before the ~~12th~~^{12th} day of March, 2010, shall be deemed good and sufficient service; and ✓

IT IS FURTHER ORDERED that Defendants' answering papers, if any, shall be served so that they are received in hand by Plaintiff's counsel, Ganfer & Shore, LLP, 360 Lexington Avenue, 14th Floor, New York, New York 10017, on or before the 28th day of March, 2010. ✓

~~and~~

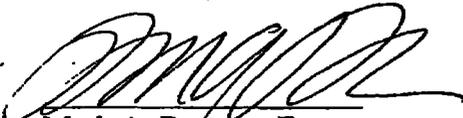
~~IT IS FURTHER ORDERED that Plaintiff's reply papers, if any, shall be served so that they are received by Defendants and/or their retained counsel of record, on or before the 28th day of March, 2010.~~

ENTER:



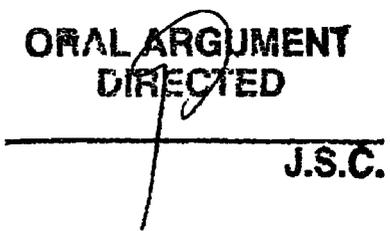
J.S.C. ✓

Certification pursuant to
22 NYCRR § 130-1.1:



Mark A. Berman, Esq.

**ORAL ARGUMENT
DIRECTED**



J.S.C.

BERMAN EMERGENCY AFFIDAVIT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. _____/10

**EMERGENCY AFFIDAVIT
OF MARK A. BERMAN**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARK A. BERMAN, being duly sworn, deposes and says:

1. I am a Member of the firm of Ganfer & Shore, LLP, counsel for Plaintiff Continental Guest Services Corporation ("Plaintiff" or "CGSC"). Unless emergency relief is granted, Plaintiff's business that it has operated for over one hundred years will be destroyed imminently (along with the long-standing relationships and goodwill that Plaintiff has fostered), and no amount of monetary damages will be able to compensate it.

2. I submit this Emergency Affidavit in support of Plaintiff's Order to Show Cause seeking a Temporary Restraining Order, pending the hearing and determination of its motion for a preliminary injunction, restraining and enjoining:

- (i) Defendants International Bus Services, Inc. ("IBS"), City Sights Twin, LLC ("City Sights"), and Twin America, LLC ("Twin America") (IBS, City Sights, and Twin America are collectively referred to as the "Bus Company Defendants") and their related entities and individuals from ceasing to sell double-decker tour bus tickets to Plaintiff and from changing the current terms and conditions of the sale; and
- (ii) Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"), Highgate Hotels, L.P. ("Highgate") (the Hotels and Highgate are collectively referred to as the "Hotel Defendants") from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

I have personal knowledge of the facts set forth herein, except where otherwise indicated.

* * *

3. The New York State Office of the Attorney General (the "Attorney General"), in a report dated November 2, 2009 (the "NYAG's Report")¹, agrees with the claims that Plaintiff is bringing in this action, and advised the United States Surface Transportation Board (the "STB") that it believes that IBS' and City Sights' joint venture agreement to form Twin America will, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) *allow the Bus Company Defendants to obtain vertical monopolistic control by eliminating competition in another market* – the Sightseeing Tour Bus Sales Market, as is defined below, wherein Plaintiff is the number one source of sales for the Bus Company Defendants' products and services. More specifically, the Attorney General in his Report states that:

¹ A copy of the NYAG's report is annexed to the Affidavit of Betty Zhang, the President of CGSC, sworn to on March 11, 2010 (the "Zhang Aff."), as Exhibit "A".

[c]oordinated action by [the Bus Companies] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6) (emphasis added).

4. Plaintiff, in the words of the Attorney General, is such a “ticket selling partner” through its operation of hotel concierge desks, and for over one hundred years, has been an independent, family-owned and operated sightseeing and hospitality company located in New York City, that, among other things, sells the tickets for double-decker sightseeing tours in New York City operated by the Bus Company Defendants. Plaintiff’s sales of the Bus Company Defendants’ tickets are effectuated through concierge desks that Plaintiff leases from forty-three hotels located in New York City.

5. As set forth more fully below, in the accompanying Zhang Affidavit, and in the accompanying Memorandum of Law, Plaintiff had established long-standing relationships with these hotels by satisfying hotel guests through Plaintiff’s: (i) successful and efficient operation of their concierge desks; and (ii) high-volume sales of the Bus Company Defendants’ products and services, and, in particular, the double-decker sightseeing tour bus tickets.

6. The Bus Company Defendants that have engaged in a concerted plan to: (i) take over and control and monopolize the double-decker sightseeing tour bus market in New York City (the “Sightseeing Tour Bus Market”), which they have jointly accomplished through their now combined control of **ninety percent of such market, if not more**; and (ii) then vertically monopolize such market’s primary distribution channel of ticketing, which is comprised of the hotel concierge desks located in hotels throughout New York City, **from which approximately ninety-five percent off Plaintiff’s revenues are generated**, and which anticompetitive and

unfair competition, is demonstrated more fully in the accompanying Zhang Affidavit.

7. Using their monopolistic control of one market to create a monopoly in another market – the sale of sightseeing tour bus tickets in New York City (the "Sightseeing Tour Bus Sales Market"), and to prevent (as admitted by the Bus Company Defendants (see Zhang Aff. ¶¶ 20, 49)) any new tour bus company entities from being able to come into the Sightseeing Tour Bus Sales Market - the Bus Company Defendants are engaged and continue to engage in illegal predatory conduct to monopolize the distribution channel for the sale of *their* double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market by taking control of the hotel concierge desk distribution channel in New York City.

8. Seeking to destroy CGSC, the Bus Company Defendants and Defendant Highgate, the entity that owns and/or manages eleven of the forty-three hotels that have concierge desk agreements with Plaintiff, have unlawfully and unfairly interfered with Plaintiff's contractual relationships with such eleven Hotel Defendants. The Bus Company Defendants, through, among other things, threats, wrongful economic coercion, and their direct and/or indirect investments in Highgate and/or in the eleven Hotel Defendants have caused Highgate and/or the Hotel Defendants to wrongfully terminate Plaintiff's hotel concierge desk agreements.

9. In addition to causing the termination of the eleven Hotel Defendants' contracts, the Bus Company Defendants have used and are improperly leveraging their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to *right now cause other hotels to cancel their hotel concierge desk agreements with Plaintiff.* (Zhang Aff. ¶¶ 41-48) Such efforts are ongoing and will continue unless enjoined by the Court.

10. The Bus Company Defendants have admitted that they intend on taking all of CGSC's concierge desks, even though they have no experience in running such desks, and the

Bus Company Defendants have affirmatively stated that they are doing so in order to ensure that any new tour bus competitor will have an impossible time entering the market, where the Bus Company Defendants would control the distribution channel for tours tickets throughout New York City hotels, and, no doubt, only sell sightseeing tickets to their companies' tours (and not others. (Zhang Aff. ¶¶ 17, 20, 41, 42, 29) As of today's date, no less than eleven of Plaintiff's concierge desk agreements at hotels in New York City have been wrongfully terminated by the Hotel Defendants due Highgate's and/or the Bus Company Defendants' wrongful conduct. (Zhang Aff. ¶¶ 47-48)

11. These hotels, no doubt, must have succumbed to the strong-armed, unfair, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants. It is no coincidence that the Hotel Defendants all have wrongfully cancelled their concierge desk contracts with Plaintiff by letters dated either February 8 or 10, 2010 and each letter signed by the same person. (Zhang Aff. ¶ 46) Accordingly, on March 11, 2010, Plaintiff notified Highgate and/or each of the Hotels in writing that CGSC disputes their purported terminations of the concierge desk agreements. (Zhang Aff. ¶ 46)

12. Of particular interest, four of the hotels managed and/or owned by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York, and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination, pursuant to the agreements, could only be "for cause." No cause, however, has been alleged in the purported termination letters.

13. Plaintiff's belief that the predatory conduct of the Bus Company Defendants caused the Hotels to wrongfully cancel their contracts with Plaintiff is well founded: Plaintiff has been advised by the Hotels that they have already entered into agreements with a company

affiliated with the Bus Company Defendants to operate their concierge desks. (Zhang Aff. ¶ 48)

14. As a result of the above, the Bus Company Defendants are on the verge wiping Plaintiff off the proverbial map. The Bus Company Defendants, if not prohibited by this Court, will soon own and control the largest consumer of their own product (the double-decker sightseeing tour bus tickets in New York City) or, in other words, *the largest distribution channel for their product*.

15. As set forth in the Zhang Affidavit, the fact is that the Bus Company Defendants previously advised Plaintiff that if CGSC informed the Attorney General or any governmental entity about the Bus Company Defendants' anti-competitive and predatory conduct or in any way interfered with their plans to take control over their primary distribution channel, they would immediately prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services. (Zhang Aff. ¶ 10) Because, as set forth above, Plaintiff has now "interfered" with the Bus Company Defendants' monopolistic maneuvering (by in writing-disputing the Hotel Defendants' wrongful cancellation of their concierge desk contracts with Plaintiff and alleging the facts set forth in the accompanying Complaint and sending a copy of this Complaint to the Attorney General), Plaintiff has every reason to believe that, absent a temporary restraining order, the Bus Company Defendants will immediately prevent Plaintiff from selling their tickets and services, thereby putting Plaintiff out of business.

16. The Bus Company Defendants already have, *inter alia*, shortened the time period for Plaintiff to pay the Bus Company Defendants for Plaintiff's sale of such tickets from over thirty days to five days; and threatened Plaintiff that if they did not receive Plaintiff's payment for its sightseeing tickets within five days, they would immediately preclude Plaintiff from

selling any of their sightseeing services at any of Plaintiff's remaining hotel concierge desks.
(Zhang Aff. ¶ 11, 39)

17. Accordingly, where the Bus Company Defendants will now stop providing their services and products to Plaintiff, which they have demonstrated, let alone indicated, they would do, then Plaintiff will be unable to operate its hotel concierge desks because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours. *A fortiori*, if CGSC is "cutoff" from being able to sell such tickets, Plaintiff will be unable to provide any alternative double-decker sightseeing tours to hotel guests, where double-decker sightseeing tours are unique and the number one activity in New York City for tourists to do at such price point, and the Bus Company Defendants control such market.

18. If CGSC is prevented from selling double-decker sightseeing bus tour tickets, the remaining hotels that have yet to terminate their hotel concierge desk agreements with Plaintiff will no doubt take the position that Plaintiff is not properly servicing its guests and will then either immediately terminate their concierge desk agreements with Plaintiff or refuse to renew such agreements upon their expiration, and, as the eleven Hotel Defendants before them, will enter into an agreement with the Bus Company Defendants or an affiliate which will supply only their own tickets, resulting in the permanent destruction of Plaintiff's business along with the goodwill and relationships that Plaintiff has built up for more than the past one hundred years.

19. Based on the foregoing, CGSC is in obvious and imminent danger of losing all of its hotel concierge desks in the immediate future.

20. For the above reasons and for the reasons more fully set forth in the accompanying Zhang Affidavit and the accompanying Memorandum of Law, it is respectfully

submitted that the Temporary Restraining Order sought by Plaintiff should be issued and the annexed Order to Show Cause considered on an expedited basis.

21. Pursuant to Uniform Rule 202.7(f), we have made a good faith effort to notify Defendants of the time and date that this application is being made to the Court. We faxed a letter to the Bus Company Defendants and the general counsel for Highgate and the Hotels yesterday indicating that the instant application will be presented today at 1 p.m. We also delivered "by hand" such letter to the Bus Company Defendants last night and it was left at their reception, and we again by delivered "by hand" that same letter to the Bus Company Defendants this morning.

22. No prior application has been made to this or any other Court for the relief requested herein.



MARK A. BERMAN

Sworn to before me this
12th day of March, 2010



NOTARY PUBLIC

MATTHEW R. MARON
Notary Public, State of New York
No. 02MA6141948
Qualified in New York County
Commission Expires 03/06/2010
2014

ZHANG AFFIDAVIT

- (2) restraining and enjoining Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"), Highgate Hotels, L.P. ("Highgate") (the Hotels and Highgate are collectively referred to as the "Hotel Defendants") from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel; and
- (B) preliminary injunction seeking to:
- (1) restrain and enjoin the Bus Company Defendants and their related entities and individuals from ceasing to sell their products and services to Plaintiff and, in particular, double-decker sightseeing tour tickets, and from changing the current terms and conditions of the sale;
 - (2) restrain and enjoin the Bus Company Defendants and their related companies and individuals and/or Highgate and its related entities and individuals from interfering with or causing hotels to terminate Plaintiff's concierge, tour or travel desk agreements with each such hotel; and
 - (3) restrain and enjoin the Hotel Defendants from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

2. I am fully familiar with the facts and circumstances herein, and make this affidavit on the basis of personal knowledge, unless otherwise indicated.

PRELIMINARY STATEMENT

3. Plaintiff is a Manhattan-based sightseeing and hospitality company that has been in existence for over one hundred years. CGSC, among other things, sells tickets to double-decker sightseeing tours in New York City operated by the Bus Company Defendants through concierge, travel and tour desks ("Concierge Desks"), Plaintiff leases are located in forty-three hotels located in New York City. For the reasons set forth below, if the requested emergency relief is not granted, CGSC will be forced out of business.

4. This action stems from the Bus Company Defendants knowingly and intentionally entering into an agreement with each other in order to monopolize the double-decker sightseeing tour bus market in New York City (the "Sightseeing Tour Bus Market") in violation of the Donnelly Act in an unreasonable restraint of competition. The purpose of this agreement is to completely control and dominate, curtail competition, and prevent the free exercise of consumer choice in the Sightseeing Tour Bus Market. The Bus Company Defendants now control ninety percent of such market, if not more.

5. Most significantly, recently the Bus Company Defendants have engaged and are continuing to engage in unfair competitive and otherwise predatory conduct in violation of the Donnelly Act with the intent of monopolizing the major distribution channel for the sale of *their* own double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Market by taking control of and over the hotel Concierge Desk distribution channel in New York City, *which Concierge Desks, I am advised¹ make up the largest single source of tour ticket sales for the Bus Company Defendants, and where the single largest source of such revenue is through Plaintiff's high-volume sales of their double-decker sightseeing tour bus tickets at CGSC's forty-three hotel Concierge Desks. If Defendants are permitted to engage in the wrongful conduct by taking over Plaintiff's Concierge Desks, as set forth herein, CGSC will be put out of business.*

6. The Bus Company Defendants have used and are continuing to use their monopoly and market power in one market – the Sightseeing Tour Bus Market – to impede competition and to create a monopoly in another market – the sale of double-decker sightseeing tour bus tickets in New York City at hotels (the "Sightseeing Tour Bus Sales Market").

¹ I am advised that the Bus Company Defendants also utilize, among other means, Expedia to sell their tour bus tickets "on line" and use salespersons who individually sell tour bus tickets to tourists on street corners throughout Manhattan.

7. The New York State Attorney General (the "Attorney General"), in a report dated November 2, 2009 (the "NYAG's Report"), which is annexed hereto as Exhibit "A", agrees with Plaintiff's assertions, and advised the United States Surface Transportation Board (the "STB") that it believes that IBS' and City Sights' agreement creating a new consolidated entity, Twin America, would, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) *allow the Bus Company Defendants to obtain vertical monopolistic control of other markets by eliminating competition in other markets, such as the Sightseeing Tour Bus Sales Market.*

8. Furthermore, the Attorney General was prescient when he asserted that the Bus Company Defendants were conspiring to monopolize, restrain trade, and engage in anti-competitive conduct in the Sightseeing Tour Bus Sales Market. The Attorney General's Report reads in relevant part:

Coordinated action by [IBS and City Sights] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6)

9. As demonstrated below, that Defendants' wrongful conduct has and will continue to inflict irreparable harm upon CGSC.

10. The Bus Company Defendants have advised CGSC that if Plaintiff informed governmental entities about their anti-competitive and predatory conduct or in any way interfered with the Bus Company Defendants' plans to take control of *their* major distribution channel of product and services, they would immediately stop making their tickets and services available to Plaintiff for sale.

11. In addition, the Bus Company Defendants have, *inter alia*, shortened the time period for Plaintiff to pay the Bus Company Defendants for Plaintiff's sale of such tickets from more than thirty days to five days; and threatened Plaintiff that if the Bus Company Defendants did not receive Plaintiff's payment for its sightseeing tickets within five days, they would preclude Plaintiff from selling any of their products and services, in particular, double-decker sightseeing tour tickets.

12. If Plaintiff cannot sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either seek to terminate its Concierge Desk agreements or refuse to renew such agreements upon their expiration, destroying the goodwill and relationships that Plaintiff has built up for more than the past one hundred years.

13. The fact is *that ninety-five percent of CGSC's sales in its multi-million dollar business in 2009 came from its hotel Concierge Desks, and with the loss of being unable to sell double-decker sightseeing tour tickets, CGSC's business will be destroyed, and Plaintiff will go out of business.*

14. To further malevolently injure CGSC, the Bus Company Defendants, *inter alia*: have recently reduced the commissions paid to Plaintiff for selling their double-decker sightseeing ticket sales by over twenty-five percent.

15. Accordingly, there is no doubt that the Bus Company Defendants will now stop providing Plaintiff with tickets to their products and services, in particular, double-decker sightseeing tour tickets. As a result, Plaintiff will be unable to operate its Concierge Desks in hotels because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours, and if CGSC is "cutoff" from being able to sell such tickets, Plaintiff will be unable to

provide any alternative double-decker sightseeing tours to hotel guests. Double-decker sightseeing tours are unique and the number one activity in New York City for tourists to do at such price point. Indeed, it is also the double-decker sightseeing bus tours, because of their high visibility throughout New York City that draws hotel guests and others to Plaintiff's Concierge Desks to purchase other services.

16. The Bus Company Defendants should not be permitted to change the current terms and conditions of their products and services to Plaintiff's detriment (eliminating any commissions Plaintiff may receive) pending a resolution of the merits of this dispute.

17. In addition to seeking to destroy Plaintiff by threatening not to sell to Plaintiff its products and services, the Bus Company Defendants and Highgate, the company that owns and/or manages the Defendant Hotels where CGSC has agreements to operate Concierge Desks, have unlawfully interfered with Plaintiff's contractual relationships with those Hotels. My understanding is that the Bus Company Defendants, through, among other things, their direct and/or indirect investments in Highgate and in the Hotels, and wrongful economic coercion, have caused the Hotels to wrongfully terminate and breach Plaintiff's hotel Concierge Desk agreements with them, many of which agreements only permit termination "for cause" (though, as set forth more fully below, no such alleged "cause" has been alleged in those termination letters).

18. Indeed, I have been advised that the Bus Company Defendants have begun seeking to "steal" my employees who worked at such Hotels to join them in operating their new business, notwithstanding non-solicitation agreements and non-compete agreements of which, upon information and belief, the Bus Company Defendants were aware.

19. The Bus Company Defendants are also using their economic pressure from their monopolization of double-decker sightseeing tours and other tourist services, and, as well as I have been advised threats, to cause and are right now in the process of causing other hotels (in addition to the Defendant Hotels) to wrongfully cancel their hotel Concierge Desk agreements with Plaintiff, thereby eliminating Plaintiff's Concierge Desks throughout New York City.

20. The Bus Company Defendants have admitted that they intend on seeking to take all of CGSC's Concierge Desks, even though they have no experience in running such desks, and the Bus Company Defendants have affirmatively stated that they are doing so in order to ensure that any new tour bus competitor will have an impossible time entering the market, where the Bus Company Defendants would control the distribution channel for tours tickets throughout New York City hotels, and, no doubt, only sell sightseeing tickets to their companies. On the other hand, Plaintiff is an independent company, unrelated to any sightseeing company or hotel, and has offered and will continue to offer the services of any reputable company that provides services which users of Concierge Desks require.

21. As a result, the Bus Company Defendants are on the verge of wiping Plaintiff off the proverbial map and obtaining vertical, monopolistic control of the Sightseeing Tour Bus Sales Market through their control of hotel Concierge Desks. The Bus Company Defendants will soon own and control the largest consumer of their own product (the double-decker sightseeing tour bus tickets in New York City) or, in other words, the largest distribution channel for their product.

**THE BUS COMPANY DEFENDANTS UNLAWFUL MONOPOLIZATION
AND RESTRAINT OF TRADE OF THE SIGHTSEEING TOUR BUS MARKET**

22. From the time of their existence through the spring of 2009, IBS and City Sights were separate and distinct companies. In fact, through their respective trade names (Gray Line

New York ("Gray Line") and City Sights New York ("NY Sights"), IBS and City Sights were direct and fierce competitors in the Sightseeing Tour Bus Market. Indeed, IBS and City Sights: (i) had different price points for their respective double-decker sightseeing tour tickets in New York City; (ii) utilized different pricing packages for their customers; (iii) maintained different bus stops; (iv) provided different information during their respective tours; (v) used different personnel, such as tour guides; and (vi) used different buses.

23. IBS and City Sights controlled the market share of the Sightseeing Tour Bus Market. For many years, the double-decker sightseeing tours buses from IBS and City Sights were the only buses that ran three out of the four major geographic routes in New York City: the Uptown Loop; the All Around Town Loop; and the Brooklyn Loop. With respect to the remaining geographic route, the Downtown Loop, the only other competitor to IBS and City Sights was a company named Big-Taxi Tours – and despite the presence of Big Taxi Tours, IBS and City Sights controls the majority of the Downtown Loop.

24. When IBS and City Sights were acting as separate and distinct entities and competitors, I believe they controlled ninety percent, if not more of the Sightseeing Tour Bus Market. Indeed, my observations are confirmed by the NYAG's Report, which estimated that they control eighty-nine percent of the market.

25. No doubt, IBS and City Sights recognized that they could eliminate all competition, dominate the entire Sightseeing Tour Bus Market, and obtain monopoly power over the entire Sightseeing Tour Bus Market by combining their forces and respective companies.

26. Accordingly, in or about March 2009, IBS and City Sights entered into a "joint venture" agreement and, by this agreement, formed Twin America.

27. The Attorney General expressed his grave concern that the formation of Twin America violates New York's antitrust laws and eliminated fair competition in the Sightseeing Tour Bus Market by sending out subpoenas to IBS and City Sights on or about July 31, 2009 for the production of documents relating to their antitrust and anti-competitive conduct. IBS and City Sights responded on August 19, 2009 by making an application to the STB for control of Twin America and asserting that the Attorney General did not have jurisdiction over them.

28. The NYAG Report made the following points:

- IBS' and City Sights' agreement to form Twin America would strengthen their market power to a degree that would "raise price above or reduce output, quality, service, or innovation below what would likely prevail in the absence of [the Bus Company Defendants' monopoly]";
- IBS' and City Sights' agreement to form Twin America will cause "a monopoly in three out of the four major [geographic] routes [in New York City];
- IBS' and City Sights' agreement to form Twin America "would likely significantly increase the barriers of entry into the [Sightseeing Tour Bus Market] by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts that further enhance its competitive position in the 'double-decker' market";
- "[a]ny cost savings, if any, would only benefit [the Bus Company Defendants' monopoly]";
- The Bus Company Defendants will "strive to maximize their profits" and "would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices";
- IBS' and City Sights' agreement to form Twin America may "reduc[e] the hours or wages of Twin America's employees"; and
- IBS' and City Sights' agreement to form Twin America may "reduce[e] the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route".

**THE BUS COMPANY DEFENDANTS' UNLAWFUL
ATTEMPTED MONOPOLIZATION AND RESTRAINT OF TRADE
OF THE SIGHTSEEING TOUR BUS SALES MARKET RESULTING IN
THEIR AND HIGHGATE'S UNFAIR AND ANTI-COMPETITIVE CONDUCT
AND THE HOTEL'S WRONGFUL CANCELLATION OF THEIR AGREEMENTS
WITH PLAINTIFF AS WELL THE BUS COMPANY DEFENDANTS SEEKING
TO TERMINATE OTHER CONCIERGE DESK AGREEMENTS WITH PLAINTIFF**

29. Plaintiff leases space in forty-three hotels in New York City and operates the Concierge Desks in these hotels, including the Hotels, pursuant to written agreements. In furtherance of these written agreements, Plaintiff provides hotel guests and other customers with, among other things, various sightseeing services. Such services specifically include the sale of the Bus Company Defendants' double-decker sightseeing tour bus tickets.

30. CGSC has long-standing relationships and contracts to operate Concierge Desks at the following forty-three hotels: Affinia Manhattan, Affinia 50, Affinia Dumont, Affinia Shelburne, Belvedere Hotel, Courtyard By Marriott Midtown East, Courtyard By Marriott Times Sq, Crowne Plaza Times Square, **Doubletree Guest Suites Time Square**, The Edison Hotel, **Embassy Suites New York**, The Excelsior Hotel, Fairfield Inn, Four Points by Sheraton Midtown Times Square, The Grand Hyatt Hotel, **Hampton Inn Times Square North**, **Hilton Garden Inn Times Square**, **Hilton Garden Inn**, Holiday Inn Midtown 57th St, The New York Hilton, The Lucerne Hotel, Marriott at Brooklyn Bridge, Marriott East Side Hotel, **Doubletree Metropolitan**, The Millennium Broadway, The Millennium Hilton, The Millennium UN, The New Yorker Hotel, **On the Ave Hotel**, **Paramount**, **Park Central**, Hotel Pennsylvania, **Radisson Lexington**, Residence Inn, The Roosevelt Hotel, Sheraton Manhattan, Sheraton New York, **Hotel 30 30**, Tudor, The Waldorf Astoria, West 57th By Hilton Club, Westin Times Square, and Wyndham Garden Inn. In addition, the Milford Plaza is also a Highgate-controlled hotel at which Plaintiff leased a Concierge Desk, which has been closed for renovation. But for

Defendants' wrongful conduct, such hotel upon reopening would have entered into a new Concierge Desk agreement with Plaintiff. Those hotels noted above in bold are the Hotels.

31. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to IBS' and City Sights' formation of Twin America), Plaintiff was the single largest customer of IBS and City Sights through its high-volume sales of their double-decker sightseeing tour bus tickets in New York City at Plaintiff's forty-three hotel Concierge Desks. Plaintiff generated millions of dollars in revenues for the Bus Company Defendants from the sale of sightseeing bus tour tickets.

32. Further, prior to IBS' and City Sights' formation of Twin America, IBS and City Sights: (i) each paid Plaintiff an agreed upon commission on its sales of their double-decker sightseeing tour bus tickets; and (ii) agreed that Plaintiff would have more than thirty days to remit to IBS and City Sights the net price (less commissions) of their double-decker sightseeing tour bus tickets that Plaintiff sold.

33. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to their formation of Twin America), Plaintiff, the major distribution channel in the Sightseeing Bus Tour Sales Market for IBS' and City Sights' sales, was able to operate its Concierge Desks at forty-three hotels in New York City in an independent, free, open, and competitive market without any trade restrictions (concomitantly, during this time, Plaintiff's relationship with Highgate, the Hotels and all of Plaintiff's other hotels where it maintained Concierge Desks was positive and mutually beneficial).

34. No doubt, the Bus Company Defendants recognized that they could dominate and obtain monopoly power over the Sightseeing Tour Bus Sales Market through their formation of Twin America. The Bus Company Defendants were aware that by conspiring with each other,

they could, *inter alia*, use their monopoly power in the Sightseeing Tour Bus Market to create a monopoly in the Sightseeing Bus Tour Sales Market by taking over the major distribution channel of their double-decker sightseeing tour bus tickets at hotel Concierge Desks throughout New York City (including those operated by Plaintiff.)

35. By taking over control of Plaintiff's Concierge Desks, and thereby putting Plaintiff out of business, the Bus Company Defendants would control the largest consumer of their own product. This would increase barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that would no doubt exclusively sell the Bus Company Defendants, and which distribution channel, currently operated by Plaintiff, sells product of companies not associated with the Bus Company Defendants.

36. The Bus Company Defendants' wrongful actions will no doubt result in their fixing and raising prices for customers, hotel guests, and users of Concierge Desk services, and, in fact, that has occurred.

37. As set forth more fully above, the Attorney General was on point when he asserted that the Bus Company Defendants were conspiring to monopolize, restrain trade, and engage in anti-competitive conduct in the Sightseeing Tour Bus Sales Market. (See Ex. A, p. 6)

38. After IBS and City Sights formed Twin America, the Bus Company Defendants conspired with each other to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by, among other things, seeking to put Plaintiff out of business.

39. The Bus Company Defendants' conspiracy had the following immediate effects: (i) the Bus Company Defendants increased the price of their double-decker sightseeing tours to consumers on its main routes by Five Dollars; (ii) the Bus Company Defendants unilaterally

reduced Plaintiff's commission on its sales of their sightseeing double-decker tour bus tickets by approximately twenty-five percent; (iii) the Bus Company Defendants unilaterally eliminated commissions paid to other vendors that sold their double-decker sightseeing tour tickets; (iv) the Bus Company Defendants revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the purchase price (net of commissions) for the Bus Company Defendants' sightseeing double-decker tour bus tickets and unilaterally made it five days; and (iv) the Bus Company Defendants threatened Plaintiff that if it did not pay them for their double-decker sightseeing tour bus tickets within five days, IBS and City Sights would no longer allow Plaintiff to sell their tickets.

40. In the fall of 2009, on behalf of the Bus Company Defendants, Mark Marmustein ("Marmustein"), the president of City Sights and now the Chief Executive Officer of Twin America, made a series of overtures to purchase Plaintiff. Plaintiff declined, advising that it would not accept such offer(s).

41. On or about February 19, 22, and 23, 2010, I, along with the other owners of the Plaintiff, met with IBS' and City Sights' representatives, and were, in effect, advised that if we did not sell Plaintiff's company to the Bus Company Defendants, they would use their economic power to take over control of all the hotel Concierge Desks in New York City.

42. The Bus Company Defendants, through Marmulstein, informed Plaintiff that because Plaintiff would not sell its company to the Bus Company Defendants, they were going to take over each and every hotel Concierge Desk in the New York City, including those operated by Plaintiff, and thereby put Plaintiff out of business.

43. I have been advised that the Bus Company Defendants have been and continue to invest, either directly or indirectly, in Highgate and/or in the Hotels, as well as in other hotels in

New York City. in order to tortiously interfere with and use such investments as unfair leverage to cause the long-standing relationships and contracts that Plaintiff had to operate hotel Concierge Desks to be cancelled.

44. The Bus Company Defendants are using their economic leverage from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause and are presently in the process of causing other hotels to wrongfully cancel their contracts with Plaintiff, thereby eliminating Plaintiff's Concierge Desks throughout New York City.

45. It is self-evident that the Bus Company Defendants have entered into an agreement and/or conspiracy with Highgate to cause the Hotels to cancel their contracts with Plaintiff. As a result of conspiratorial efforts, the eleven Hotel Defendants have wrongfully sought to terminate their Concierge Desk agreements entered into with Plaintiff.

46. These hotels, no doubt, must have succumbed to the strong-armed, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants and have sought to, in breach of such contracts, wrongfully cancel their contracts with Plaintiff, all by letters dated either February 8 or 10, 2010. On March 11, 2010, we notified Highgate and/or each of the Hotels that we disputed their purported terminations of the Concierge Desk agreements.

47. Of particular interest, four of the hotels managed and/or owned by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York, and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination, pursuant to the agreements, could only be "for cause." No cause, however, has been alleged, and none could be because Plaintiff has consistently, efficiently, and successfully

operated their Concierge Desks to this very day. (Copies of the eleven alleged termination letters concerning the Hotels are annexed hereto as Exhibit "B".) Because the termination letters from the above four hotels fail to state that they were terminating their agreements with Plaintiff "for cause," it is clear to me that the restrictive and anti-competitive conduct of the Bus Company Defendants and Highgate is the real reason for the termination letters.

48. My belief that the predatory conduct of the Bus Company Defendants caused the Hotels to wrongfully cancel their contracts with Plaintiff is well founded: Plaintiff has been advised by the Hotels that they have already entered into agreements with a company affiliated with the Bus Company Defendants to operate their Concierge Desks.

49. The Bus Company Defendants indicated that they wanted to control the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks (even though they admitted that they do not know how to run hotel Concierge Desks), in order to ensconce their position in the double-decker sightseeing tour market in order to prevent any new bus company from being able to come into the market. The Bus Company Defendants' representatives made the following admissions:

- The Bus Company Defendants were concerned that a new player in the Sightseeing Tour Bus Sales Market would come in and they needed to "protect" themselves;
- The Bus Company Defendants wanted to be "secure" by "locking up" Plaintiff's hotel Concierge Desks and thereby prevent any new competitor from entering the Sightseeing Tour Bus Sales Market;
- Marmustein (and thereby the Bus Company Defendants) is in the process of taking over each of the forty-three hotel Concierge Desks operated by Plaintiff in order to prevent another competitor from entering the Sightseeing Tour Bus Sales Market;
- Marmustein (and thereby the Bus Company Defendants) had a direct and/or indirect interest in many hotels which have long-standing relationships and contracts with Plaintiff to operate hotels' Concierge Desks, and the Bus Company Defendants seek to control at least twenty of Plaintiff's Concierge Desks by the end of 2010;

- Marmustein (and thereby the Bus Company Defendants) "does not want to be held hostage" by Plaintiff, their largest customer in the Sightseeing Tour Bus Sales Market, for fear that they might decide to do business, exclusive or otherwise, with any new tour bus competitor that might decide to come into the Sightseeing Tour Bus Sales Market; and
- Marmustein (and thereby the Bus Company Defendants) seeks to own Plaintiff or take its hotel Concierge Desks in order to control the Bus Company Defendants' major distribution channel for the sale of double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market.

50. It is readily apparent that the Bus Company Defendants, if allowed to continue their predatory, restrictive, and anti-competitive conduct, will continue to irreparably harm Plaintiff by taking over the Concierge Desks at all of the hotels where Plaintiff has leases to operate.

51. In sum, there can be but little doubt that Plaintiff has suffered and will continue to suffer irreparable harm resulting from Defendants' wrongful conduct.

52. As far as balancing of the equities, there are simply no equities that favor the Bus Company Defendants. Indeed, there have been no complaints from the Hotels that CGCS has not provided the highest quality of service to its guests. To the extent that the Bus Company Defendants and related entities are not restrained and enjoined from interfering and preventing Plaintiff from selling their double-decker sightseeing tour bus tickets, Plaintiff will be harmed due to its inability to provide full-service hotel concierge desks, and thus will lose such contracts and go out of business, and consumers concomitantly will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market and Sightseeing Tour Bus Sales Market through, among other things, increases in price and a reduced selection of tour company choices.

53. In addition, if the Bus Company Defendants and related entities are not restrained and enjoined from interfering with the hotel Concierge Desks Plaintiff leases at forty-three hotels

in New York City, they will vertically monopolize the distribution channel of double-decker sightseeing tours in New York City and vendors, distributors, customers, and consumers of double-decker sightseeing tours in New York City will not be paying competitive prices for such tours and be deprived of an open and competitive market for such tours. The Bus Company Defendants and related entities, however, will not be harmed if they are required to stop denying Plaintiff access to the Sightseeing Tour Bus Sales Market; stop reducing choice; stop suppressing and eliminating competition; and stop destroying Plaintiff's business by concomitantly controlling the largest distribution channel for the sale of double-decker sightseeing tour bus tickets.

54. Moreover, if the Bus Company Defendants, Highgate and the Hotels are not restrained and enjoined from interfering with and/or from terminating Plaintiff's Concierge Desk agreements, they will not be harmed because, *inter alia*, Plaintiff has consistently, efficiently, and successfully operated their forty-three hotel concierge desks to this very day (and, accordingly, prices for double-decker sightseeing tours are not higher than those that would be charged had Defendants engaged in their anti-competitive behavior).

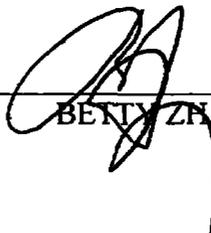
55. To the extent that the Bus Company Defendants, Highgate, and the Hotels are not enjoined, Plaintiff will be harmed and fatally damaged by the elimination of its Concierge Desk leases, along with the goodwill and relationships that Plaintiff had built up for more than the past one hundred years.

56. Finally, as for the likelihood of success on the merits, I will defer to the legal arguments set forth in the accompanying Memorandum of Law, but there cannot be any dispute with what the Attorney General's position is as to the Bus Company Defendants' wrongful conduct. The Bus Company Defendants control ninety percent, if not more, of the double-decker

sightseeing tour bus market in New York City, and they are in the process of vertically controlling their largest distribution channel for the sale of their tickets, which I have been informed constitutes a violation of the Donnelly Act and constitutes unfair competition.

CONCLUSION

57. For the reasons set forth above, in the accompanying Affidavit of Mark A. Berman, and in the accompanying Memorandum of Law, Plaintiff requests that its application for a temporary restraining order and preliminary injunction be granted in its entirety.



BETTY ZHANG

Sworn to before me this
11 day of March, 2010



NOTARY PUBLIC

 JANET SEIDMAN
Notary Public State Of New York
T.C. 24-4705123
Qualified in Kings County
Commission Expires January 31, 2014

AMENDED SUMMONS AND COMPLAINT

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. 600643 /10

Date of Filing:
March 12, 2010

AMENDED SUMMONS

NEW YORK
CITY CLERKS OFFICE

MAR 12 2010

NOT COMPARED
WITH COPY FILED

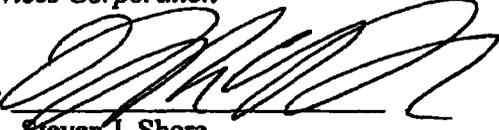
TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint of Plaintiff in this action and to serve a copy of your Answer on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

In accordance with CPLR § 503(a), the basis of the venue designated is the residence of the parties in New York County.

Dated: New York, New York
March 12, 2010

GANFER & SHORE, LLP
*Attorneys for Plaintiff, Continental Guest
Services Corporation*

By: 

Steven J. Shore

Mark A. Berman

Gabriel Levinson

360 Lexington Avenue

New York, New York 10017

(212) 922-9250

TO:

International Bus Services, Inc.
d/b/a Gray Line New York
1430 Broadway, 5th Floor
New York, New York 10036

On The Ave Hotel
2178 Broadway
New York, New York 10024

City Sights Twin, LLC
d/b/a City Sights New York
1430 Broadway, 5th Floor
New York, New York 10036

The Paramount Hotel New York
235 West 46th Street
New York, New York 10036

Twin America, LLC
1430 Broadway, 5th Floor
New York, New York 10036

Park Central Hotel (DE), LLC
870 Seventh Avenue
New York, New York 10019

Highgate Hotels, L.P.
545 E. John Carpenter Freeway
Irving, Texas 75062

Thirty East 30th Street Owner, LLC
30 East 30th Street
New York, New York 10016

Battery Park Hotel Management, LLC,
102 North End Avenue
New York, New York 10281

Times Square Operating Lessee LLC
1568 Broadway
New York, New York 10036

Hampton Inn Times Square North
851 Eighth Avenue
New York, New York 10019

Lexington Hotel, LLC
511 Lexington Avenue
New York, New York 10017

Hilton Garden Inn Times Square
790 Eighth Avenue
New York, New York 10019

New York West 35th Street HGI
63 West 35th Street
New York, New York 10001

W2001 Metropolitan Hotel Operating Lessee,
L.L.C.
569 Lexington Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CONTINENTAL GUEST SERVICES
CORPORATION,

Plaintiff,

- against -

INTERNATIONAL BUS SERVICES, INC. D/B/A
GRAY LINE NEW YORK, CITY SIGHTS TWIN,
LLC D/B/A CITY SIGHTS NEW YORK, TWIN
AMERICA, LLC, BATTERY PARK HOTEL
MANAGEMENT, LLC, HAMPTON INN TIMES
SQUARE NORTH, HILTON GARDEN INN TIMES
SQUARE, NEW YORK WEST 35TH STREET HGI,
ON THE AVE HOTEL, THE PARAMOUNT HOTEL
NEW YORK, PARK CENTRAL HOTEL (DE), LLC,
THIRTY EAST 30TH STREET OWNER, LLC, TIMES
SQUARE HOTEL OPERATING LESSEE LLC,
LEXINGTON HOTEL, LLC, W2001
METROPOLITAN HOTEL OPERATING LESSEE,
L.L.C, and HIGHGATE HOTELS, L.P.,

Defendants.

Index No. _____/10

COMPLAINT

Plaintiff, Continental Guest Services Corporation ("Plaintiff" or "CGSC"), by its undersigned attorneys, as and for its Complaint against Defendants International Bus Services, Inc. d/b/a Gray Line New York ("IBS"), City Sights Twin, LLC d/b/a City Sights New York ("City Sights"), Twin America, LLC ("Twin America") (collectively, with IBS, City Sights and Twin America, the "Bus Company Defendants") and Battery Park Hotel Management, LLC, Hampton Inn Times Square North, Hilton Garden Inn Times Square, New York West 35th Street HGI, On The Ave Hotel, The Paramount Hotel New York, Park Central Hotel (DE), LLC, Thirty East 30th Street Owner, LLC, Times Square Hotel Operating Lessee LLC, Lexington Hotel, LLC, and W2001 Metropolitan Hotel Operating Lessee, L.L.C. (collectively, the "Hotels"),

Highgate Hotels, L.P. ("Highgate") (the Hotels and Highgate are collectively referred to as the "Hotel Defendants") (the Bus Company Defendants and the Hotel Defendants are collectively referred to as "Defendants"), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff, for over one hundred years, has been an independent, family-owned and operated sightseeing and hospitality company located in New York City, that, among other things, sells tickets for double-decker sightseeing tours in New York City operated by the Bus Company Defendants through concierge, travel or tour desks ("Concierge Desks") Plaintiff leases that are located in forty-three hotels located in New York City.

2. Defendant IBS is a company that, among other things, operates double-decker sightseeing tour buses in New York City through its trade name Gray Line New York ("Gray Line"). Defendant City Sights is a company that similarly operates double-decker sightseeing tour buses in New York City through its trade name City Sights New York. It is IBS, City Sights and Twin America and all of their related entities (collectively referred to herein as the "Bus Company Defendants") that have engaged in a concerted plan to: (i) take over and control and monopolize the double-decker sightseeing bus tour market in New York City; and (ii) then vertically monopolize such market's primary distribution channel of ticketing, which is comprised of the hotel Concierge Desks located in hotels throughout New York City, and which anticompetitive and unfair competition, as demonstrated below, are putting Plaintiff out of business.

3. More specifically, IBS and City Sights have entered into an agreement among and between each other, effectuated through their recent, joint formation of Twin America, to completely control and dominate, curtail competition, and prevent the free exercise of choice in

the double-decker sightseeing tour bus market in New York City (the "Sightseeing Tour Bus Market"), which they have jointly accomplished through their now combined control of ninety percent, if not more, of such market. In addition, in order to impede competition and to create a monopoly in another market – the sale of sightseeing tour bus tickets in New York City (the "Sightseeing Tour Bus Sales Market"), and to prevent any new entities into the Sightseeing Tour Bus Sales Market - the Bus Company Defendants are engaged and continue to engage in illegal predatory conduct with the intent of monopolizing the distribution channel for the sale of *their* double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market by taking control of the hotel Concierge Desk distribution channel in New York City. Moreover, with their horizontal control of the Sightseeing Tour Bus Market, the Bus Company Defendants have raised prices, lowered commissions, and otherwise used their monopoly to gain financial advantages and harm the public and companies like Plaintiff.

4. The New York State Attorney General (the "Attorney General") commenced proceedings against the Bus Company Defendants which they sought to stop by re-registering in Washington D.C. with the United States Surface Transportation Board ("STB"). In proceedings before the STB, the Attorney General has asserted that the Bus Company Defendants are engaging in antitrust violations because their control of the double-decker sightseeing tours in New York City would, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) allow the Bus Company Defendants to obtain vertical monopolistic control of other markets by eliminating competition in other markets, such as the Sightseeing Tour Bus Sales Market. A copy of the Attorney General's submission to the STB, dated November 2, 2009, which is discussed in more detail below, is annexed hereto as Exhibit "A" (the "NYAG Report").

5. More specifically, the Attorney General in the Report states that:

[c]oordinated action by [the Bus Company Defendants] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6) (Emphasis added).

6. The Attorney General's concerns about what the Bus Company Defendants would do to eliminate competition in the Sightseeing Tour Bus Sales Market were well founded and the Bus Company Defendants are now attempting to do exactly what the Attorney General predicted.

7. CGSC is the largest operator of hotel Concierge Desks in New York City and is, among other things, the largest single source of ticket sales for double-decker sightseeing tours in New York City. Upon information and belief, the Bus Company Defendants determined that they needed to control CGSC's concierge business, among other reasons, in order to ensure that there would be no new entrants into the double-decker sightseeing bus tours market, since by controlling the Concierge Desks they would be able to choose which bus company on which to book hotel guests.

8. In furtherance of their efforts to control on which bus companies CGSC booked its customers, the Bus Company Defendants initially attempted to purchase a forty-nine interest in Plaintiff. When Plaintiff declined, the Bus Company Defendants advised Plaintiff that they would use their financial interests in the Hotels to force Plaintiff out and steal its business so they could control the hotel Concierge Desks.

9. Seeking to destroy CGSC, the Bus Company Defendants and Highgate, the entity that owns and/or manages eleven of the forty-three hotels that have Concierge Desk agreements with Plaintiff, have unlawfully interfered with Plaintiff's contractual relationships with such

eleven Hotels. The Bus Company Defendants, through, among other things, their direct and indirect investments in Highgate and/or in the eleven Hotels and wrongful economic coercion, have caused Highgate and the Hotels to wrongfully terminate Plaintiff's hotel Concierge Desk agreements, many of which only permit termination "for cause" (though, as set forth more fully below, no such "cause" has been alleged).

10. The Hotels, through Highgate, in furtherance of the Bus Company Defendants' wrongful and anti-competitive scheme, have notified Plaintiff that they are terminating Plaintiff's operation of the Concierge Desks in eleven Hotels. In many instances such purported termination notices were in breach of the contracts between Plaintiff and the Hotels and, in all instances, such termination notices were a result of the Bus Company Defendants' economic interests in Highgate and/or in the Hotels and in furtherance of the Bus Company Defendants' scheme to steal Plaintiff's business and control its Concierge Desks to ensure the maintenance of the Bus Company Defendants' monopolization of the double-decker sightseeing tour bus business.

11. In addition to causing the termination of the eleven Hotel contracts, the Bus Company Defendants have used their economic pressure from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause and are in the process of seeking to cause other hotels to cancel their hotel Concierge Desk agreements with Plaintiff. Such efforts are ongoing and will continue unless enjoined by the Court.

12. In furtherance of their efforts to steal Plaintiff's business, the Bus Company Defendants, as more fully discussed below, have been attempting to hire away Plaintiff's employees, notwithstanding non-solicitation agreements and non-compete agreements of which, upon information and belief, the Bus Company Defendants are aware.

13. As a result of the above, the Bus Company Defendants are on the verge wiping Plaintiff off the proverbial map and obtaining vertical, monopolistic control of the Sightseeing Tour Bus Sales Market through their control of hotel Concierge Desks. The Bus Company Defendants are seeking to soon own and control the largest consumer of their own product (the double-decker sightseeing tour bus tickets in New York City) or, in other words, the largest distribution channel for their product. The economic impact of the Bus Company Defendants' conspiracy has restrained trade in the Sightseeing Tour Bus Sales Market.

14. Based on Defendants' wrongful conduct, Plaintiff asserts claims for antitrust violations, unfair competition, tortious interference and breach of contract. The antitrust violations assert anti-competitive conduct on the part of the Bus Company Defendants, including a conspiracy to monopolize, an attempted monopolization, and an illegal conspiracy to restrain trade and competition all in violation of New York's Donnelly Act, General Business Law § 340 (the "Donnelly Act"). The unfair competition claim is predicated upon the Bus Company Defendants (and their related entities) improperly causing Highgate and/or the Hotels to terminate Plaintiff's Concierge Desk agreements that Plaintiff entered into, which the Hotels have now re-leased to the Bus Company Defendants or companies related to them. Plaintiff's tortious interference claim is based on the Bus Company Defendants' tortious and intentional interference with the agreements Plaintiff has with the Hotels. Finally, Plaintiff alleges that the Hotels wrongfully breached their written Concierge Desk agreements with Plaintiff.

15. Predicated on such anti-competitive conduct, Plaintiff brings this action alleging the following causes of action:

- (i) preliminary injunctive relief to:
 - restraining and enjoining the Bus Company Defendants and their related entities and individuals from ceasing to sell their products

and services to Plaintiff and, in particular, double-decker sightseeing tour tickets, and from changing the current terms and conditions of the sale;

- restraining and enjoining the Bus Company Defendants and their related companies and individuals and/or Highgate and its related entities and individuals from interfering with or causing hotels to terminate Plaintiff's concierge, tour or travel desk agreements with each such hotel; and
- restraining and enjoining the Hotel Defendants from terminating Plaintiff's concierge, tour or travel desk agreements with each such Hotel.

(ii) permanent injunctive relief to:

- restrain and enjoin the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market;
- restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services;
- restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and
- restrain and enjoin the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

(iii) monopolization of the Sightseeing Tour Bus Market;

(iv) attempted monopolization of the Sightseeing Tour Bus Market;

(v) attempted monopolization of the Sightseeing Tour Bus Sales Market;

(vi) unlawful restraint of trade of the Sightseeing Tour Bus Market;

- (vii) conspiracy in the unlawful restraint of trade of the Sightseeing Tour Bus Sale Market;
- (viii) common law unfair competition;
- (ix) tortious interference; and
- (x) breach of contract.

THE PARTIES

16. Plaintiff, Continental Guest Services Corporation, is a New York corporation, authorized to do business in New York, and has its principal place of business at 1501 Broadway, New York, New York. For over one hundred years, Plaintiff has been an independent, family-owned and operated sightseeing and hospitality company that has been based in New York.

17. Upon information and belief, Defendant IBS is a New York domestic business corporation, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. IBS, through its trade name Gray Line, operating double-decker sightseeing bus tours in New York City.

18. Upon information and belief, Defendant City Sights is a New York domestic limited liability company, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. City Sights, through its trade name NY Sights, operating double-decker sightseeing bus tours in New York City.

19. Upon information and belief, Defendant Twin America is a New York domestic limited liability company, authorized to do business in New York, and has its principal place of business at 1430 Broadway, Fifth Floor, New York, New York, 10036. Twin America is a "joint venture" entered into by IBS and City Sights.

20. Upon information and belief, Defendant Highgate is a hotel ownership and/or management company, authorized to do business in New York, and has its principal place of business at 545 E. John Carpenter Freeway, Irving, Texas. Upon information and belief, Highgate owns and/or manages the eleven Hotels.

21. Upon information and belief, Defendant Battery Park Hotel Management, LLC ("Embassy Suites Hotel New York") is located at 102 North End Avenue, Manhattan, New York.

22. Upon information and belief, Defendant Hampton Inn Times Square North ("Hampton Inn Times Square North") is located at 851 Eighth Avenue, Manhattan, New York.

23. Upon information and belief, Defendant Hilton Garden Inn Times Square ("Hilton Garden Inn Times Square") is located at 790 Eighth Avenue, New York.

24. Upon information and belief, Defendant New York West 35th Street HGI ("Hilton Garden Inn") is located at 63 West 35th Street, Manhattan, New York.

25. Upon information and belief, Defendant On The Ave Hotel ("On The Ave Hotel") is located at 2178 Broadway, Manhattan, New York.

26. Upon information and belief, Defendant The Paramount Hotel New York ("Paramount") is located at 235 West 46th Street, Manhattan, New York.

27. Upon information and belief, Defendant Park Central Hotel (DE), LLC ("Park Central") is located at 870 Seventh Avenue, Manhattan, New York.

28. Upon information and belief, Defendant Thirty East 30th Street Owner, LLC ("Hotel 30 30") is located at 30 East 30th Street, Manhattan, New York.

29. Upon information and belief, Defendant Times Square Operating Lessee LLC (the "Doubletree Guest Suites Times Square"), is located at 1568 Broadway, Manhattan, New York.

30. Upon information and belief, Defendant Lexington Hotel, LLC ("Radisson Lexington") is located at 511 Lexington Avenue, Manhattan, New York.

31. Upon information and belief, Defendant W2001 Metropolitan Hotel Operating Lessee, L.L.C. ("Doubletree Metropolitan Hotel") is located at 569 Lexington Avenue, Manhattan, New York.

JURISDICTION AND VENUE

32. This Court has jurisdiction over this action pursuant to CPLR §§ 301 and 302(a) in that Plaintiff's principal place of business is in the State of New York, IBS's principal place of business is in the State of New York, City Sights's principal place of business is in the State of New York, Twin America's principal place of business is in the State of New York, and the acts complained of occurred in the City and State of New York.

33. Venue in the County of New York is proper pursuant to CPLR § 503 based on the residence of the parties in New York County.

34. The New York State Office of The Attorney General has been provided prior notice of this action.

RELEVANT MARKET

35. The relevant market consists of the following relevant product market(s) and the relevant geographic market.

36. The two relevant product markets in which the restraints and other anti-competitive conduct alleged herein have had and will continue to have anti-competitive effects

are inextricably intertwined. The first is the market for double-decker sightseeing tour buses – the Sightseeing Tour Bus Market. Double-decker sightseeing bus tours in New York City allow passengers to board and un-board buses at short intervals along a tour route of historical sites, monuments, and other places of interest/sights, and allow passengers to board any bus at any interval along the tour route for the sightseeing tour that was purchased. The second market is the hotel Concierge Desk distribution channel for the sale of tickets to passengers for the double-decker sightseeing tours in New York City – the Sightseeing Tour Bus Sales Market.

37. There are significant barriers to entering the Sightseeing Tour Bus and Tour Bus Sales Markets because of, *inter alia*: (i) the expense of purchasing and maintaining a fleet of buses, let alone double-decker buses that appeal to tourists; (ii) the economies of scope and scale in developing an efficient and wide distribution channel for the sale of sightseeing bus tour tickets; (iii) the time, expense, and difficulties of obtaining the necessary approvals from either the state or the municipality to operate sightseeing tours; (iv) the time and expense of finding and convincing a hotel to lease its lucrative Concierge Desk at one of the finite number of hotels in New York City and the economies of scope and scale (including the development of a reliable and durable network of hotel Concierge Desk specialists who man such desks); (v) the inherent difficulties of establishing a reputation in the New York sightseeing and hospitality industry, let alone a reputation for quality and reliability; and (vi) the complexities associated with attracting and building a customer base.

38. Both markets are inherently localized because the historical sites, monuments, and other places of interest/sights are located in a single city, such as New York City, and the tours emanate solely from New York City and are limited to New York City. *A fortiori*, the

passengers must be visiting or located in such city in order to go on the tours to see such city's historical sites, monuments, and other places of interest/sights.

39. The sales of tickets for double-decker sightseeing tours are solely directed to the city that has these historical sites, monuments, and other places of interest/sights. The primary customers that purchase tickets to go on double-decker sightseeing tours are therefore either tourists or locals who enjoy visiting and/or re-visiting the historical sites, monuments, and other places of interest/sights in New York City,

40. The relevant geographic market for the Sightseeing Tour Bus and Tour Bus Sales Markets for the purposes of this lawsuit is New York City. The major geographic routes for the Bus Company Defendants' double-decker sightseeing tours buses are located in the boroughs of New York City. They are the: (i) Downtown Loop; (ii) Uptown Loop; (iii) All Around Town Loop; and (iv) Brooklyn Loop. The Bus Company Defendants' double-decker sightseeing tours buses only carry passengers in New York City, and the buses only allow passengers to board and un-board at specified locations along a specified tour route in New York City. Plaintiff's sale to and customers' pick-up of tickets for the Bus Company Defendants' double-decker sightseeing tours are done at the hotel Concierge Desks only located in New York City. Due to the inherent nature of sightseeing double-decker tours, competitors from outside this geographic area cannot effectively compete in such New York City market.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. The Bus Company Defendants' Unlawful Monopolization And Restraint Of Trade Of The Sightseeing Tour Bus Market

41. From the time of their existence through the Spring of 2009, IBS and City Sights were separate and distinct companies. Through their respective trade names (Gray Line and NY Sights), they were direct and fierce competitors in the Sightseeing Tour Bus Market. Indeed,

IBS and City Sights: (i) had different price points for their respective double-decker sightseeing tour tickets in New York City; (ii) utilized different pricing packages for their customers; (iii) maintained different bus stops; (iv) provided different information during their respective tours; (v) used different personnel, such as tour guides; and (vi) used different buses.

42. Upon information and belief, as competitors, IBS and City Sights controlled the overwhelming market share of the Sightseeing Tour Bus Market. Upon further information and belief, for many years, the double-decker sightseeing tours buses from IBS and City Sights were the only buses that ran three out of the four major geographic routes in New York City: the Uptown Town Loop; the All Around Town Loop; and the Brooklyn Loop. With respect to the remaining geographic route, the Downtown Loop, the only other competitor to IBS and City Sights was a company named Big Taxi Tours – and despite the presence of Big Taxi Tours, upon information and belief, IBS and City Sights controls the vast majority of the Downtown Loop.

43. Upon information and belief, when IBS and City Sights were acting as separate and distinct entities and competitors, the estimated market share in the Sightseeing Tour Bus Market for each company was, respectively, a staggering 44.5% of the market. Put differently, IBS and City Sights independently controlled approximately 89% of the Sightseeing Tour Bus Market (and Big Taxi Tours controlled approximately 11% of the market through its limited participation in the Downtown Loop), which Plaintiff asserts is even higher.

44. Upon information and belief, IBS and City Sights recognized that they could eliminate all competition, dominate the entire Sightseeing Tour Bus Market, and obtain monopoly power over the entire Sightseeing Tour Bus Market by combining their forces and respective companies. Upon further information and belief, IBS and City Sights were well aware that by coming to an 'arrangement' or a 'reciprocal relationship of commitment' with each other,

they could, *inter alia*: increase the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with a combined entity with control of 90% of the market, if not more; maximize their profits by fixing and/or raising prices for their customers; increase their profits by implementing cost saving alternatives such as reducing the number of buses and/or the frequency of tours; boost their profit margins by generally reducing output, quality, and other services; reduce commissions paid to outside booking vendors, such as Plaintiff, for selling IBS' and City Sights' double-decker sightseeing tours; and reduce the time frame for outside vendors, such as Plaintiff, to pay IBS and City Sights for their sightseeing tickets.

45. In furtherance of their anti-competitive scheme, in or about March 2009, IBS and City Sights entered into a "joint venture" agreement and, by this agreement, formed Twin America. IBS and City Sights, through such agreement, controlled all of the voting and economic rights in Twin America. Twin America began operations as a joint venture in the Sightseeing Tour Bus Market on or about March 31, 2009.

46. IBS' and City Sights' formation of Twin America created an improper consolidation of market power in the Sightseeing Tour Bus Market by creating an illegal monopoly in that market – **IBS and City Sights together now control 90% of the market, if not more.** Moreover, as set forth more fully below, the Bus Company Defendants' monopoly illegally restrains trade and competition in the Sightseeing Tour Bus Market.

47. The Attorney General expressed his grave concern that the formation of Twin America violates New York's antitrust laws and eliminated fair competition in the Sightseeing Tour Bus Market by sending out subpoenas to IBS and City Sights on or about July 31, 2009 for the production of documents relating to their antitrust and anti-competitive conduct. IBS and

City Sights responded on August 19, 2009 by making an application to the United States STB for the registration of Twin America and asserting that the NYAG did not have jurisdiction over them.

48. The Attorney General in his Report advised the STB that it believed IBS' and City Sights' control of Twin America would, *inter alia*: (i) create an illegal monopoly; (ii) illegally restrain trade and competition; and (iii) allow IBS and City Sights to obtain vertical monopolistic control of other markets by eliminating competition in such markets, such as the Sightseeing Tour Bus Sales Market. The NYAG's Report made the following points:

- IBS' and City Sights' agreement to form Twin America would strengthen their market power to a degree that would "raise price above or reduce output, quality, service, or innovation below what would likely prevail in the absence of [the Bus Company Defendants' monopoly]";
- IBS' and City Sights' agreement to form Twin America will cause "a monopoly in three out of the four major [geographic] routes [in New York City]; -
- IBS' and City Sights' agreement to form Twin America "would likely significantly increase the barriers of entry into the [Sightseeing Tour Bus Market] by putting potential entrants in competition with an incumbent with control of 90% of the market, if not more, and with the ability to benefit from volume discounts that further enhance its competitive position in the 'double-decker' market";
- "[a]ny cost savings, if any, would only benefit [the Bus Company Defendants]";
- The Bus Company Defendants will "strive to maximize their profits" and "would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices";
- IBS' and City Sights' agreement to form Twin America may "reduc[e] the hours or wages of Twin America's employees"; and
- IBS' and City Sights' agreement to form Twin America may "reduce[e] the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route".

(Ex. A.)

49. The Attorney General's assessment of IBS' and City Sights' agreement to form Twin America was correct. In addition to illegally forming a monopoly, upon information and belief, the Bus Company Defendants' anti-competitive conduct has had the direct, intended, and reasonably foreseeable effect of reducing the output of services, while increasing the cost to consumers for same in the Sightseeing Tour Bus Market, reducing consumer welfare, and/or transferring wealth from consumers to the Bus Company Defendants in that:

- (i) actual and potential competition in the Sightseeing Tour Bus Market has been, and will continue to be limited, reduced, restrained, suppressed, and substantially foreclosed;
- (ii) instead of free, open, and competitive markets for double-decker sightseeing tours in New York City, a monopoly has been established and will be maintained;
- (iii) other double-decker sightseeing tour companies will be effectively foreclosed from competing on the merits to the fullest extent possible in the Sightseeing Tour Bus Market, and will be injured in their business and property;
- (iv) vendors, distributors, and other customers, as well as ultimate consumers, have paid, and will pay in the future, artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and
- (v) vendors, distributors, and other customers, as well as ultimate consumers, have been, and will be, deprived of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

50. Furthermore, upon information and belief, IBS' and City Sights' formation of Twin America has already economically impacted and illegally restrained trade and competition in the Sightseeing Tour Bus Market by, *inter alia*:

- (i) increasing the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90%, if not more, of the market;
- (ii) fixing and raising the double-decker sightseeing tour prices for the Bus Company Defendants' customers by an average of Five Dollars per tour;
- (iii) reducing the number of buses and/or the frequency of tours;

- (iv) decreasing the overall quality of the Bus Company Defendants' double-decker sightseeing tours;
- (v) restricting other services formerly provided to the Bus Company Defendants' customers on their sightseeing double-decker tours;
- (vi) reducing the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; and
- (vii) reducing the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets.

51. Consumers in the Sightseeing Tour Bus Market have been injured by the resulting lack of competition that other sightseeing double-decker tour companies would have provided but for such restraint of trade and, as a result, have fewer choices for double-decker sightseeing tours and pay more for fewer services than they would have paid had the Bus Company Defendants not engaged in their anti-competitive behavior, and as noted above, CGSC has had its commissions drastically reduced.

B. The Bus Company Defendants' Unlawful Attempted Monopolization And Restraint Of Trade Of The Sightseeing Tour Bus Sales Market Resulting In Their And Highgate's Unfair And Anti-Competitive Conduct And The Hotel's Wrongful Cancellation Of Their Agreements With Plaintiff As Well As The Bus Company Defendants Seeking To Terminate Other Concierge Desk Agreements With Plaintiff

52. Plaintiff leases space in forty-three hotels in New York City and operates the Concierge Desk in these hotels seven days a week pursuant to written agreements with those hotels, such as the Hotels. In furtherance of these written agreements, Plaintiff provides hotel guests and other customers with, among other things, various sightseeing services. Such services specifically include the sale of the Bus Company Defendants' double-decker sightseeing tour bus tickets.

53. Specifically, Plaintiff has long-standing relationships and agreements to operate Concierge Desks at the following forty-three hotels: Affinia Manhattan, Affinia 50, Affinia

Dumont, Affinia Shelburne, Belvedere Hotel, Courtyard By Marriott Midtown East, Courtyard By Marriott Times Sq., Crowne Plaza Times Square, **Doubletree Guest Suites Time Square**, The Edison Hotel, **Embassy Suites New York**, The Excelsior Hotel, Fairfield Inn, Four Points by Sheraton Midtown Times Square, The Grand Hyatt Hotel, **Hampton Inn Times Square North**, **Hilton Garden Inn Times Square**, **Hilton Garden Inn**, Holiday Inn Midtown 57th St, The New York Hilton, The Lucerne Hotel, Marriott at Brooklyn Bridge, Marriott East Side Hotel, **Doubletree Metropolitan**, The Millennium Broadway, The Millennium Hilton, The Millennium UN, The New Yorker Hotel, **On the Ave Hotel**, **Paramount**, **Park Central**, Hotel Pennsylvania, **Radisson Lexington**, Residence Inn, The Roosevelt Hotel, Sheraton Manhattan, Sheraton New York, **Hotel 30 30**, Tudor, The Waldorf Astoria, West 57th By Hilton Club, Westin Times Square, and Wyndham Garden Inn. In addition, the Milford Plaza is also a Highgate-controlled hotel at which Plaintiff leased a Concierge Desk, which has been closed for renovation. But for Defendants' wrongful conduct, such hotel upon reopening would have entered into a new Concierge Desk agreement with Plaintiff. Those hotels noted above in bold are the Hotels.

54. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to IBS' and City Sights' formation of Twin America), Plaintiff was the single largest customer of IBS and City Sights through its high-volume sales of their double-decker sightseeing tour bus tickets in New York City at Plaintiff's forty-three hotel Concierge Desks. Plaintiff generated millions in revenues for IBS and City Sights from the sale of sightseeing bus tour tickets.

55. Further, prior to IBS' and City Sights' formation of Twin America, IBS and City Sights: (i) each paid Plaintiff an agreed upon commission on its sales of their double-decker

sightseeing tour bus tickets; and (ii) agreed that Plaintiff would have more than thirty days to remit to IBS and City Sights the net price (less commissions) of their double-decker sightseeing tour bus tickets that Plaintiff sold.

56. During the time when IBS and City Sights were acting as separate and distinct entities and competitors (prior to their formation of Twin America), Plaintiff, the major distribution channel in the Sightseeing Bus Tour Sales Market for their sales, was able to operate its Concierge Desks at forty-three hotels in New York City in an independent, free, open, and competitive market without any trade restrictions (concomitantly, during this time Plaintiff's relationship with Highgate, the Hotels and all of Plaintiff's other hotels where it maintained Concierge Desks was positive and mutually beneficial). Accordingly, hotel guests, users, consumers, and Plaintiff's customers benefited and had more choices in the types and cost of tours than they do now after the formation of Twin America.

57. Upon information and belief, IBS and City Sights recognized that they could dominate and obtain monopoly power over the Sightseeing Tour Bus Sales Market through their formation of Twin America. IBS and City Sights were also well aware that by conspiring with each other, they could, *inter alia*, use their monopoly power in the Sightseeing Tour Bus Market to create a monopoly in the Sightseeing Bus Tour Sales Market by taking over the major distribution channel of their double-decker sightseeing tour bus tickets at hotel Concierge Desks throughout New York City (including those operated by Plaintiff). By taking over control of Plaintiff's hotel desks, and thereby putting Plaintiff out of business, the Bus Company Defendants would control the largest consumer of their own product. Such unlawful restraint in trade would increase the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that would exclusively sell the Bus Company

Defendants' product, and which distribution channel, currently operated by Plaintiff, sells product of companies not associated with the Bus Company Defendants, and could sell the product of any new reputable entrants into the Sightseeing Tour Bus Sales Market.

58. The Bus Company Defendants' wrongful actions will no doubt result in their further fixing and raising prices for customers, hotel guests, and users of Concierge Desk services something that the Bus Company Defendants have already done as demonstrated above.

59. The Attorney General was prescient when he asserted that the Bus Company Defendants were conspiring to monopolize, restrain trade, and engage in anti-competitive conduct in the Sightseeing Tour Bus Sales Market. The NYAG's Report reads in relevant part:

Coordinated action by [the Bus Company Defendants] can also eliminate competition for marketing with ticket selling partners, such as hotel concierges. . . . Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

(See Ex. A, p. 6)

60. The Attorney General was on point again about the Bus Company Defendants eliminating competition by controlling the "marketing" of sightseeing bus tour tickets through the monopolization of New York City's hotel Concierge Desks. After IBS and City Sights formed Twin America, the Bus Company Defendants conspired with each other to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by, among other things, seeking to put Plaintiff out of business and to take direct control of the hotel Concierge Desks throughout New York City.

61. The Bus Company Defendants' conspiracy have already: (i) increased the price of their double-decker sightseeing tours to consumers on its main routes by Five Dollars; (ii) unilaterally reduced Plaintiff's commission on its sales of their sightseeing double-decker tour

bus tickets by approximately twenty-five percent; (iii) unilaterally eliminated commissions paid to other vendors that sold their double-decker sightseeing tour tickets; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the purchase price (net of commissions) for the Bus Company Defendants' sightseeing double-decker tour bus tickets and unilaterally made it five days; and (iv) threatened Plaintiff that if it did not pay them for their double-decker sightseeing tour bus tickets within five days, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets.

62. The Bus Company Defendants should not be permitted to change the current terms and conditions of their products and services to Plaintiff's detriment (such as by eliminating any commissions Plaintiff may receive).

63. The Bus Company Defendants also advised Plaintiff that if Plaintiff informed the NYAG or any governmental entity about the Bus Company Defendants' anti-competitive and predatory conduct or in any way interfered with their plans to take control over their primary distribution channel, they would immediately prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services.

64. If the Bus Company Defendants stop providing Plaintiff with tickets to their services, then Plaintiff will be unable to operate its Concierge Desks in hotels because they hold the monopoly on double-decker sightseeing bus tours and if CGSC is "cutoff" from being able to sell such tickets, Plaintiff will be unable to provide any alternative double-decker sightseeing tours to hotel guests. Double-decker sightseeing tours are unique and the number one activity in New York City for tourists to do at such price point. Indeed, it is also the double-decker sightseeing bus tours, because of their high visibility throughout New York City that draws hotel guests and others to Plaintiff's Concierge Desks to purchase other services. If Plaintiff cannot

sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either seek to terminate its Concierge Desk agreements or refuse to renew such agreements upon their expiration, destroying the good will and relationships that Plaintiff has built up for more than the past one hundred years.

65. In furtherance of their efforts to control the Sightseeing Tour Bus Sales Market, the Bus Company Defendants initially sought to acquire a forty-nine percent interest in Plaintiff. Beginning in the fall of 2009 and on behalf of the Bus Company Defendants, Mark Marmustein ("Marmustein"), the president of City Sights and now the Chief Executive Officer of Twin America, made a series of overtures to purchase such interest. Plaintiff declined such overtures.

66. On or about February 19, 22, and 23, 2010, Plaintiff's representatives met with the Bus Company Defendants' representatives, and were, in effect, advised that if they did not sell Plaintiff's company to the Bus Company Defendants, the Bus Company Defendants would use their economic power to take over control of all the hotel Concierge Desks in New York City. The Bus Company Defendants indicated that they wanted to control the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks (even though they admitted that they do not know how to run hotel Concierge Desks), in order to ensconce their position in the double-decker sightseeing tour market in order to prevent any new bus company from being able to come into the market. The Bus Company Defendants' representatives made the following admissions:

- The Bus Company Defendants were concerned that a new player in the Sightseeing Tour Bus Sales Market would come in and they needed to "protect" themselves;
- The Bus Company Defendants wanted to be "secure" by "locking up" Plaintiff's hotel Concierge Desks and thereby prevent any new competitor from entering the Sightseeing Tour Bus Sales Market;

- Marmustein (and thereby the Bus Company Defendants) is in the process of taking over each of the forty-three hotel Concierge Desks operated by Plaintiff in order to prevent another competitor from entering the Sightseeing Tour Bus Sales Market;
- Marmustein (and thereby the Bus Company Defendants) had a direct and/or indirect interest in many hotels which have long-standing relationships and contracts with Plaintiff to operate hotels' Concierge Desks, and the Bus Company Defendants seek to control at least twenty of Plaintiff's Concierge Desks by the end of 2010;
- Marmustein (and thereby the Bus Company Defendants) "does not want to be held hostage" by Plaintiff, their largest customer in the Sightseeing Tour Bus Sales Market, for fear that they might decide to do business, exclusive or otherwise, with any new tour bus competitor that might decide to come into the Sightseeing Tour Bus Sales Market; and
- Marmustein (and thereby the Bus Company Defendants) seeks to own Plaintiff or take its hotel Concierge Desks in order to control the Bus Company Defendants' major distribution channel for the sale of double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market.

67. The Bus Company Defendants, through Marmustein, informed Plaintiff that because Plaintiff would not sell its company to the Bus Company Defendants, they were going to take over each and every hotel Concierge Desk in the New York City, including those operated by Plaintiff, and thereby put Plaintiff out of business.

68. Upon information and belief, the Bus Company Defendants have been and continue to invest, either directly or indirectly, in Highgate and/or in the Hotels, as well as in other hotels in New York City, in order to use such investments as economic leverage to cause the long-standing relationships and contracts that Plaintiff had to operate hotel Concierge Desks to be wrongfully cancelled.

69. Highgate's and the Hotels' newfound "arrangement" with the Bus Company Defendants, through their direct or indirect investment in Highgate and/or in the Hotels, is nothing short of an agreement and/or conspiracy to unlawfully restrain competition and the free exercise of business activity in the Sightseeing Tour Bus Sales Market. The improper tying

relationship between the Bus Company Defendants and Highgate violates the Donnelly Act as demonstrative of Defendants' unfair competition.

70. Upon information and belief, in addition to causing Highgate and the Hotels to terminate Plaintiff's Concierge Desk contracts, the Bus Company Defendants are using their economic leverage from their monopolization of double-decker sightseeing tours and other tourist services, as well as threats, to cause and are in the process of causing other hotels to wrongfully cancel their contracts with Plaintiff, thereby eliminating Plaintiff's Concierge Desks throughout New York City.

71. Upon information and belief, the Bus Company Defendants have entered into an agreement and/or conspiracy with Highgate (which controls the Hotels) and the Hotels to cause the Hotels to cancel their contracts with Plaintiff, and through such efforts they have already caused Highgate and the Hotels to wrongfully cancel eleven Concierge Desk agreements entered into with Plaintiff. These Hotels have succumbed to the strong-armed, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants and/or Highgate and have sought to wrongfully cancel their contracts with Plaintiff, all by letters dated February 8, 2010.

72. On March 11, 2010, Plaintiff's counsel notified Highgate and/or each of the Hotels that Plaintiff disputed their purported terminations of the Concierge Desk agreements.

73. Of particular interest, four of the hotels owned and/or managed by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination, pursuant to the agreements, could only be "for cause". No cause, however, has been alleged, and none could be because Plaintiff has consistently, efficiently, and successfully

operated their Concierge Desks to this very day. (Copies of the eleven termination letters concerning the Hotels are annexed hereto as Exhibit "B".)

74. Having caused the Hotels to cancel their Concierge Desk contracts with Plaintiff, the Bus Company Defendants, through an affiliate, have now entered into agreements with the Hotels to operate their Concierge Desks.

75. In furtherance of their efforts to steal Plaintiff's business, the Bus Company Defendants have been attempting to hire away Plaintiff's employees, notwithstanding non-solicitation agreements and non-compete agreements of which, upon information and belief, the Bus Company Defendants were aware.

76. It is readily apparent that the Bus Company Defendants, if allowed to continue their predatory, restrictive, and anti-competitive conduct, will continue to irreparably harm Plaintiff by taking over the Concierge Desks at all of the hotels where Plaintiff has leases to operate same.

77. In addition to illegally attempting to form a monopoly, the Bus Company Defendants' anti-competitive conduct has the direct, intended, and reasonably foreseeable effect of reducing the output of services provided to consumers, while increasing the cost for same in the Sightseeing Tour Bus Sales Market, reducing consumer welfare, and/or transferring wealth from consumers to the Bus Company Defendants in that:

- (i) actual and potential competition in the Sightseeing Tour Bus Sales Market has been, and will continue to be, limited, reduced, restrained, suppressed, and substantially foreclosed;
- (ii) instead of free, open, and competitive markets for the sales of double-decker sightseeing tours in New York City, a monopoly has been established and maintained;
- (iii) other companies that sell double-decker sightseeing tours in New York City will be effectively foreclosed from competing on the merits to the fullest extent possible in the Sightseeing Tour Bus Sales Market, and will be injured in their business and property;

(iv) vendors, distributors, and other customers, as well as ultimate consumers, have paid, and will pay in the future, artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and

(vi) vendors, distributors, and other customers, as well as ultimate consumers, have been, and will be, deprived of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

78. The Bus Company Defendants' conspiracy has and will economically impact and illegally restrain trade and competition in the Sightseeing Tour Bus Sales Market by, *inter alia*:

- (i) increasing the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity that controls the major distribution channel in the market;
- (ii) reducing commissions paid to Plaintiff for selling the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iii) eliminating commissions paid to other vendors that sell the Bus Company Defendants' double-decker sightseeing tour tickets;
- (iv) fixing and raising prices for the Bus Company Defendants' customers, hotel guests, Concierge Desk users, consumers;
- (v) seeking to take over eleven hotel Concierge Desks operated by Plaintiff with the stated and admitted intent to take over additional hotel Concierge Desks;
- (vi) decreasing the overall quality of service provided at hotel Concierge Desks; and
- (vii) restricting the availability of other services formerly provided by Plaintiff to hotel guests, Concierge Desk users, and consumers at such hotel Concierge Desks.

79. Moreover, CGSC and consumers in the Sightseeing Tour Bus Sales Market have been injured by the resulting lack of competition that other companies that sell double-decker sightseeing tours in New York City would have provided and, as a result, CGSC has had its commissions drastically reduced and Concierge Desks eliminated and consumers have fewer choices for purchasing double-decker sightseeing tours and pay more for fewer services than

they would have paid had the Bus Company Defendants not engaged in their anti-competitive behavior.

AS AND FOR A FIRST CAUSE OF ACTION

**(For Permanent Injunctive Relief
Against The Bus Company Defendants And The Hotel Defendants)**

80. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

81. As set forth above, Plaintiff has suffered irreparable harm and will continue to suffer irreparable harm, which cannot be compensated with money damages, if: (i) the Bus Company Defendants and related companies and individuals are permitted to monopolize, attempt to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market; (ii) the Bus Company Defendants and the Hotel Defendants do not immediately stop their conspiratorial, predatory, monopolistic, restrictive, and anti-competitive conduct of using economic pressure and threats to cause hotels with which Plaintiff has concierge Desk Contracts agreements to terminate them, thereby destroying Plaintiff's business and the good will and relationships that Plaintiff has built up for more than the past one hundred years.

82. In addition, if the Bus Company Defendants stop providing to Plaintiff its services and products, as they have threatened to do, then Plaintiff will be unable to operate its Concierge Desks at any of its hotels. Because the Bus Company Defendants hold the monopoly on double-decker sightseeing bus tours, Plaintiff will be unable to provide any alternative double-decker tours from another company to hotel guests, its customers or Concierge Desk users. If Plaintiff cannot sell double-decker sightseeing tour tickets, hotels will no doubt take the position that Plaintiff is not properly servicing its guests and will then either terminate their Concierge Desk agreements with Plaintiff or refuse to renew such agreements upon their expiration, and enter

into an agreement with the Bus Company Defendants and/or an affiliate, which can supply such tickets, destroying the good will and relationships that Plaintiff has built up for more than the past one hundred years.

83. The above allegations demonstrate that Plaintiff will prevail on the merits of its claims.

84. The balancing of the equities clearly weighs in favor of Plaintiff.

85. Plaintiff has no adequate remedy at law.

86. By reason of the foregoing, Plaintiff is entitled to permanent injunctive relief restraining and enjoining: (i) the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market; (ii) the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services; (iii) the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and (iv) the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

AS AND FOR A SECOND CAUSE OF ACTION

**(For Monopolization Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

87. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

88. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

89. The relevant geographic market is New York City as set forth in Paragraph 38 above.

90. The Bus Company Defendants possess monopoly power in the Sightseeing Tour Bus Market.

91. The Bus Company Defendants have willfully acquired, maintained, and exercised monopoly power in the Sightseeing Tour Bus Market.

92. The Bus Company Defendants' anti-competitive conduct, as described above, is in violation of the Donnelly Act. The Bus Company Defendants have acted to acquire, maintain, and exercise its monopoly power and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) control 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (vi) reduced the number of buses

and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus Company Defendants paid other outside vendors for selling their double-decker sightseeing tours; (xi) reduced the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

93. The Bus Company Defendants have excluded competitors from the Sightseeing Tour Bus Market.

94. There are no justifications for the Bus Company Defendants' conduct.

95. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

96. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive actions.

97. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive behavior.

98. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

99. The Bus Company Defendants acted with specific intent to monopolize the Sightseeing Tour Bus Market.

100. The wrongful conduct described above impacted competition.

101. Consumers are being and will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market, which will enable the Bus Company Defendants to charge even higher artificially inflated supra-competitive prices.

102. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' IBS' conduct unlawful.

103. As a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

104. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION

**(For Attempted Monopolization Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

105. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

106. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

107. The relevant geographic market is New York City as set forth in Paragraph 38 above.

108. The Bus Company Defendants' anti-competitive conduct, as described above, in violation of the Donnelly Act, is a willful attempt to acquire and exert monopoly power. The Bus Company Defendants have excluded all competitors from lawfully competing in the Sightseeing Tour Bus Market by and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) control 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (vi) reduced the number of buses and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus

Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) reduced the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

109. The Bus Company Defendants have excluded competitors from the Sightseeing Tour Bus Market.

110. There are no justifications for the Bus Company Defendants' conduct.

111. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

112. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of its anti-competitive actions.

113. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had they not engaged in their anti-competitive behavior.

114. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

115. The Bus Company Defendants acted with specific intent to monopolize the Sightseeing Tour Bus Market.

116. The Bus Company Defendants currently control 90%, if not more, of the Sightseeing Tour Bus Market.

117. Through the above described conduct, the Bus Company Defendants created a dangerous possibility of achieving a monopoly in violation of the Donnelly Act.

118. The Bus Company Defendants' wrongful conduct has impacted competition.

119. Consumers are being and will be injured by the Bus Company Defendants' monopolization of the Sightseeing Tour Bus Market, which will enable them to charge even higher artificially inflated supra-competitive prices.

120. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

121. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

122. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION

**(For Attempted Monopolization Of The Sightseeing
Tour Bus Sales Market Against The Bus Company Defendants)**

123. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

124. The relevant product market is the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

125. The relevant geographic market is New York City as set forth in Paragraph 38 above.

126. The Bus Company Defendants' anti-competitive conduct, as described above, in violation of the Donnelly Act, is a willful attempt to acquire and exert monopoly power. The Bus Company Defendants are excluding all competitors from lawfully competing in the Sightseeing Tour Bus Sales Market and, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by putting Plaintiff out of business; (iii) unilaterally reduced Plaintiff's commission on its sales of the Bus Company Defendants' sightseeing double-decker tour bus tickets by twenty-five percent; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the Bus Company Defendants for the cost of their sightseeing double-decker tour bus tickets after Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) threatened Plaintiff that if it did not pay the Bus Company Defendants for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets; (vi) increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (vii) eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling the Bus Company' sightseeing double-decker tours; (viii) taking over eleven Concierge Desks operated by Plaintiff; (ix) threatened immediately to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-

competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (x) eliminated the commissions the Bus Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) conspired to fix and/or raise prices for the Bus Company Defendants' customers, hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xii) conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xiii) conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market; (xv) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xvi) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

127. The Bus Company Defendant's conspiracy has excluded competitors from the Sightseeing Tour Bus Sales Market.

128. There are no justifications for the Bus Company Defendants' conspiratorial conduct.

129. The Bus Company Defendants have not acquired their monopoly power through superior product, business acumen, or historical accident.

130. The Bus Company Defendants are able to sell supra-competitive tickets for double-decker sightseeing tours in New York City as a result of their anti-competitive conspiratorial actions.

131. The Bus Company Defendants' prices for tickets of double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive conspiratorial behavior.

132. Denying access to the Sightseeing Tour Bus Sales Market has reduced choice for double-decker sightseeing tours in New York City.

133. The Bus Company Defendants, though their conspiracy, acted with specific intent to monopolize the Sightseeing Tour Bus Sales Market.

134. Upon information and belief, the Bus Company Defendants currently control a sizeable percentage of the Sightseeing Tour Bus Sales Market, and this percentage is increasing with each day that passes.

135. Through the conspiracy described above, the Bus Company Defendants created a dangerous possibility of achieving a monopoly in violation of the Donnelly Act.

136. The conspiracy described above impacted competition.

137. Consumers are being and will be injured by the Bus Company Defendants' conspiracy to monopolize the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to sell even higher artificially inflated supra-competitive tickets.

138. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conspiracy unlawful.

139. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive and unlawful conspiracy, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

140. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A FIFTH CAUSE OF ACTION

**(For Unlawful Restraint Of Trade Of The Sightseeing
Tour Bus Market Against The Bus Company Defendants)**

141. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

142. The relevant product market is the Sightseeing Tour Bus Market as set forth in Paragraph 36 above.

143. The relevant geographic market is New York City as set forth in Paragraph 38 above.

144. IBS and City Sights entered into an agreement with each other in or about March 2009 to unlawfully restrain trade and eliminate competition in violation of the Donnelly Act.

145. IBS and City Sights entered into this agreement with each other to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Market. The Bus Company Defendants' conduct has unreasonably restrained trade and has had the impact of allowing the Bus Company Defendants to raise prices and exclude competitors, thus harming consumers who purchase double-decker sightseeing tour bus tickets in New York City.

146. The Bus Company Defendants' anti-competitive conduct is described above. The Bus Company Defendants, *inter alia*: (i) entered into a "joint venture" agreement with each

other in or about March 2009; (ii) controlled 90% of the Sightseeing Tour Bus Market, if not more; (iii) increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (iv) fixed and raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (v) immediately threatened to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of their major distribution channel of product; (vi) reduced the number of buses and/or the frequency of tours; (vii) decreased the overall quality of the Bus Company Defendants' double-decker sightseeing tours; (viii) restricted other services formerly provided to IBS' and City Sights' customers on the Bus Company Defendants' sightseeing double-decker tours; (ix) reduced the commissions the Bus Company Defendants paid outside booking vendors, such as Plaintiff, for selling their double-decker sightseeing tours; (x) eliminated the commissions the Bus Company Defendants paid other outside booking vendors for selling their double-decker sightseeing tours; (xi) reducing the time frame for outside vendors, such as Plaintiff, to pay the Bus Company Defendants for their sightseeing tickets; (xii) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Market; (xiii) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xiv) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for double-decker sightseeing tours in New York City.

147. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive actions.

148. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants not engaged in their anti-competitive behavior.

149. Denying access to the Sightseeing Tour Bus Market has reduced choice for double-decker sightseeing tours in New York City.

150. The Bus Company Defendants' restraints on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

151. The Bus Company Defendants' restraints serve no legitimate business reason and have no pro-competitive benefits.

152. The agreement by and between the Bus Company Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Market, and these effects are not *de minimus* or minute, but substantial and significant.

153. As set forth above, the agreement by and between the Bus Company Defendants to inhibit, reduce, and eliminate competition has affected and continues to affect the Sightseeing Tour Bus Market.

154. Consumers are being and will be injured by the Bus Company Defendants' illegal restraint of the Sightseeing Tour Bus Market, which will enable the Bus Company Defendants to charge even higher artificially inflated supra-competitive prices.

155. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

156. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conduct, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

157. The Bus Company Defendants' conduct has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A SIXTH CAUSE OF ACTION

**(For Conspiracy In The Unlawful Restraint Of Trade Of The
Sightseeing Tour Bus Sales Market Against The Bus Company Defendants)**

158. Plaintiff repeats and realleges all the foregoing allegations as though they were set forth fully herein.

159. The relevant product market is the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

160. The relevant geographic market is New York City as set forth in Paragraph 38 above.

161. The Bus Company Defendants entered into a conspiracy with each other to unlawfully restrain trade and eliminate competition in violation of the Donnelly Act.

162. The Bus Company Defendants entered into this conspiracy with each other to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Sales Market. The Bus Company Defendants' conduct has unreasonably restrained trade and has had the impact of allowing the Bus Company Defendants to control their ticket sales and exclude competitors, thus harming Plaintiff, other competitors, and consumers who purchase double-decker sightseeing tour bus tickets in New York City.

163. The Bus Company Defendants' anti-competitive conspiratorial conduct is described above. The Bus Company Defendants, *inter alia*: (i) entered into a "joint venture" agreement with each other in or about March 2009; (ii) entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to monopolize and illegally restrain trade in the Sightseeing Tour Bus Sales Market by putting Plaintiff out of business; (iii) unilaterally reduced Plaintiff's commission on its sales of the Bus Company Defendants' sightseeing double-decker tour bus tickets by twenty-five percent; (iv) revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay the Bus Company Defendants for the cost of their sightseeing double-decker tour bus tickets after Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) threatened Plaintiff that if it did not pay the Bus Company Defendants for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, the Bus Company Defendants would no longer allow Plaintiff to sell their tickets; (vi) increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (vii) eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling the Bus Company' sightseeing double-decker tours; (viii) conspired to take over eleven Concierge Desks operated by Plaintiff; (ix) immediately threatened to prevent Plaintiff from being able to sell the Bus Company Defendants' tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take control of the their major distribution channel of product; (x) eliminated the commissions the Bus Company Defendants paid other outside vendors for selling their double-decker sightseeing tours; (xi) conspired to fix and/or raise prices for the Bus Company Defendants' customers, hotel

guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xii) conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xiii) conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market; (xv) caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xvi) deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the sale of double-decker sightseeing tours in New York City.

164. The Bus Company Defendants are able to charge supra-competitive prices for double-decker sightseeing tours in New York City as a result of their anti-competitive conspiracy.

165. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had IBS and City Sights not engaged in their anti-competitive conspiracy.

166. Denying access to the Sightseeing Tour Bus Sales Market has reduced choice for other vendors of double-decker sightseeing tours in New York City.

167. The Bus Company Defendants' restraints, through their conspiracy, on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

168. The Bus Company Defendants' restraints serve no legitimate business reason and have no pro-competitive benefits.

169. The conspiracy by and between the Bus Company Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Sales Market, and these effects are not *de minimus* or minute but substantial and significant.

170. The conspiracy by and between the Bus Company Defendants to inhibit, reduce, and eliminate competition has affected and continues to affect the Sightseeing Tour Bus Sales Market, as described above.

171. Consumers are being and will be injured by the Bus Company Defendants' illegal restraint of the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to further ensconce their position in the double-decker sightseeing tour market by concomitantly controlling the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks.

172. Plaintiff's and consumers' injuries are the types of injuries the Donnelly Act was designed to prevent, and flow from that which make the Bus Company Defendants' conduct unlawful.

173. As set forth above, as a direct result of the Bus Company Defendants' anti-competitive conspiracy, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

174. The Bus Company Defendants' conspiracy has proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A SEVENTH CAUSE OF ACTION

**(For Common Law Unfair Competition
Against The Bus Company Defendants And The Hotel Defendants)**

175. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

176. The relevant product markets are the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market as set forth in Paragraph 36 above.

177. The relevant geographic market is New York City as set forth in Paragraph 38 above.

178. The Bus Company Defendants entered into an agreement with each other in March 2009 and entered into a conspiracy with each other to unlawfully restrain trade, to restrain competition and the free exercise of a business activity, and to and engage in unfair and anti-competitive conduct.

179. The Bus Company Defendants entered into this agreement and conspiracy to restrain competition and the free exercise of business activity as well as to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market.

180. Upon information and belief, the Bus Company Defendants thereafter entered into an agreement and/or conspiracy with Hotel Defendants to unlawfully restrain trade, to restrain competition and the free exercise of a business activity, and to and engage in unfair and anti-competitive conduct, in violation of the Donnelly Act.

181. The Bus Company Defendants and the Hotel Defendants entered into this agreement and/or conspiracy to restrain competition and the free exercise of business activity as

well as to increase the Bus Company Defendants' market power in the Sightseeing Tour Bus Sales Market.

182. The conduct of the Bus Company Defendants and the Hotel Defendants has unreasonably restrained competition and the free exercise of business activity and has had the impact of allowing the Bus Company Defendants to raise prices and exclude competitors, thus harming: (i) Plaintiff, who sells double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Sales Market; and (ii) consumers, who purchase double-decker sightseeing tour bus tickets in the Sightseeing Tour Bus Market.

183. The Bus Company Defendants' and the Hotel Defendants' unlawful restraint of competition and the free exercise of business activities in the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market are described above. Among other things: (i) the Bus Company Defendants entered into a "joint venture" agreement with each other in or about March 2009; (ii) the Bus Company Defendants entered into a conspiracy with each other, after IBS and City Sights formed Twin America, to illegally restrain competition and the free exercise of business activities in the Sightseeing Tour Bus Market and the Sightseeing Tour Bus Sales Market by, *inter alia*, putting Plaintiff out of business; (iii) the Bus Company Defendants and the Hotel Defendants thereafter entered into an agreement and/or conspiracy with each other to illegally restrain competition and the free exercise of business activities in the Sightseeing Tour Bus Sales Market by, *inter alia*, putting Plaintiff out of business; (iv) the Bus Company Defendants unilaterally reduced Plaintiff's commission on its sales of their sightseeing double-decker tour bus tickets by twenty-five percent; (v) the Bus Company Defendants revoked their agreement with Plaintiff concerning the amount of time (more than thirty days) that Plaintiff would have to pay them for the cost of their sightseeing double-decker tour bus tickets after

Plaintiff's sale of the tickets to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers; (v) the Bus Company Defendants and Highgate wrongfully caused the Hotels to wrongfully cancel their written agreements with Plaintiff to permit Plaintiff to operate the Concierge Desks at the hotels owned by the Hotels; (vi) the Bus Company Defendants threatened Plaintiff that if it did not pay them for their sightseeing double-decker tour bus tickets within five days of Plaintiff's receipt of same, they would no longer allow Plaintiff to sell their tickets; (vii) the Bus Company Defendants and the Hotel Defendants increased the barriers to entry into the Sightseeing Tour Bus Sales Market by putting potential entrants in competition with an entity with control of the major distribution channel of the market; (viii) the Bus Company Defendants increased the barriers to entry into the Sightseeing Tour Bus Market by putting potential entrants in competition with an entity with control of 90% of the market, if not more; (ix) the Bus Company Defendants eliminated the commissions they paid outside booking vendors, such as Plaintiff, for selling their sightseeing double-decker tours; (x) the Bus Company Defendants have taken over eleven Concierge Desks operated by Plaintiff; (xi) the Bus Company Defendants threatened immediately to prevent Plaintiff from being able to sell their tickets and services if Plaintiff informed any governmental entity about their anti-competitive and predatory conduct or in any way interfered with their plans to take channel of the their major distribution channel of product; (xii) the Bus Company Defendants eliminated the commissions they paid other outside booking vendors for selling their double-decker sightseeing tours; (xiii) the Bus Company Defendants has conspired to fix and/or raise prices for their customers, hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xiv) the Bus Company Defendants fixed and/or raised the double-decker sightseeing tour prices for their customers by an average of Five Dollars per tour; (xv) the Bus Company

Defendants reduced the number of buses and/or frequency of tours; (xvi) the Bus Company Defendants decreased the overall quality of their double-decker sightseeing tours; (xvii) the Bus Company Defendants restricted other services formerly provided to their customers on their double-decker sightseeing tours; (xviii) the Bus Company Defendants have conspired to decrease the overall quality of service provided at eleven hotel Concierge Desks operated by Plaintiff; (xix) the Bus Company Defendants have conspired to restrict other services formerly provided to hotel guests, Concierge Desk users, consumers, and Plaintiff's customers at eleven Concierge Desks operated by Plaintiff; (xx) the Bus Company Defendants and the Hotel Defendants limited, reduced, restrained, suppressed, and substantially foreclosed actual and potential competition in the Sightseeing Tour Bus Sales Market and/or the Sightseeing Tour Bus Sales Market; (xxi) the Bus Company Defendants and the Hotel Defendants caused vendors, distributors, and other customers, as well as ultimate consumers to pay artificially inflated and supra-competitive prices for double-decker sightseeing tours in New York City; and (xxii) the Bus Company Defendants and the Hotel Defendants deprived vendors, distributors, and other customers, as well as ultimate consumers of a free, open, competitive, and unrestrained market for the purchase and sale of double-decker sightseeing tours in New York City

184. In addition, the Bus Company Defendants engaged in unfair competition to steal Plaintiff's business by improperly seeking to hire way former employees of CGSC, notwithstanding non-solicitation agreements and non-compete agreements of which the Bus Company Defendants were aware.

185. The Bus Company Defendants are able to charge supra-competitive prices and exclude competition for double-decker sightseeing tours in New York City as a result of their

restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct and/or conspiracy.

186. The Bus Company Defendants' prices for double-decker sightseeing tours in New York City are higher than those that would be charged had the Bus Company Defendants and the Hotel Defendants not engaged in their anti-competitive conduct, agreements and/or conspiracy.

187. The Bus Company Defendants' and the Hotel Defendants' denial of access to the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market has reduced choice for purchasers, Plaintiff, and other vendors of double-decker sightseeing tours in New York City.

188. The Bus Company Defendants' and the Hotel Defendants' restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct, through their agreements and/or conspiracies, on Plaintiff and other competitors serve no purpose than to increase costs of operation and to impede their ability to compete effectively.

189. The Bus Company Defendants' and the Hotel Defendants' restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct and/or conspiracy serve no legitimate business reason and have no pro-competitive benefits.

190. The agreements and/or conspiracies between and/or among the Bus Company Defendants and the Hotel Defendants has had the effect of suppressing and eliminating competition in the Sightseeing Tour Bus Market and/or Sightseeing Tour Bus Sales Market, and these effects are not *de minimus* or minute but substantial and significant.

191. The agreements and/or conspiracies between and/or among the Bus Company Defendants and the Hotel Defendants to inhibit, reduce, and eliminate competition has affected

and continues to affect the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market, as described above.

192. Consumers are being and will be injured by the Bus Company Defendants' and the Hotel Defendants' illegal restraint of competition and the free exercise of business activities as well as their unfair and anti-competitive conduct in the Sightseeing Tour Bus Market and/or the Sightseeing Tour Bus Sales Market, which will enable the Bus Company Defendants to further ensconce their position in these markets by concomitantly controlling the largest distribution channel for the sale of sightseeing tickets; *to wit*, Plaintiff's hotel Concierge Desks.

193. As set forth above, as a direct result of the Bus Company Defendants' and the Hotel Defendants' unfair and anti-competitive agreements and/or conspiracies, Plaintiff has been injured and will continue to be injured in its business by, *inter alia*, increased costs to operate its business, its inability to compete effectively, and by the destruction of its business.

194. The Bus Company Defendants' and the Hotel Defendants' agreements and/or conspiracies have proximately caused damages to Plaintiff in an amount to be determined at trial.

AS AND FOR A EIGHTH CAUSE OF ACTION

(For Tortious Interference Against the Bus Company Defendants)

195. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

196. Plaintiff has and had a contractual relationship with the Hotels wherein Plaintiff leases Concierge Desks in the eleven Hotels in order to, *inter alia*, sell tickets to the Bus Company Defendants' double-decker sightseeing bus tours.

197. Upon information and belief, the Bus Company Defendants have entered into an agreement and/or conspiracy between and/or among each other, knowing of the Hotel's

agreements with Plaintiff, to cause the Hotels to terminate such agreements in breach of the terms therein.

198. Upon information and belief, the Bus Company Defendants' efforts have already caused the Hotels to intentionally and wrongfully terminate their Concierge Desk agreements entered into with Plaintiff. These hotels have succumbed to the strong-armed, anti-competitive, and monopolistic tactics employed by the Bus Company Defendants, either independently or through Highgate, and have sought to wrongfully intentionally terminate their contracts with Plaintiff, all by letters dated February 8, 2010.

199. Of particular interest, four of the hotels owned and/or managed by Highgate (On The Ave Hotel, Hampton Inn Times Square North, Embassy Suites Hotel New York and Hilton Garden Inn Times Square) wrongfully cancelled their contracts with Plaintiff even though termination could only be "for cause". No cause, however, has been alleged, and none could be because Plaintiff has consistently, efficiently, and successfully operated their Concierge Desks to this very day. (See Ex. B)

200. Moreover, the Hotels have re-leased their Concierge Desks to the Bus Company Defendants and/or their affiliates.

201. The conduct of the Bus Company Defendants constituted a wrongful interference with Plaintiff's actual contractual and business relationships with the Hotels through the use of wrongful and unfair means.

202. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

203. In addition, because the Bus Company Defendant's conduct were undertaken willfully and with a high degree of moral culpability, the Bus Company Defendants and

Highgate should be ordered to pay Plaintiff punitive or exemplary damages, in an amount to be determined at trial.

AS AND FOR A NINTH CAUSE OF ACTION

(For Breach of Contract Against The Hotels)

204. Plaintiff repeats and realleges all of the foregoing allegations as though they were set forth fully herein.

205. Plaintiff has been damaged in that the Hotels have breached their written agreements with Plaintiff, which Plaintiff duly performed under by, *inter alia*:

- wrongfully terminating their agreements with Plaintiff; and
- wrongfully entering into agreements with companies affiliated with the Bus Company Defendants for them to operate the Hotels' eleven hotel Concierge Desks.

206. As a matter of law, every contract and agreement, including but not limited to the written agreements between the Hotels and Plaintiff, has an implied covenant of good faith and fair dealing.

207. Plaintiff has duly performed the obligations to be performed by it pursuant to its written agreements with the Hotels.

208. Plaintiff has suffered actual injury and will continue to suffer damages as a direct result of the Hotels' breaches of their contractual obligations and their breach of the implied covenant of good faith and fair dealing to Plaintiff.

209. By reason of the foregoing, Plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff requests that judgment be entered as follows:

(a) On the First Cause of Action against the Defendants awarding Plaintiff permanent injunctive relief to:

(1) restrain and enjoin: restrain and enjoin the Bus Company Defendants and related companies and individuals from monopolizing, attempting to monopolize, and unlawfully restrain trade in the Sightseeing Tour Bus Sales Market;

(2) restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering and preventing Plaintiff from selling the Bus Company Defendants' products and services and, in particular, double-decker sightseeing tour tickets and otherwise restraining them from not changing the current terms and conditions of the sale of such products and services;

(3) restrain and enjoin the Bus Company Defendants and related companies and individuals from interfering with hotel Concierge Desk agreements that Plaintiff has entered into with hotels; and

(4) restrain and enjoin the Bus Company Defendants and Highgate from interfering with and the Hotels from terminating Plaintiff's hotel Concierge Desk agreements in order to enter in an agreement with the Bus Company Defendants and/or related companies and/or individuals.

(b) On the Second Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(c) On the Third Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(d) On the Fourth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(e) On the Fifth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(f) On the Sixth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(g) On the Seventh Cause of Action against the Defendants, awarding Plaintiff compensatory damages in an amount to be determined at trial;

(h) On the Eighth Cause of Action against the Bus Company Defendants, awarding Plaintiff compensatory and punitive damages in an amount to be determined at trial;

(i) On the Ninth Cause of Action against the Hotels, awarding Plaintiff compensatory damages in an amount to be determined at trial;

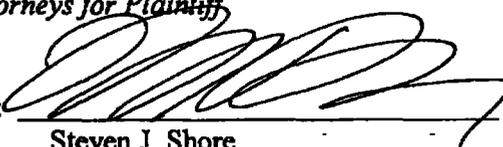
(j) Awarding Plaintiff treble damages as provided by law;

(k) Awarding Plaintiff its reasonable costs, disbursements, and attorneys' fees of this action as provided by law; and

(l) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 12, 2010

GANFER & SHORE, LLP
Attorneys for Plaintiff

By: 

Steven J. Shore
Mark A. Berman
Gabriel Levinson

360 Lexington Avenue, 14th Floor
New York, New York 10017
(212) 922-9250

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. MC-F-21035

**STAGECOACH GROUP PLC AND COACH USA, INC., ET AL. --
ACQUISITION OF CONTROL--TWIN AMERICA, LLC**

COMMENT OF THE STATE OF NEW YORK

The State of New York ("NYSAG") respectfully submits the following comments to the Surface Transportation Board ("STB") in connection with the above captioned STB Docket No. MC-F-21035 ("Application"). By decision and order dated September 15, 2009 ("Decision"), the STB did not grant applicants tentative authority under 49 CFR 1182.4(b) and instead instituted a proceeding to address certain matters and to determine the merits of the parties application.

The NYSAG currently has an open antitrust investigation concerning Twin America, LLC and its formation. That investigation is ongoing so our comments are made using publicly available information and the parties' Application to the STB. Nevertheless, commenting on certain key issues may be beneficial in addressing certain matters and determining the merits of the application.

The NYSAG submits these comments to emphasize the competitive importance to New York, its consumers and tourists visiting New York City. We urge the STB to take a particularly close look at the Application of the parties to ensure that there is fair competition for sightseeing tours of New York City by double-decker buses and to the integrity of the STB application process.

BACKGROUND

The New York State Attorney General subpoenaed Stagecoach Group plc and Coach USA, Inc. on July 31, 2009. City Sights LLC, City Sights Twin LLC, and Twin America, LLC ("Twin America") were subpoenaed on August 3, 2009.

The subpoenas concerned a "joint venture" agreement entered into by International Bus Services, Inc. ("IBS"), a subsidiary of Coach USA, Inc. ("Coach USA") and City Sights Twin, LLC ("City Sights Twin") in March, 2009 for the formation of Twin America, LLC ("Twin America"). We believe the joint venture concerned the parties' respective business of a sightseeing hop-on/hop-off tour primarily by double-decker and other vehicles in the 5 boroughs of New York City. Twin America, LLC began operations as a joint venture on March 31, 2009.

After we issued subpoenas to the parties, the parties made an application to the STB on August 19, 2009, about 4½ months after the joint venture began, for control of Twin America

under 49 U.S.C. § 14303 ("Application"). Also after our subpoenas, on August 10, 2009, Twin America applied to the Federal Motor Carrier Safety Administration ("FMCSA") for appropriate operating authority to become a regulated motor carrier.

We met with the parties on August 19, 2009,¹ the same day the parties filed their Application to the STB. The parties asserted that they believed the NYSAG did not have jurisdiction over the parties and we disagreed. Without waiving jurisdiction, the parties and the NYSAG agreed to a voluntary production of documents. The parties are currently in the initial stages of voluntarily producing documents to us.

On August 27, 2009, the NYSAG filed its Notice of Intent to Participate in this STB proceeding as a party of record to receive any filings by the parties. This was done without conceding the NYSAG's jurisdiction over the parties.

ANTITRUST CONCERNS

In the view of the NYSAG, the Application to control Twin America by two direct competitors of tour guided sightseeing tours by hop-on/hop-off double-decker buses in New York City raises significant competitive concerns. The NYSAG makes these comments without passing judgment as to the legality of Twin America, LLC at this time.

a. Approval of the Application Would Strengthen Market Power and Create a Monopolist in Major Routes

Market shares determine the likelihood that a joint control agreement will create or increase market power or facilitate its exercise. "The creation, increase, or facilitation of market power will likely increase the ability and incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement." (see Antitrust Guidelines for Collaborations Among Competitors). To assess the impact on market power of the Application filed on August 19, 2009, it is necessary to go back and examine the change in market shares that occurred before and after the parties entered into the joint venture agreement in March, 2009. It is necessary to look back because the joint venture agreement in March, 2009, resulted in a major consolidation of market power in at least one of the primary product segment markets in which Twin America operates. Hence, this raises potential antitrust issues, and the STB's approval of the Application would have the effect of exempting the applicants from both state and federal antitrust law under 49 U.S.C. § 14303.

The starting point for estimating market share is identifying the relevant markets. Twin America was formed by (i) IBS, which is associated with both Stagecoach plc and Coach USA, and (ii) City Sights.² IBS was operating under the trade name Gray Line New York ("Gray

¹ After several postponements by the parties, we were finally able to schedule a meeting for August 19, 2009. To our great surprise, the parties informed us during our initial meeting that they were making a filing to the STB for the acquisition of Twin America, LLC that same day.

² For purposes of this discussion, we will call City Sights LLC and City Sights Twin as "City Sights" because "Twin America was formed in March 2009 in recognition of the fact that IBS and CitySights LLC, the previous operator of transportation services now provided by City Sights Twin..." (Application, pg. 10).

Line") before entering into the joint agreement. Both Gray Line and City Sights provided and competed on various transportation and tour services. Tour services included double-decker buses and other vehicles before the parties entered into the joint venture agreement.

Both IBS and City Sights served various product segment markets instead of one product market that includes all transportation and tour services. For example, the market for the hop-on/hop-off double-decker tour bus business segment is not the same kind of bus business segment as carrying passengers from New York City to Washington, DC or Boston, MA. The sightseeing double-decker tour buses allow passengers to board and un-board (hop-on/hop-off) the buses at short intervals along a tour route and allow ticketed passengers to board any bus along the tour route for the sightseeing tour purchased.

To further explain why Twin America operates in various relevant product segment markets, instead of a single product market that includes all transportation and tour services, it is helpful to understand the different market segments in which Twin America's competitors participate and the particular products which they provide. For example, both On Board New York Tours and Big Taxi Tours were identified by the applicants as Twin America competitors in the Application (Application, pg. 11). On Board New York Tours serves in the destination-specific shuttle bus tour segment market and Big Taxi Tours serves the double-decker bus tour market. That is, customers using the double-decker product would be able to catch any double-decker bus at any of the designated tour stops with an average waiting time of about 15 minutes, while the shuttles for the On Board New York Tours are scheduled to leave roughly 4 times a day and customers stay on the same bus and do not have the option to decide how long to stop at a particular destination. Hence, Twin America services various product segment markets instead of one product market that includes all transportation and tour services.

With access to only limited information on the various product market segments which IBS and City Sights service, market shares are only calculated for the "double-decker" market as an illustration of the impact on market power of approving the Application. According to the Application, both IBS and City Sights were active participants in the "double-decker" product segment market. (Application, pg. 11). Applicants state that Twin America was formed because of "a declining revenue base due to a drop-off in tourism in the New York City area." (Application, pg. 10). Thus, the market share calculation treats New York City as the geographic market.

Without any financial information from the applicants and any of its competitors in the market, the market shares were estimated using the number of major geographic routes,³ which are covered by providers in the market. The major geographic routes are the (i) Downtown Loop, (ii) Uptown Town Loop, (iii) All Around Town Loop, and (iv) Brooklyn Loop. The estimated market shares indicate that even without the approval of the joint control, Stagecoach already owns roughly 44.5% of the market through its association with Gray Line, while City Sights owns about 44.5% of the market. The remaining 11% of the market is owned by Big Taxi Tours. The approval of the Application will solidify the applicants' control to approximately 89% of the market share (See summary Tables 1 and 2 below with the estimates of market share). Additionally, approval of the Application will endorse a monopoly in three out of the four major

³ Information was collected from each of the provider's internet websites. City Sights. October 23, 2009. <http://www.citysightsny.com>. Grey Line New York. October 23, 2009. <http://www.newyorksightseeing.com>. Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>.

routes. That is, the Uptown Loop, All Around Town Loop and Brooklyn Loop will be controlled by the applicants alone, with the majority of the Downtown Loop controlled by the applicants as well.

Table 1:

	<u>CitySights</u>	<u>Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Loop</u>
Downtown Loop	1	1	1	3
Uptown Loop	1	1		2
All Around Town Loop	1	1		2
Brooklyn Loop	1	1		
Total by Company	4	4	1	9
Estimated Market Share	44.5%	44.5%	11%	100%

Sources:

CitySights. October 23, 2009. <http://www.citysightsny.com>

Gray Line New York. October 23, 2009. <http://www.newyorksightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

Table 2:

	<u>CitySights & Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Tour Type</u>
Downtown Loop	2	1	3
Uptown Loop	2		2
All Around Town Loop	2		2
Brooklyn Loop	2		2
Total by Company	8	1	9
Estimated Market Share	89%	11%	100%

Sources:

CitySights. October 23, 2009. <http://www.citysightsny.com>

Gray Line New York. October 23, 2009. <http://www.newyorksightseeing.com>

Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>

b. Approval of the Application Would Increase Barriers to Entry and/or Assert Negative Impacts on Employees

The applicants claim that the joint control would allow them to achieve significant economies and cost savings by combining their common management and purchasing activities. The applicants claim that they have already achieved savings on purchases of fuel and spare parts since entering into the joint venture agreement and that they are also expecting to save on insurance and advertising costs in the future (Application, pg. 10). Unless the applicants lowered the number of buses running and/or reduced current employee levels after consolidating their operations, the reported cost savings in fuel, spare parts and insurance purchases could probably only have been generated by receiving volume discounts. This indicates that the approval of the application would likely significantly increase the barriers to entry into the market by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts that further enhance its competitive position in the "double-decker" market.

As for the anticipated savings on advertising costs suggested by the applicants, these could likely be achieved either by consolidating the number of advertisements, or by firing advertising/field sales personnel who are currently employed by Twin America. The applicants further suggest that the joint control could eliminate duplicative "back office" administrative functions, including accounting, sales, and IT functions. Unless these back office functions are currently out sourced rather than performed in house by Twin America employees, eliminating these function will likely mean layoffs of Twin America employees.

Any cost savings, if any, would only benefit the applicants and not the consumers unless the applicants were to pass on the savings to consumers in the form of lower prices for their products. Economic theory suggests that businesses strive to maximize their profits. Businesses would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices. That is, the likelihood of passing on cost savings increases with the level of competition. This suggests the approval of the Application will lower the applicants' incentive to pass on any cost savings in the double-decker market since the approval will affirm the applicants' control of nearly 90% of the market as explained in the previous section. Hence, the applicants anticipated cost savings in the double-decker market come from the cost of (i) increased barriers to entry through volume discount contracts; (ii) firing of Twin America's employees and/or reducing the hours or wages of Twin America's employees; and/or (iii) reducing the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route.

c. Horizontal Agreement By Competitors of Sightseeing Hop-on/Hop-off Tours Primarily By Double Decker Buses

The joint venture as structured in March, 2009 gave IBS, a subsidiary of Coach USA and City Sights Twin each a 50 percent share of the voting rights in Twin America. The joint venture gave Coach USA a 60 percent share and City Sights Twin a 40 percent share of the economic rights.⁴

⁴ Article from www.busrside.com, "Stagecoach Group, CitySights NY form Twin America in joint venture," March 18, 2009 and parties' Application, pg. 3.

Currently, the joint operation by two direct competitors of tour guided sightseeing hop-on/hop-off tours primarily by double-decker buses in New York City gives the entities the power to restrict competition for double-decker bus tour ticket prices and marketing to customers. Dividing profits by competitors are a disincentive to compete on price. Both competitors can remain static on price or have price differentials relative to each other but the profits would always be divided the same, 60/40 amongst the two direct competitors.

Coordinated action by two direct competitors can also eliminate competition for marketing with ticket selling partners such as hotel concierges, museums, helicopter and boat tour operators, etc. Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

JURISDICTION

With due deference to the STB, the NYSAG disagrees with the applicants' assertion that the NYSAG does not have jurisdiction over the parties under the present facts.

a. Twin America, Inc., CitySights LLC and City Sights Twin Are Not Interstate Passenger Carriers

As the STB recognized in its Sept. 15, 2009 Decision, the parties do not provide specific information detailing the authority under which the various interstate transportation services operate. Although Twin America recently filed with the FMCSA to obtain appropriate operating authority after our subpoenas, we are not aware of CitySights LLC or City Sights Twin as having had appropriate interstate operating authority either. Applicants state that City Sights Twin, a non-carrier, now provides interstate transportation services previously provided by CitySights LLC.

We are not persuaded that CitySights, LLC, City Sights Twin and Twin America were interstate passenger carriers when we subpoenaed the parties. Although Coach USA and its parent Stagecoach plc controlled interstate passenger carriers, the joint venture they entered into with City Sights Twin in March, 2009, did not involve interstate transportation because the parties' sightseeing double-decker tour buses in New York City did not carry passengers interstate. Also, the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate.

We believe Twin America was formed by the parties to jointly operate their respective sightseeing hop-on/hop-off tours primarily by double-decker buses and other vehicles in the 5 boroughs of New York City.

b. The March, 2009 "Joint Venture" Transaction is Not Interstate

The parties' respective hop-on/hop-off double-decker bus sightseeing tours of New York City did not carry passengers interstate.

As noted above, the hop-on/hop-off double-decker bus sightseeing service is not the same service as transportation services carrying passengers interstate. The sightseeing double-decker

tour buses in New York City allow passengers to board and un-board the double-decker buses at specific tourist attractions along a specified tour route, at short intervals. The New York City sightseeing tours by double-decker buses did not carry passengers out of New York State, let alone New York City.

Although the parties enumerate various services as part of Twin America's tourism services to give the semblance of interstate transportation, such as garaging buses in New Jersey, we believe the crux of the joint venture concerned the sightseeing hop-on/hop-off tours primarily by double-decker buses in the 5 boroughs of New York City. Characterizing a New York City transaction as an interstate motor passenger carrier transaction should not trigger STB jurisdiction and avoid antitrust scrutiny.

c. Approval of the Application is Not in the Public Interest

The parties state in their Application that "a grant of this Application will not only comport with the requirements of section 14303, but underscore the role of the Board in connection with transactions of the sort that led to the formation of Twin America." (Application pgs. 15-16).

While underscoring the role of the STB, we are not aware of any filing made to the STB by the parties or any approval by the STB for the March, 2009, joint venture formation of Twin America under 49 USC § 14302, if such a filing were required for the pooling and division of transportation or earnings. The role of the STB may have been critical at that juncture had a filing been made because one of the standards for approval by the STB under 49 U.S.C. § 14302 is whether the transaction will not unreasonably restrain competition. While the parties have now filed the Application under 49 U.S.C. § 14303 and state that the transaction is consistent with the public interest, we disagree. The elimination of competition is not in the public interest.

A signed copy of the March, 2009 joint venture agreement and its exhibits may already have been submitted by the parties for STB review.

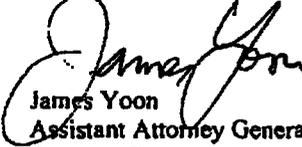
d. Jurisdictional Issues Not Resolved

"Applicants submit that the Transaction is subject to the Board's exclusive jurisdiction and will be pursuing that issue with the New York Attorney General." (Application, pg. 15). At present, since our meeting with the parties on August 19, 2009, we have only agreed to disagree as to jurisdiction. We believe that we have jurisdiction over the parties conduct concerning the formation and the subsequent joint activities of Twin America.

Consequently, the NYSAG believes the STB should find that under the present facts, the NYSAG has jurisdiction and should deny the parties' Application for control of Twin America LLC and restore competition for tour guided sightseeing by double-decker buses in New York City. In the alternative, the STB should condition the approval of the Application by ordering a divestiture of the tour guided sightseeing business by double-decker buses in the 5 boroughs of New York City from the transaction.

DATED: November 2, 2009

Respectfully submitted,


James Yoon
Assistant Attorney General
Antitrust Bureau

Kitty Kay Chan
Director of Economics
Antitrust Bureau

State of New York
Office of the Attorney General
Antitrust Bureau
120 Broadway, Suite 26C
New York, NY 10271
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Fax: (212) 416-6015

For ANDREW M. CUOMO
Attorney General
State of New York

EXHIBIT B

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Expedia TravelDesk License Agreement (the "Agreement"), dated December 30, 2005 as amended by the Novation Agreement (the "Novation") dated December 2006 by and between Continental Guest Services Corp ("CGS") successor to Travelscape, LLC d/b/a Expedia Travel ("Expedia") and Lexington Hotel, LLC as successor to Lexington Hotel Operating Lease, LLC (the "Operator") with respect to the property commonly known as Radisson Lexington with an address of 511 Lexington Avenue, New York, NY 10017 (the "Property")

Ladies and Gentlemen:

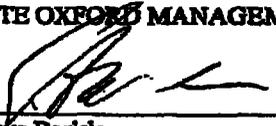
Highgate Oxford Management Company, LLC manages the Radisson Lexington Hotel for Operator and this letter is written on behalf of Operator.

Operator exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Donald Sheneman at 212-755-4400 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

cc: Donald Sheneman
Steve Barick
Sam Bhadha
Kurien Jacob

1568 BROADWAY HOTEL MANAGEMENT, LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
New York, NY 10036

Re: Termination of License Agreement (the "Agreement"), dated April 11, 2007, by and between Times Square Hotel Operating Lessee LLC (the "Licensor") and Continental Guest Services, Corp. (the "Licensee") with respect to the property commonly known as Doubletree Guest Suites Times Square, New York, NY (the "Hotel").

Ladies & Gentlemen:

1568 Broadway Hotel Management LLC manages the Hotel on behalf of Licensor.

Licensor hereby exercises its right to terminate the Agreement effective March 15, 2010.

Please contact Sam Grabush at 212-403-6310 if you have any questions.

Sincerely,

1568 Broadway Hotel Management, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

BATTERY PARK HOTEL MANAGEMENT, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated October 2, 2006, by and between Battery Park Hotel Management, LLC (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Embassy Suites Hotel with an address of 102 North End Avenue, New York, NY (the "Property")

Ladies and Gentlemen:

Battery Park Hotel Management, LLC, hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Mark Miller @ 646-769-4416 if you have any questions.

Sincerely,

BATTERY PARK HOTEL MANAGEMENT, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Mark Miller
Geoffrey Mills
Steve Barick
Kurien Jacob

PARK CENTRAL MANAGEMENT LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Lease Agreement (the "Agreement") dated November 22, 2005, by and between Park Central Hotel (PCH), LLC (the "Landlord") and Continental Guest Services, Corp. (the "Tenant") with respect to the property commonly known as Park Central Hotel with an address of 870 7th Avenue @ 66th Street, New York, NY (the "Hotel")

Ladies & Gentlemen:

Park Central Management LLC, d/b/a Park Central Halifax Management LLC manages the Hotel for Landlord and this letter is written on behalf of Landlord.

Landlord hereby exercises its right to terminate the Agreement effective May 15, 2010

Please contact Mickey Schneider at 212-707-5028 if you have any questions.

Sincerely,

Park Central Management, LLC d/b/a
Park Central Halifax Management, LLC

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc: Mickey Schneider
Steve Barick
Kurien Jacob

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

February 8, 2010

**VIA OVERNIGHT COURIER AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Continental Guest Services Desk License Agreement (the "Agreement"), by and between W2001 Metropolitan Hotel Operating Lessee, LLC (the "Hotel Operator") and Continental Guest Services Corporation (the "Operator") dated May 1, 2007, with respect to the property commonly known as Doubletree Metropolitan Hotel (the "Hotel") with an address of 669 Lexington Avenue, New York, NY 10022

Ladies and Gentlemen:

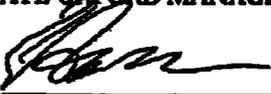
Highgate Oxford Management Company II, LLC manages the Hotel on behalf of the Hotel Operator and this letter is written on behalf of the Hotel Operator.

Hotel Operator hereby elects to terminate the Agreement effective May 15, 2010.

Please contact Mauricio Patino at 212-350-6004 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Mauricio Patino
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement") by and between New York West 35th Street HGI (the "Hilton Garden Inn") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hilton Garden Inn 35th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

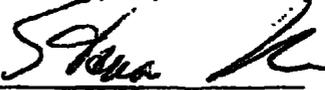
Highgate Hotels, L.P. manages the hotel for RLJ III – HGN Manhattan Lessee, LLC, d/b/a New York West 35th Street HGI ("HGI") and this letter is written on behalf of HGI.

The above referenced agreement expired January 29, 2010 and HGI hereby elects not to renew the agreement and demands that you vacate the premises by March 15, 2010.

Please contact Hilda Garvey @ 212-609-1030 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Hilda Garvey
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of License and Concierge Services Agreement (the "Agreement"), dated January 1, 2009, by and between Thirty East 30th Street Owner, LLC (the "Hotel") and Continental Guest Services Corporation (the "Operator") with respect to the property commonly known as Hotel 30 30 with an address of 30 East 30th Street, New York, NY (the "Property")

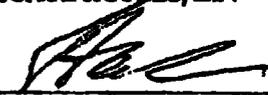
Ladies & Gentlemen:

Highgate Hotels, L.P. manages the Property for Hotel and this letter is written on Hotel's behalf. Hotel hereby elects to exercise its right to terminate the Agreement effective April 15, 2010.

Please contact Florencio Ferrao at 212-651-3880 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Florencio Ferrao
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Chief Executive Officer

Re: Termination of The Paramount Hotel New York and Continental Guest Services Corp. (the "Agreement"), by and between The Paramount Hotel New York (the "PH") and Continental Guest Services, Corp. (the "CGS") with respect to the property commonly known as The Paramount Hotel with an address of 235 West 46th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

Highgate Hotels, L.P. manages the hotel for Becker-Paramount Fee, LLC, d/b/a The Paramount Hotel ("PH") and this letter is written on behalf of PH.

PH hereby exercises its right to terminate the Agreement effective April 15, 2010.

Please contact Geoffrey Mills at 212-827-4174 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Geoffrey Mills
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hilton Garden Inn Times Square (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019

Ladies and Gentlemen:

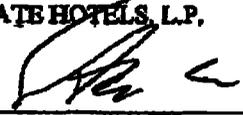
Highgate Hotels, L.P. manages the hotel for RPH Hotels 48th Street Owner, LLC, d/b/a Hilton Garden Inn Times Square (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Timothy Dowd at 646-710-5710 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Timothy Dowd
Dennis Lanners
Steve Barick
Kurtien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hampton Inn Times Square North (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019 (the "Property")

Ladies and Gentlemen:

Highgate Hotels, L.P. manages the property for RPH Hotels 51st Street Owner, LLC, d/b/a Hampton Inn Times Square North (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Kaizad Chara at 646-710-5840 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Kaizad Chara
Dennis Lanners
Steve Barick
Kurien Jacob

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated July 11, 2007, by and between OTA Hotel Owner, L.P. d/b/a On The Avenue Hotel (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as On The Avenue Hotel, New York, NY (the "Property").

Ladies & Gentlemen:

Highgate Hotels, L.P. manages the Property on behalf of Hotel and this letter is written on behalf of the Hotel.

Hotel hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Richard Hotter at 212-651-3308 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

cc: Richard Hotter
Dennis Lamers
Steve Barick
Kurien Jacob

545 E. John Carpenter Freeway · Suite 1400 · Irving, Texas 75062
Telephone: (972) 444-9700 · Facsimile: (972) 444-9210

Exhibit A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. MC-F-21035

**STAGECOACH GROUP PLC AND COACH USA, INC., ET AL. --
ACQUISITION OF CONTROL--TWIN AMERICA, LLC**

COMMENT OF THE STATE OF NEW YORK

The State of New York ("NYSAG") respectfully submits the following comments to the Surface Transportation Board ("STB") in connection with the above captioned STB Docket No. MC-F-21035 ("Application"). By decision and order dated September 15, 2009 ("Decision"), the STB did not grant applicants tentative authority under 49 CFR 1182.4(b) and instead instituted a proceeding to address certain matters and to determine the merits of the parties application.

The NYSAG currently has an open antitrust investigation concerning Twin America, LLC and its formation. That investigation is ongoing so our comments are made using publicly available information and the parties' Application to the STB. Nevertheless, commenting on certain key issues may be beneficial in addressing certain matters and determining the merits of the application.

The NYSAG submits these comments to emphasize the competitive importance to New York, its consumers and tourists visiting New York City. We urge the STB to take a particularly close look at the Application of the parties to ensure that there is fair competition for sightseeing tours of New York City by double-decker buses and to the integrity of the STB application process.

BACKGROUND

The New York State Attorney General subpoenaed Stagecoach Group plc and Coach USA, Inc. on July 31, 2009. City Sights LLC, City Sights Twin LLC, and Twin America, LLC ("Twin America") were subpoenaed on August 3, 2009.

The subpoenas concerned a "joint venture" agreement entered into by International Bus Services, Inc. ("IBS"), a subsidiary of Coach USA, Inc. ("Coach USA") and City Sights Twin, LLC ("City Sights Twin") in March, 2009 for the formation of Twin America, LLC ("Twin America"). We believe the joint venture concerned the parties' respective business of a sightseeing hop-on/hop-off tour primarily by double-decker and other vehicles in the 5 boroughs of New York City. Twin America, LLC began operations as a joint venture on March 31, 2009

After we issued subpoenas to the parties, the parties made an application to the STB on August 19, 2009, about 4½ months after the joint venture began, for control of Twin America

under 49 U.S.C. § 14303 ("Application"). Also after our subpoenas, on August 10, 2009, Twin America applied to the Federal Motor Carrier Safety Administration ("FMCSA") for appropriate operating authority to become a regulated motor carrier.

We met with the parties on August 19, 2009,¹ the same day the parties filed their Application to the STB. The parties asserted that they believed the NYSAG did not have jurisdiction over the parties and we disagreed. Without waiving jurisdiction, the parties and the NYSAG agreed to a voluntary production of documents. The parties are currently in the initial stages of voluntarily producing documents to us.

On August 27, 2009, the NYSAG filed its Notice of Intent to Participate in this STB proceeding as a party of record to receive any filings by the parties. This was done without conceding the NYSAG's jurisdiction over the parties.

ANTITRUST CONCERNS

In the view of the NYSAG, the Application to control Twin America by two direct competitors of tour guided sightseeing tours by hop-on/hop-off double-decker buses in New York City raises significant competitive concerns. The NYSAG makes these comments without passing judgment as to the legality of Twin America, LLC at this time.

a. Approval of the Application Would Strengthen Market Power and Create a Monopolist in Major Routes.

Market shares determine the likelihood that a joint control agreement will create or increase market power or facilitate its exercise. "The creation, increase, or facilitation of market power will likely increase the ability and incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement." (see Antitrust Guidelines for Collaborations Among Competitors). To assess the impact on market power of the Application filed on August 19, 2009, it is necessary to go back and examine the change in market shares that occurred before and after the parties entered into the joint venture agreement in March, 2009. It is necessary to look back because the joint venture agreement in March, 2009, resulted in a major consolidation of market power in at least one of the primary product segment markets in which Twin America operates. Hence, this raises potential antitrust issues, and the STB's approval of the Application would have the effect of exempting the applicants from both state and federal antitrust law under 49 U.S.C. § 14303.

The starting point for estimating market share is identifying the relevant markets. Twin America was formed by (i) IBS, which is associated with both Stagecoach plc and Coach USA, and (ii) City Sights.² IBS was operating under the trade name Gray Line New York ("Gray

¹ After several postponements by the parties, we were finally able to schedule a meeting for August 19, 2009. To our great surprise, the parties informed us during our initial meeting that they were making a filing to the STB for the acquisition of Twin America, LLC that same day.

² For purposes of this discussion, we will call City Sights LLC and City Sights Twin as "City Sights" because "Twin America was formed in March 2009 in recognition of the fact that IBS and CitySights LLC, the previous operator of transportation services now provided by City Sights Twin " (Application, pg. 10).

Line") before entering into the joint agreement. Both Gray Line and City Sights provided and competed on various transportation and tour services. Tour services included double-decker buses and other vehicles before the parties entered into the joint venture agreement.

Both IBS and City Sights served various product segment markets instead of one product market that includes all transportation and tour services. For example, the market for the hop-on/hop-off double-decker tour bus business segment is not the same kind of bus business segment as carrying passengers from New York City to Washington, DC or Boston, MA. The sightseeing double-decker tour buses allow passengers to board and un-board (hop-on/hop-off) the buses at short intervals along a tour route and allow ticketed passengers to board any bus along the tour route for the sightseeing tour purchased.

To further explain why Twin America operates in various relevant product segment markets, instead of a single product market that includes all transportation and tour services, it is helpful to understand the different market segments in which Twin America's competitors participate and the particular products which they provide. For example, both On Board New York Tours and Big Taxi Tours were identified by the applicants as Twin America competitors in the Application (Application, pg. 11). On Board New York Tours serves in the destination-specific shuttle bus tour segment market and Big Taxi Tours serves the double-decker bus tour market. That is, customers using the double-decker product would be able to catch any double-decker bus at any of the designated tour stops with an average waiting time of about 15 minutes, while the shuttles for the On Board New York Tours are scheduled to leave roughly 4 times a day and customers stay on the same bus and do not have the option to decide how long to stop at a particular destination. Hence, Twin America services various product segment markets instead of one product market that includes all transportation and tour services.

With access to only limited information on the various product market segments which IBS and City Sights service, market shares are only calculated for the "double-decker" market as an illustration of the impact on market power of approving the Application. According to the Application, both IBS and City Sights were active participants in the "double-decker" product segment market. (Application, pg. 11). Applicants state that Twin America was formed because of "a declining revenue base due to a drop-off in tourism in the New York City area." (Application, pg. 10). Thus, the market share calculation treats New York City as the geographic market.

Without any financial information from the applicants and any of its competitors in the market, the market shares were estimated using the number of major geographic routes,³ which are covered by providers in the market. The major geographic routes are the (i) Downtown Loop, (ii) Uptown Town Loop, (iii) All Around Town Loop, and (iv) Brooklyn Loop. The estimated market shares indicate that even without the approval of the joint control, Stagecoach already owns roughly 44.5% of the market through its association with Gray Line, while City Sights owns about 44.5% of the market. The remaining 11% of the market is owned by Big Taxi Tours. The approval of the Application will solidify the applicants' control to approximately 89% of the market share (See summary Tables 1 and 2 below with the estimates of market share). Additionally, approval of the Application will endorse a monopoly in three out of the four major

³ Information was collected from each of the provider's internet websites. City Sights. October 23, 2009. <http://www.citysightsny.com>. Grey Line New York. October 23, 2009. <http://www.newyorksightseeing.com> Big Taxi Tours. October 23, 2009. <http://www.bigtaxitours.com/Packages.htm>.

routes. That is, the Uptown Loop, All Around Town Loop and Brooklyn Loop will be controlled by the applicants alone, with the majority of the Downtown Loop controlled by the applicants as well.

Table 1:

	<u>CitySights</u>	<u>Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Loop</u>
Downtown Loop	1	1	1	3
Uptown Loop	1	1		2
All Around Town Loop	1	1		2
Brooklyn Loop	1	1		
Total by Company	4	4	1	9
Estimated Market Share	44.5%	44.5%	11%	100%

Sources

City Sights October 23, 2009 <http://www.citysightsny.com>

Grey Line New York October 23, 2009 <http://www.newyorksightseeing.com>

Big Taxi Tours October 23, 2009 <http://www.bigtaxitours.com/Packages.htm>

Table 2:

	<u>CitySights & Gray Line</u>	<u>Big Taxi Tours</u>	<u>Total by Tour Type</u>
Downtown Loop	2	1	3
Uptown Loop	2		2
All Around Town Loop	2		2
Brooklyn Loop	2		2
Total by Company	8	1	9
Estimated Market Share	89%	11%	100%

Sources

City Sights October 23, 2009 <http://www.citysightsny.com>

Grey Line New York October 23, 2009 <http://www.newyorksightseeing.com>

Big Taxi Tours October 23, 2009 <http://www.bigtaxitours.com/Packages.htm>

b. Approval of the Application Would Increase Barriers to Entry and/or Assert Negative Impacts on Employees

The applicants claim that the joint control would allow them to achieve significant economies and cost savings by combining their common management and purchasing activities. The applicants claim that they have already achieved savings on purchases of fuel and spare parts since entering into the joint venture agreement and that they are also expecting to save on insurance and advertising costs in the future (Application, pg. 10). Unless the applicants lowered the number of buses running and/or reduced current employee levels after consolidating their operations, the reported cost savings in fuel, spare parts and insurance purchases could probably only have been generated by receiving volume discounts. This indicates that the approval of the application would likely significantly increase the barriers to entry into the market by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts that further enhance its competitive position in the "double-decker" market.

As for the anticipated savings on advertising costs suggested by the applicants, these could likely be achieved either by consolidating the number of advertisements, or by firing advertising/field sales personnel who are currently employed by Twin America. The applicants further suggest that the joint control could eliminate duplicative "back office" administrative functions, including accounting, sales, and IT functions. Unless these back office functions are currently out sourced rather than performed in house by Twin America employees, eliminating these function will likely mean layoffs of Twin America employees.

Any cost savings, if any, would only benefit the applicants and not the consumers unless the applicants were to pass on the savings to consumers in the form of lower prices for their products. Economic theory suggests that businesses strive to maximize their profits. Businesses would thus be inclined to boost their profit margins by keeping any realized cost savings unless they are faced with competitive pressure to lower prices. That is, the likelihood of passing on cost savings increases with the level of competition. This suggests the approval of the Application will lower the applicants' incentive to pass on any cost savings in the double-decker market since the approval will affirm the applicants' control of nearly 90% of the market as explained in the previous section. Hence, the applicants anticipated cost savings in the double-decker market come from the cost of (i) increased barriers to entry through volume discount contracts; (ii) firing of Twin America's employees and/or reducing the hours or wages of Twin America's employees; and/or (iii) reducing the number of buses or frequency of tours. Eliminating buses or tours could decrease the adequacy of the service since it would increase waiting time and/or lower the number of stops available within a route.

c. Horizontal Agreement By Competitors of Sightseeing Hop-on/Hop-off Tours Primarily By Double Decker Buses

The joint venture as structured in March, 2009 gave IBS, a subsidiary of Coach USA and City Sights Twin each a 50 percent share of the voting rights in Twin America. The joint venture gave Coach USA a 60 percent share and City Sights Twin a 40 percent share of the economic rights.⁴

⁴ Article from www.busride.com, "Stagecoach Group, CitySights NY form Twin America in joint venture," March 18, 2009 and parties' Application, pg. 3

Currently, the joint operation by two direct competitors of tour guided sightseeing hop-on/hop-off tours primarily by double-decker buses in New York City gives the entities the power to restrict competition for double-decker bus tour ticket prices and marketing to customers. Dividing profits by competitors are a disincentive to compete on price. Both competitors can remain static on price or have price differentials relative to each other but the profits would always be divided the same, 60/40 amongst the two direct competitors.

Coordinated action by two direct competitors can also eliminate competition for marketing with ticket selling partners such as hotel concierges, museums, helicopter and boat tour operators, etc. Coordinated action may foreclose new entrants from gaining access to a network of hotel lobby ticket counters, hotel concierges, and travel agents to sell sightseeing tours because of volume discounts, exclusivity or lack of bargaining power.

JURISDICTION

With due deference to the STB, the NYSAG disagrees with the applicants' assertion that the NYSAG does not have jurisdiction over the parties under the present facts.

a. Twin America, Inc., CitySights LLC and City Sights Twin Are Not Interstate Passenger Carriers

As the STB recognized in its Sept. 15, 2009 Decision, the parties do not provide specific information detailing the authority under which the various interstate transportation services operate. Although Twin America recently filed with the FMCSA to obtain appropriate operating authority after our subpoenas, we are not aware of CitySights LLC or City Sights Twin as having had appropriate interstate operating authority either. Applicants state that City Sights Twin, a non-carrier, now provides interstate transportation services previously provided by CitySights LLC.

We are not persuaded that CitySights, LLC, City Sights Twin and Twin America were interstate passenger carriers when we subpoenaed the parties. Although Coach USA and its parent Stagecoach plc controlled interstate passenger carriers, the joint venture they entered into with City Sights Twin in March, 2009, did not involve interstate transportation because the parties' sightseeing double-decker tour buses in New York City did not carry passengers interstate. Also, the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate.

We believe Twin America was formed by the parties to jointly operate their respective sightseeing hop-on/hop-off tours primarily by double-decker buses and other vehicles in the 5 boroughs of New York City.

b. The March, 2009 "Joint Venture" Transaction is Not Interstate

The parties' respective hop-on/hop-off double-decker bus sightseeing tours of New York City did not carry passengers interstate

As noted above, the hop-on/hop-off double-decker bus sightseeing service is not the same service as transportation services carrying passengers interstate. The sightseeing double-decker

tour buses in New York City allow passengers to board and un-board the double-decker buses at specific tourist attractions along a specified tour route, at short intervals. The New York City sightseeing tours by double-decker buses did not carry passengers out of New York State, let alone New York City.

Although the parties enumerate various services as part of Twin America's tourism services to give the semblance of interstate transportation, such as garaging buses in New Jersey, we believe the crux of the joint venture concerned the sightseeing hop-on/hop-off tours primarily by double-decker buses in the 5 boroughs of New York City. Characterizing a New York City transaction as an interstate motor passenger carrier transaction should not trigger STB jurisdiction and avoid antitrust scrutiny.

c. Approval of the Application is Not in the Public Interest

The parties state in their Application that "a grant of this Application will not only comport with the requirements of section 14303, but underscore the role of the Board in connection with transactions of the sort that led to the formation of Twin America." (Application pgs. 15-16).

While underscoring the role of the STB, we are not aware of any filing made to the STB by the parties or any approval by the STB for the March, 2009, joint venture formation of Twin America under 49 USC § 14302, if such a filing were required for the pooling and division of transportation or earnings. The role of the STB may have been critical at that juncture had a filing been made because one of the standards for approval by the STB under 49 U.S.C. § 14302 is whether the transaction will not unreasonably restrain competition. While the parties have now filed the Application under 49 U.S.C. § 14303 and state that the transaction is consistent with the public interest, we disagree. The elimination of competition is not in the public interest.

A signed copy of the March, 2009 joint venture agreement and its exhibits may already have been submitted by the parties for STB review.

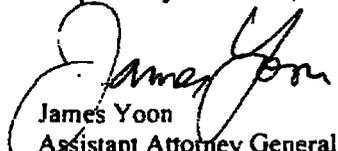
d. Jurisdictional Issues Not Resolved

"Applicants submit that the Transaction is subject to the Board's exclusive jurisdiction and will be pursuing that issue with the New York Attorney General." (Application, pg. 15). At present, since our meeting with the parties on August 19, 2009, we have only agreed to disagree as to jurisdiction. We believe that we have jurisdiction over the parties conduct concerning the formation and the subsequent joint activities of Twin America.

Consequently, the NYSAG believes the STB should find that under the present facts, the NYSAG has jurisdiction and should deny the parties' Application for control of Twin America LLC and restore competition for tour guided sightseeing by double-decker buses in New York City. In the alternative, the STB should condition the approval of the Application by ordering a divestiture of the tour guided sightseeing business by double-decker buses in the 5 boroughs of New York City from the transaction.

DATED: November 2, 2009

Respectfully submitted,


James Yoon
Assistant Attorney General
Antitrust Bureau

Kitty Kay Chan
Director of Economics
Antitrust Bureau

State of New York
Office of the Attorney General
Antitrust Bureau
120 Broadway, Suite 26C
New York, NY 10271
Tel: (212) 416-8822
Fax: (212) 416-6015

For ANDREW M. CUOMO
Attorney General
State of New York

Exhibit B

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Expedia Traveldesk License Agreement (the "Agreement"), dated December 30, 2005 as amended by the Novation Agreement (the "Novation") dated December 2006 by and between Continental Guest Services Corp ("CGS") successor to Travelscape, LLC d/b/a Expedia Travel ("Expedia") and Lexington Hotel, LLC as successor to Lexington Hotel Operating Lessee, LLC (the "Operator") with respect to the property commonly known as Radisson Lexington with an address of 511 Lexington Avenue, New York, NY 10017 (the "Property")

Ladies and Gentlemen:

Highgate Oxford Management Company, LLC manages the Radisson Lexington Hotel for Operator and this letter is written on behalf of Operator.

Operator exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Donald Sheneman at 212-755-4400 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY, LLC

By: 

Name: Steve Barick

Title: Chief Operating Officer

cc: Donald Sheneman
Steve Barick
Sam Bhadha
Kurien Jacob

1568 BROADWAY HOTEL MANAGEMENT, LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
New York, NY 10036

Re: Termination of License Agreement (the "Agreement"), dated April 11, 2007, by and between Times Square Hotel Operating Lessee LLC. (the "Licensor") and Continental Guest Services, Corp. (the "Licensee") with respect to the property commonly known as Doubletree Guest Suites Times Square, New York, NY (the "Hotel").

Ladies & Gentlemen:

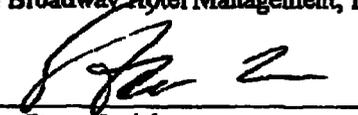
1568 Broadway Hotel Management LLC manages the Hotel on behalf of Licensor.

Licensor hereby exercises its right to terminate the Agreement effective March 15, 2010.

Please contact Sam Grabush at 212-403-6310 if you have any questions.

Sincerely,

1568 Broadway Hotel Management, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

BATTERY PARK HOTEL MANAGEMENT, LLC

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated October 2, 2006, by and between Battery Park Hotel Management, LLC (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Embassy Suites Hotel with an address of 102 North End Avenue, New York, NY (the "Property")

Ladies and Gentlemen:

Battery Park Hotel Management, LLC, hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Mark Miller @ 646-769-4416 if you have any questions.

Sincerely,

BATTERY PARK HOTEL MANAGEMENT, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Mark Miller
Geoffrey Mills
Steve Barick
Kurien Jacob

PARK CENTRAL MANAGEMENT LLC

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Lease Agreement (the "Agreement"), dated November 22, 2005, by and between Park Central Hotel (PCH), LLC (the "Landlord") and Continental Guest Services, Corp. (the "Tenant") with respect to the property commonly known as Park Central Hotel with an address of 870 7th Avenue @ 66th Street, New York, NY (the "Hotel")

Ladies & Gentlemen:

Park Central Management LLC, d/b/a Park Central Halifax Management LLC manages the Hotel for Landlord and this letter is written on behalf of Landlord.

Landlord hereby exercises its right to terminate the Agreement effective May 15, 2010

Please contact Mickey Schneider at 212-707-5028 if you have any questions.

Sincerely,

Park Central Management, LLC d/b/a
Park Central Halifax Management, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Mickey Schneider
Steve Barick
Kurien Jacob

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

February 8, 2010

**VIA OVERNIGHT COURIER AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang

Re: Termination of Continental Guest Services Desk License Agreement (the "Agreement"), by and between W2001 Metropolitan Hotel Operating Lessee, LLC (the "Hotel Operator") and Continental Guest Services Corporation (the "Operator") dated May 1, 2007, with respect to the property commonly known as Doubletree Metropolitan Hotel (the "Hotel") with an address of 669 Lexington Avenue, New York, NY 10022

Ladies and Gentlemen:

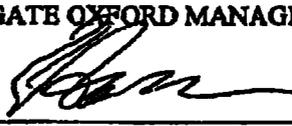
Highgate Oxford Management Company II, LLC manages the Hotel on behalf of the Hotel Operator and this letter is written on behalf of the Hotel Operator.

Hotel Operator hereby elects to terminate the Agreement effective May 15, 2010.

Please contact Mauricio Patino at 212-350-6004 if you have any questions.

Sincerely,

HIGHGATE OXFORD MANAGEMENT COMPANY II, LLC

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Mauricio Patino
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), by and between New York West 35th Street HGI (the "Hilton Garden Inn") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hilton Garden Inn 35th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

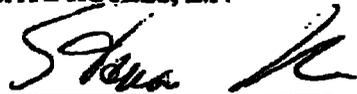
Highgate Hotels, L.P. manages the hotel for RLJ III – HGN Manhattan Lessee, LLC, d/b/a New York West 35th Street HGI ("HGI") and this letter is written on behalf of HGI.

The above referenced agreement expired January 29, 2010 and HGI hereby elects not to renew the agreement and demands that you vacate the premises by March 15, 2010.

Please contact Hilda Garvey @ 212-609-1030 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Hilda Garvey
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attr: Betty Zhang

Re: Termination of License and Concierge Services Agreement (the "Agreement"), dated January 1, 2009, by and between Thirty East 30th Street Owner, LLC (the "Hotel") and Continental Guest Services Corporation (the "Operator") with respect to the property commonly known as Hotel 30 30 with an address of 30 East 30th Street, New York, NY (the "Property")

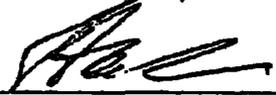
Ladies & Gentlemen:

Highgate Hotels, L.P. manages the Property for Hotel and this letter is written on Hotel's behalf. Hotel hereby elects to exercise its right to terminate the Agreement effective April 15, 2010.

Please contact Florencio Ferrao at 212-651-3880 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: Florencio Ferrao
Sam Bhadha
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 8, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services, Corp.
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Chief Executive Officer

Re: Termination of The Paramount Hotel New York and Continental Guest Services Corp. (the "Agreement"), by and between The Paramount Hotel New York (the "PH") and Continental Guest Services, Corp. (the "CGS") with respect to the property commonly known as The Paramount Hotel with an address of 235 West 46th Street, New York, NY (the "Hotel")

Ladies and Gentlemen:

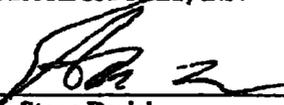
Highgate Hotels, L.P. manages the hotel for Becker-Paramount Fee, LLC, d/b/a The Paramount Hotel ("PH") and this letter is written on behalf of PH.

PH hereby exercises its right to terminate the Agreement effective April 15, 2010.

Please contact Geoffrey Mills at 212-827-4174 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Geoffrey Mills
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hilton Garden Inn Times Square (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019

Ladies and Gentlemen:

Highgate Hotels, L.P. manages the hotel for RPH Hotels 48th Street Owner, LLC, d/b/a Hilton Garden Inn Times Square (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Timothy Dowd at 646-710-5710 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 
Name: Steve Barick
Title: Chief Operating Officer

Cc: _____
Timothy Dowd
Dennis Lanners
Steve Barick
Kurien Jacob

HIGHGATE HOTELS, L.P.

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
Suite 1814
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Concierge Service and Gift Shop Agreement (the "Agreement"), dated September 4, 2007, by and between Hampton Inn Times Square North (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as Hampton Inn with an address of 851 8th Avenue, New York, NY 10019 (the "Property")

Ladies and Gentlemen:

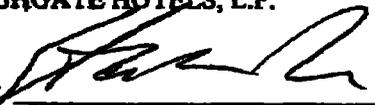
Highgate Hotels, L.P. manages the property for RPH Hotels 51st Street Owner, LLC, d/b/a Hampton Inn Times Square North (the "Hotel") and this letter is written on behalf of Hotel.

Hotel hereby exercises its right to terminate the Agreement effective June 15, 2010.

Please contact Kaizad Charna at 646-710-5840 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

Cc: _____

Kaizad Charna
Dennis Lanners
Steve Barick
Kurien Jacob

February 10, 2010

**VIA OVERNIGHT COURIER
AND CERTIFIED MAIL, RETURN RECEIPT
REQUESTED**

Continental Guest Services Corporation
1501 Broadway
New York, NY 10036
Attn: Betty Zhang, President

Re: Termination of Theatre, Travel & Concierge Services Agreement (the "Agreement"), dated July 11, 2007, by and between OTA Hotel Owner, L.P. d/b/a On The Avenue Hotel (the "Hotel") and Continental Guest Services, Corp. (the "Operator") with respect to the property commonly known as On The Avenue Hotel, New York, NY (the "Property").

Ladies & Gentlemen:

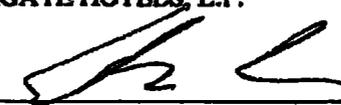
Highgate Hotels, L.P. manages the Property on behalf of Hotel and this letter is written on behalf of the Hotel.

Hotel hereby exercises its right to terminate the Agreement effective May 15, 2010.

Please contact Richard Hotter at 212-651-3308 if you have any questions.

Sincerely,

HIGHGATE HOTELS, L.P.

By: 

Name: Steve Barick

Title: Chief Operating Officer

cc: Richard Hotter
Dennis Lamers
Steve Barick
Kurien Jacob

545 E. John Carpenter Freeway · Suite 1400 · Irving, Texas 75062
Telephone: (972) 444-9700 · Facsimile: (972) 444-9210