

**AMERICAN ARBITRATION ASSOCIATION**

YOEL GOLDMAN,  
personally, and on behalf of Wythe Berry LLC,  
William Vale Hotel LLC, William Vale FNB  
LLC, and North 12 Parking LLC,

AAA No. 01-23-0001-2090

*Claimant,*

vs.

ZELIG WEISS,  
personally, and Wythe Berry LLC, William Vale  
Hotel LLC, William Vale FNB LLC, and North  
12 Parking LLC as nominal defendants,

*Respondent.*

**AMENDED DEMAND FOR ARBITRATION**

Claimant Yoel Goldman (“Goldman”), by and through his counsel, Dechert LLP, notices and demands arbitration of several disputes with Respondent Zelig Weiss (“Weiss”) concerning their joint venture concerning a Brooklyn hotel. The Parties agreed to arbitrate in this forum, as documented in the Wythe Berry LLC Operating Agreement, last amended in December 2016 (the “Fifth Amendment”), and subsequently extended, in a February 2017 Deed of Acknowledgement, Understanding and Clarification (the “Side Agreement”), to cover all potential disputes between Goldman and Weiss, regardless of entity, in any way related to the Parties’ joint hotel venture.<sup>1</sup>

**NATURE OF THE ACTION**

1. Claimant Goldman demands arbitration to resolve a series of disputes with Respondent Weiss, Goldman’s business partner in the joint venture for The William Vale hotel

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<sup>1</sup> A compilation exhibit containing the Wythe Berry LLC Operating Agreement, and its amendments, is attached as Exhibit A. The Parties’ Side Agreement, together with a certified translation of the Side Agreement, is attached as Exhibit B.

real estate complex (“Hotel venture”), because of a series of actions by Weiss that violate his contractual and fiduciary duties to Goldman, and to the joint venture Companies.<sup>2</sup>

2. The William Vale is a premier hotel located in Brooklyn. The William Vale sits on a real estate complex along with a restaurant, parking garage, retail, offices and a community facility, (the “Hotel complex”) all owned and operated jointly by Goldman and Weiss (collectively, the “Parties”). Claimant Goldman funded the development and construction of the Hotel venture through a combination of third-party financing and his own personal capital. Weiss, who had been Goldman’s partner in other ventures, was tasked with managing the day-to-day operations of the Hotel venture. As described below, Goldman and Weiss both own the Hotel venture in a joint venture, which operates through several entities, including one entity whose purpose was to lease the Hotel complex premises from the Parties’ property-owning entity and then re-lease the space to the Parties’ jointly-held operating companies (i.e., the Companies).

3. Since the project’s inception in 2013, Goldman arranged funding for the Hotel venture without any, or any meaningful, financial contribution from Weiss. Under their explicit agreements, Goldman has extensive rights to information about the operations and finances of the Hotel venture and express approval rights regarding fundamental decisions impacting their joint venture. Despite these unequivocal rights—and Goldman’s repeated attempts to invoke them—Weiss has (for years at this point) repeatedly stonewalled Goldman’s attempts to get information while mismanaging the Hotel venture for his own benefit—in direct violation of the Parties’ written agreements and Weiss’s fiduciary obligations to Goldman and the Companies. Weiss’s behavior resulted in the operating entities, of which Weiss is the Managing Member, becoming

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<sup>2</sup> “Companies” refers to Wythe Berry LLC, the William Vale Hotel LLC, William Vale FNB LLC, and North 12 Parking LLC, collectively.

subject to a contempt order in a separate litigation for his failure to disclose some of the same secreted Hotel-related financial information. He has similarly disregarded repeated orders to make full disclosures to Goldman in this arbitration. As described herein, this ongoing pattern of unlawful activity and strategic delay in various proceedings has been part of a scheme by Weiss to enrich himself to the exclusion of Goldman, and to the detriment of the Companies. If they have not already, Weiss's actions will soon irreversibly dispossess Goldman of his interests in the Hotel venture.

4. Although the history and structure of the Parties' Hotel venture are complex, in essence, the dispute here arises out of contractual and fiduciary duties that govern two sets of interlocking entities and ownership interests Goldman and Weiss have used to finance, hold, and operate their Hotel joint venture.<sup>3</sup> One set of interests consists of entities that **operate** the Hotel venture. The other set of interests concerns the **fee ownership** of the Williamsburg property, where the Hotel venture now sits and operates ("Property"). The fee ownership is encumbered by a Note and Mortgage that Weiss caused to go into default and failed to cure. Eventually, the creditors holding the Note and Mortgage ("Bondholders") commenced involuntary bankruptcy proceedings against the fee-owning entity which holds the fee simple interest of the Property.<sup>4</sup> At that point, Weiss further engaged in self-serving misconduct to ensure he remained the only person with access to the Hotel venture's complete records. He then leveraged that sole-access in self-serving negotiations with Bondholders to purchase their interests in Hotel Property. As described further herein, those negotiations apparently failed once the Panel enjoined Weiss from finalizing

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<sup>3</sup> A visual representation of the entity structure for the Hotel venture is attached as Exhibit C.

<sup>4</sup> See *In re Wythe Berry Fee Owner, LLC*, Case No. 22-11340-mg, (S.D.N.Y. Bankr. Oct. 6, 2022) ("Involuntary Proceeding").

any such transaction without making a full disclosure to Goldman. The Bondholders now taking steps to remove Weiss from his management stranglehold on the Hotel complex by removing the jointly held Companies from the Property entirely.

5. Weiss holds his interests in the fee ownership personally. Goldman's interest in the fee ownership was held indirectly through All Year Holdings Limited ("AYH")—Goldman's real estate holding entity that reorganized in bankruptcy proceedings that began in 2021. As discussed further herein, in connection with that AYH bankruptcy, Goldman lost direct control of his interests in the Hotel complex fee ownership. Although Weiss has in recent months taken several improper and illegal steps seeking to acquire that interest from the Bondholders, his attempts to purchase that interest have reportedly stalled. Thus, for the moment, the fee is half-owned by Weiss; and the Bondholders control the other half.

6. The operating entities, by contrast, have always each been owned equally by Weiss and Goldman individually. It is Weiss's conduct in his capacity as Managing Member of the operating company interests (including Weiss's self-serving use of his role to enrich himself at Goldman's expense and pursue Goldman's half of the fee ownership) that is the subject of this arbitration.

7. The operating interests are owned by the individual Parties equally and connect to the fee ownership interests through a ground lease. The fee owner leases the Hotel venture property to Wythe Berry LLC ("Wythe Berry"), which is the entity that originally developed the Property and has always been funded predominantly by Goldman – but whose day-to-day operations are handled by Weiss, as Managing Member. The ground tenant entity (Wythe Berry) operates the Hotel complex through three other operating LLCs, collectively encompassing a hotel,

restaurant, parking garage, retail, offices, and community facility.<sup>5</sup> All four of these lessee/operating companies are owned equally by Weiss and Goldman (individually), meaning they are not assets of the AYH bankruptcy estate.

8. Under the ground lease (“Lease”), the lessee (Wythe Berry) must make biannual payments of \$7.5 million to the lessor (Wythe Berry Fee Owner LLC) (“Fee Owner”), plus pay additional rent covering all expenses, of every kind and nature arising from the Property.

9. These rent payments were meant to cover the semi-annual payments due to the Bondholders. In practice, however, Goldman did not require Wythe Berry to make the full semiannual payments of \$7.5 million to Fee Owner. Instead, when bond payments were nearing due, Goldman would approach Weiss with the amount due to determine how much money was available in the Companies’ accounts. If there was not enough money in the Companies’ accounts to satisfy the bond payment, Goldman would find funds elsewhere to satisfy the bond payment. The funds were then transferred to AYH, which coordinated the payment to the Bondholders.

10. On at least one occasion, in 2019, Weiss knowingly and deliberately misrepresented the state of those accounts, and then caused the transfer of millions of dollars from Company accounts to an account of Weiss’s wholly-owned companies, forcing Goldman to incur indebtedness on adverse terms in order to cover the shortfall necessary to stave off default on the Hotel venture’s financing.

11. Later, in 2021, Weiss caused the lessee (Wythe Berry) to stop making payments on the Lease altogether—although he has since revealed that the Companies could have done so. As

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<sup>5</sup> The operating LLCs are The William Vale Hotel LLC (“WVH”), the William Vale Hotel FNB LLC (“FNB”), and North 12 Parking LLC (“North 12”) (collectively, the “Operating Affiliates”). The William Vale Hotel LLC Operating Agreement is attached as Exhibit D, The William Vale Hotel FNB LLC Operating Agreement is attached as Exhibit E, and The North 12 Parking LLC Operating Agreement is attached as Exhibit F. The operating agreements for the three Operating Affiliates (the “Operating Affiliate Agreements”) include substantially similar terms.

a result, the Bondholders controlling Goldman's former real estate holding company, who had gained control of the lessor on the Lease (i.e., Fee Owner), commenced a rent default action in New York Supreme Court seeking to eject Wythe Berry, the ground tenant of the Hotel complex.

12. For years, Weiss strategically delayed that proceeding and refused to turn over information about the Hotel venture's profitability.<sup>6</sup> Meanwhile, Weiss (in violation of a provision of the Parties' operating agreement) began secretly attempting to purchase (at a fire sale price) that same interest.

13. Weiss's ploy eventually failed, but not before his scheme created another crisis that he then tried to exploit. Withholding rent on the ground lease caused Fee Owner to default on its own financing arrangement; and Fee Owner's creditors (i.e., bondholders who had not been paid for years) commenced an involuntary bankruptcy proceeding against Fee Owner.<sup>7</sup>

14. Weiss then pivoted to a new approach, no less disloyal. Specifically, with Fee Owner in involuntary bankruptcy, Weiss began attempting unilaterally, separate from his role as Managing Member of the Companies, to purchase Fee Owner's assets, i.e., the fee interest in the Hotel complex. He did so in violation of the Parties' operating agreement and his fiduciary duties. Weiss's scheme eventually failed, and the bankruptcy court has now ruled on Fee Owner's motion for summary judgment the *Wythe v. Wythe*, declaring the Lease terminated. *Wythe v. Wythe*, Adv. Pro. Case No. 23-01012, Dkt. 45 (Oct. 5, 2023) ("Order Granting Summary Judgment").

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<sup>6</sup> The rent default action was removed to federal bankruptcy court and is now proceeding as an adversary proceeding related to Fee Owner's involuntary bankruptcy proceeding: *Wythe Berry Fee Owner v. Wythe Berry*, Adv. Pro. Case No. 23-101012 (S.D.N.Y. Bankr. Feb. 13, 2023). ("*Wythe v. Wythe*").

<sup>7</sup> See *In re Wythe Berry Fee Owner, LLC*, Case No. 22-11340-mg, (S.D.N.Y. Bankr. Oct. 6, 2022) ("Involuntary Proceeding").

15. All the while, Weiss was strategically controlling, withholding, and manipulating information about the Hotel venture finances to extract personal gain, to the exclusion of Goldman.

16. In early-2023, Weiss reached an agreement to share the Hotel venture's financial information with Fee Owner's creditors, as he attempted to strike a deal to purchase their interests or reach some other unilateral resolution with respect to the Hotel venture. He did so in a way that cut off the rest of the world—including Goldman—from that same information.

17. Putting aside that this makes for an unfair process, this is particularly disloyal and unlawful as to Goldman because the Parties have several operating agreements that expressly entitles Goldman to this same information on a regular basis.

18. By ensuring the financial information regarding the Hotel venture is not shared with any other interested party, Weiss positioned himself as the only party with enough information regarding the Hotel venture's finances to undertake a transaction with respect to the fee ownership. This was part of Weiss's continued effort to block others, including Goldman, from accessing the information necessary to make an informed bid or otherwise negotiate with Fee Owner's creditors.

19. Weiss has done all of this in violation of his fiduciary duties in addition to an agreement he had with Goldman, essentially vesting in Goldman control over funding, financing, and refinancing matters, and requiring both Parties' consent before making a "Major Decision" (defined in the agreements and described in relevant part below) concerning the Hotel venture. Instead, Weiss arrogated for himself control over every Major Decision concerning the Hotel venture, and was (and still is) concealing information about the Hotel venture's finances in a scheme to enrich himself and force out Goldman. In doing so, his actions have caused the Parties' loss of control and interests in the Hotel complex.

20. To date, Weiss has refused to provide Goldman with a full accounting of the Parties' jointly owned entities (despite several Orders in this arbitration requiring him to do so); has violated the Parties' operating agreements by refusing to consult with or secure approval from Goldman for transactions that are "Major Decisions" under the Parties' agreements; has exacerbated Goldman's financial distress in an attempt to increase his own interests in the Hotel venture to the exclusion of Goldman; and has mismanaged the Companies, including by improperly diverting Company assets in ways that are to his own exclusive benefit.

21. But, as Goldman has learned, Weiss's lawless conduct did not start here. In fact, for years, in violation of his contractual and fiduciary duties, Weiss secretly and improperly diverted Hotel venture cash flows for his own exclusive benefit to the exclusion of Goldman, and withheld distributions from Goldman in violation of his fiduciary duties and the Parties' agreed-upon distribution scheme for Hotel venture.

22. Weiss has also failed to properly maintain the books and records of the Companies, including but not limited to comingling of Company funds and records, and mismanagement of the Companies' capital accounts for his own exclusive benefit, in violation of his contractual and fiduciary duties to the Companies and Goldman.

23. Accordingly, because Goldman and Weiss have agreed to submit any disputes related to the Hotel venture for resolution in this forum, Goldman demands arbitration to address Weiss's many contractual and fiduciary violations, including (i) Weiss's strategic manipulation and withholding of information about the Hotel venture to prevent Goldman from developing a competing bid or alternative transaction so that he may recover his half of the Hotel Property (which is now controlled by Fee Owner's creditors), (ii) Weiss's attempts to pursue a purchase of Hotel-related interests without Goldman's express consent, in violation of the Hotel venture



operating agreements (described in detail below), (iii) Weiss's duplicitous diversion of Hotel venture assets and cash flows, (iv) Weiss's mismanagement of the Companies, and (v) Weiss's actions that have now lost the Parties' control over the Hotel complex.

24. On his own behalf, and, where specified herein on behalf of the Companies, Goldman seeks, and is entitled to, equitable relief and damages in an amount to be determined by the arbitrator(s), including following an equitable accounting and Weiss's full disclosure of the relevant Hotel venture records, which he has been withholding in bad faith, as described below.<sup>8</sup>

25. In light of the Panel's Procedural Orders, Weiss has made some book and records productions which have given rise to several substantial new claims since Goldman's original Demand in light of the information obtained. However, since Weiss's disclosures of the books and records remain incomplete, Goldman reserves the right to further supplement and amend this Amended Demand when he obtains full and complete access to the books and records of the Companies.

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<sup>8</sup> In order to obtain financial information regarding the Hotel venture and to prevent Weiss from entering into a transaction divesting Goldman of his interests in the venture before AAA could order relief, Goldman commenced an Article 75 special proceeding in the New York Supreme Court seeking a preliminary injunction and discovery in aid of this arbitration. For the better part of a year, Weiss repeatedly and strategically delayed the special proceeding, as he has done in this arbitration, to prevent Goldman from obtaining information he is contractually entitled to receive, and to exclude Goldman from Major Decisions regarding the Hotel venture, as Weiss attempted to seize control of the Hotel for himself. *See Goldman v. Weiss*, Index No. 65186/2022 (N.Y. Sup. Ct. Sept. 1, 2022). Goldman's Verified Petition, in the Article 75 special proceeding *Goldman v. Weiss*, Index No. 65186/2022 (N.Y. Sup. Ct. Sept. 1, 2022) is attached as Exhibit G.

**THE PARTIES**

26. Claimant Yoel Goldman is an individual residing in Brooklyn, New York. His address and contact information are as follows:

- a. Address: 12 Spencer Street, 4th Floor, Brooklyn, New York 11205
- b. Telephone: 718-809-3768
- c. Fax: None
- d. Email: [y3768g@gmail.com](mailto:y3768g@gmail.com)

27. Goldman is represented by the undersigned counsel.

28. Respondent Zelig Weiss is an individual residing in Brooklyn, New York. His address and contact information are as follows:

- a. Address: 50 Skillman Street, #1, Brooklyn, NY 11205
- b. Telephone: 917-684-8399
- c. Fax: None
- d. Email: [zelig@riversideny.com](mailto:zelig@riversideny.com)

29. Weiss is represented by the following counsel:

Jon Schuyler Brooks  
Abramson Brooks LLP  
1051 Port Washington Blvd. #322  
Port Washington, NY 11050  
Telephone: (516) 455-0215  
Email: [jbrooks@abramsonbrooks.com](mailto:jbrooks@abramsonbrooks.com)

30. The Companies (defined below) are now added as Respondents in connection with this Amended Demand, as described below in the section describing Goldman's claims and requested relief.

## **FACTUAL BACKGROUND**

### **The History and Structure of the Parties' Hotel Venture**

31. In 2013, Goldman and Weiss partnered to purchase land for and to develop a luxury hotel located at 55 Wythe Avenue, Brooklyn, New York, also known as 111 N. 12th Street, Brooklyn, New York (Block 2283, Lot 1) (the "Property"). After acquiring the land, Goldman and Weiss developed the Property into The William Vale, a hotel complex that opened in 2016. The Hotel venture encompasses several business lines, including a traditional hotel, supporting food and beverage space and operations, retail space, office space, and a parking lot.

32. Formed in September 2013, the Parties' oldest and primary entity through which they have operated the Hotel venture is Wythe Berry. Goldman and Weiss each own a 50% interest. As Managing Member, Weiss is responsible for day-to-day management of the business, and Goldman, who was solely responsible for funding the venture and contributed his own capital to it, has the authority to oversee matters relating to funding, financing, and refinancing the Hotel venture.

33. Over time, the Parties' formed several more entities to develop, hold, and operate the Hotel complex.

34. In late-2016, the Parties agreed to a re-financing arrangement to refinance the Hotel venture's original construction financing. The new arrangement altered the venture's original structure and transferred title of the Property to a yet-to-be-formed entity. In connection with that planned re-financing, the Parties amended the Wythe Berry Operating Agreement, effective on December 31, 2016 and executed on February 9, 2017, to account for this change in organization, as well as to ratify the creation of several entities that operate space assigned to the Hotel complex's various functions. *See* Ex. A, Fifth Amendment. The William Vale Hotel LLC

(“WVH”) operates the Hotel space used as hotel accommodations for guests. The William Vale FNB LLC (“FNB”) operates the property’s food and beverage space. And North 12 Parking LLC (“North 12”) operates the facility’s parking garage. The WVH and North 12 sublease the space they need to perform their assigned functions from the Parties’ original entity, Wythe Berry. *Id.* ¶ 7(d). Wythe Berry also subleases office and retail space at the Hotel complex to other third-parties. FNB subleases the Hotel restaurant and food and beverage spaces from WVH. *Id.* ¶ 7(d)(iv). As with Wythe Berry, Goldman and Weiss each own a 50% Interest in WVH, FNB, and North 12. Ex. D ¶ 8; Ex. E ¶ 8; Ex. F ¶ 8. Each of the Operating Affiliate Agreements similarly identify Weiss as Managing Member, responsible for day-to-day management of the business, and assign Goldman matters relating to funding, financing, and refinancing. Ex. D ¶ 11; Ex. E ¶ 11; Ex. F ¶ 11.

35. In connection with that refinancing, and in accordance with the Fifth Amendment, the Parties’ altered the Hotel venture’s original structure, forming a new entity, Fee Owner, which acquired title to the Property.

36. Fee Owner then leased-back the Property to Wythe Berry (the “Lease”). Under the Lease, Wythe Berry agreed to pay rent to Fee Owner consisting of two semi-annual \$7.5 million payments plus additional rents covering all expenses arising from the property, including taxes, operating costs, construction costs, repair and maintenance costs. The Lease payments were intended to allow Fee Owner to cover payments for a promissory note issued in connection with the Parties 2017 financing transaction, discussed further below.

37. Contemporaneously with the formation of Fee Owner, the Parties formed Wythe Berry Member LLC (“Member LLC”), which held a 100% interest in the Fee Owner entity.

38. Despite this complicated structure, “[t]he Parties’ intentions were always the same: Goldman (through All Year) and Weiss would partner with each other (and no one else) to continue to co-own (through Fee Owner LLC) and operate (through Wythe Berry LLC)” the Hotel complex. *See* Ex. H, Adversary Proceeding Amended Complaint at ¶ 4.<sup>9</sup>

39. The Parties did ultimately maintain their 50/50 ownership split in the Hotel venture property, albeit indirectly. Goldman and Weiss each held 50% of Member LLC: Weiss held his 50% interest directly; and Goldman held his 50% through an entity (YG WV LLC) that is part of Goldman’s real estate holdings entity, AYH. In turn, Member LLC holds 100% of Fee Owner, and Fee Owner holds 100% of the Hotel property. *See* Ex. C (visual representation of the Hotel venture structure).

#### The Hotel Venture’s 2017 Financing Transaction

40. The Parties’ completed the above-described reorganizations to facilitate a refinancing of the Hotel venture’s original construction loan. From that transaction, Fee Owner ultimately raised \$166 million through a bond offering on the Tel Aviv Stock Exchange (the “Series C Bonds”).

41. The bond issuer was AYH. AYH loaned bond proceeds to Fee Owner, in exchange for a promissory Note from Fee Owner for approximately \$166 million, which was secured by a Mortgage on Fee Owner’s fee simple interest in the Hotel venture Property.

42. AYH later assigned its collateral to Mishmeret Trust Company Ltd. (“Mishmeret”), as trustee for the Series C Bondholders.

#### Weiss’s Manipulation of the Companies’ Accounts

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<sup>9</sup> Weiss’s complaint in the Adversary Proceeding to the *In re All Year Holdings* bankruptcy proceeding, *Zelig Weiss v. All Year Holdings Ltd.*, Adv. Proc. No. 22-01115, Dkt. 10 (S.D.N.Y. Bankr. Aug. 4, 2022) is attached as Exhibit H.

43. Weiss used his position as Managing Member to manipulate the Companies' accounts and hide from Goldman the true state of Companies' financial status early in their joint venture relationship.

44. Following the structure change for the joint venture, in practice, the Parties did not make rent payments to Fee Owner as outlined in the Lease. Payments on the bonds, which would fluctuate from payment-to-payment based on the Dollar-Shekel exchange rate, did not always necessitate the entire \$7.5 million rent payment from Wythe Berry. Rather, in practice, Goldman would approach Weiss when the bond payments were nearing due with the amount due and would inquire how much money was available in the Companies' accounts to satisfy the obligation under the bonds. If there was not enough money in the accounts to satisfy the bond payment, Goldman would find or provide the difference needed to satisfy the bond payment. Ultimately, the funds were transferred to AYH, which coordinated payments to the Bondholders.

45. On at least one occasion, in August 2019, Goldman approached Weiss, as he had for the past several years, inquiring as to what funds were available in the Companies' accounts to satisfy the upcoming \$5.5 million bond payment that was due on August 31, 2019.

46. Based on the (incomplete) productions Weiss has made as a result of the Panel's recent orders, the Hotel venture plainly had access to millions of dollars in August 2019 that could have gone towards its Lease obligation (and thus a bond payment that Weiss knew was due that month).

47. Even so, Weiss repeatedly evaded answering Goldman and would not provide Goldman with information regarding available funds in the Companies' accounts. After weeks of stonewalling, Goldman accessed the one Wythe Berry account to which Weiss had given him

access, found available funds, and transferred \$238,000 on August 14, 2019, to use towards the bond payment due on August 31, 2019.

48. On the same day, to hide from Goldman the true amount of funds that were available in other Company accounts, Weiss caused WVH to transfer \$4 million from one of its operating accounts to a separate account of Espresso Hospitality Management (“Espresso”) – an entity Weiss wholly owns and controls.

49. To prevent Goldman from discovering what had occurred, Weiss took steps to cover his tracks, including cutting off Goldman’s access to the Companies’ accounts. *See, e.g.*, Ex. N at 70.

50. After emptying the WVH operating account, Weiss knowingly misrepresented to Goldman that the Companies did not have the funds to contribute to the bond payment.

51. Relying on Weiss’s misrepresentation, to avoid default, Goldman was left to obtain the balance of the funds needed for that bond payment (i.e., millions of dollars) from other sources, including loans that had to be taken on short notice, on unfavorable, non-market terms.

52. Less than a month later -- after Goldman came up with the funds to satisfy the bond payment on his own (borrowing on non-market terms) -- Weiss transferred \$4 million back from his separate Espresso account to the WVH operating account.

53. Weiss continued to use his position as Managing Member of the Companies in similar ways designed to enrich himself at the expense of Goldman, all leading to the ultimate default on the bonds and the termination of the Lease.

#### Goldman’s Real Estate Business Becomes Distressed During the 2020 COVID-19 Pandemic

54. Beginning in 2020, the COVID-19 pandemic distressed the real estate sector. For Goldman’s AYH entity, rental incomes slowed or stopped, which cascaded through his operations.

55. Seeking to mitigate the unprecedented cash flow crisis, Goldman diligently explored refinancing alternatives for the Hotel venture – which is a task expressly delegated to him in the Wythe Berry Operating Agreement, as amended. Ex. A, Fifth Amendment, ¶ 7(a). In or around October 2021, Goldman identified a viable alternative funding source that would have facilitated a favorable repurchase of the Series C Bonds, effectively refinancing the outstanding Hotel venture debt.

56. When Goldman attempted to engage with Weiss on such a transaction, Weiss caused the Parties' business relationship to deteriorate further.

57. When Goldman and his team sought access to the Hotel venture's financial information as part of standard due diligence requests from the prospective lender, Weiss and his team outright refused to engage or even respond to several good faith requests from Goldman and his lawyer to access the relevant information. Weiss and his lawyer refused these repeated attempts to access the Hotel venture's financial information, despite (i) Goldman's plain contractual right to the information under the Wythe Berry Operating Agreement, and (ii) the Fifth Amendment expressly identifying Goldman as the member in charge of financing and refinancing for the Property. *See* Ex. I (October 2021 emails).<sup>10</sup>

58. After Weiss refused even to respond to Goldman's attempts to engage on the potential refinancing for the Hotel venture, Goldman's attorney communicated to Weiss's counsel that Goldman had lined up a provisional offer for a \$160 million loan to repurchase the existing Hotel-related debt. As Goldman's attorney explained, the offer was subject to due diligence requirements; time was of the essence; and Weiss had not yet cooperated with, nor even responded

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<sup>10</sup> Attached as Exhibit I is an October 2021 email thread consisting of five messages between Elliot Moskowitz, counsel to Goldman, and Jon S. Brooks, counsel to Weiss.



to, Goldman's attempts to access the information. Ex. I. Weiss's attorney responded, but entirely ignored the request for financial information. Instead, Weiss's attorney maintained (incorrectly and without support) that only Weiss is authorized to speak for or bind Wythe Berry. Ex. I. Despite two follow-up messages from Goldman's counsel, which reiterated the requests and explained why Goldman was entitled to the information, Weiss's lawyer did not respond.

59. Because of Weiss's bad faith refusal to cooperate with or even respond to straightforward information requests from Goldman and his lawyer, Goldman's attempt to refinance the outstanding Hotel venture debt was effectively blocked.

60. Similarly, despite Goldman coming to Weiss with a lucrative offer to sell the Hotel, Weiss stonewalled.

61. Weiss's refusal to engage with Goldman regarding refinancing or potential sale of the Property despite Goldman's repeated and urgent efforts to do so was in violation of his fiduciary duties and caused severe financial repercussions for Goldman, including AYH's default on the Series C Bonds.

62. In fact, with AYH facing financial difficulties, instead of cooperating with Goldman to satisfy the upcoming bond payments, in February 2021, as discussed further below, Weiss caused Wythe Berry to cut off rent payments to Fee Owner under its Lease altogether, which left Fee Owner unable to satisfy its payment obligations under the Note and Mortgage.

63. As a direct and proximate result of Weiss's actions, on March 16, 2021, AYH was required to assign the Note and Mortgage to Mishmeret Trust Company Ltd., an Israeli company serving as Trustee for the Series C Bondholders ("Bondholders"), and Mishmeret became the owner of the Note and Mortgage.

64. The Bondholders then issued notice of default under the Series C Bonds, as well as under the Note issued by Fee Owner.

65. Despite having the funds to cure the default and being well aware of the financial fallout his decisions were causing, Weiss continued to cause the Companies to withhold rent payments and similarly withheld payment of funds that would have been necessary to cure the default – even when the Companies plainly had the funds available to do so and had not satisfied the obligations due under the Lease.

#### The AYH Liquidation and Bankruptcy

66. Weiss's actions as described herein, including the above-described default, materially contributed to the insolvency proceedings that followed. Among other consequences of Weiss's misconduct, Goldman's AYH entity filed a liquidation proceeding in the British Virgin Islands and a chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York in December 2021. *In re All Year Holdings Limited*, No. 21-12051 (S.D.N.Y. Bankr. Dec. 14, 2021).

67. As a result of the default under the Series C Bonds, and the Note issued by Fee Owner, the Bondholders assumed control Fee Owner, and thus the fee simple interest in the Hotel venture.

68. Meanwhile, Weiss continued to contribute to, and sought to capitalize on AYH's financial distress, engaging in impermissible, bad faith conduct designed to benefit himself to the exclusion and detriment of Goldman, all in violation of the Parties' agreements and Weiss's fiduciary duties, as detailed below.

#### Goldman's Continuing Rights Under Agreements with Weiss Relating to the Hotel Venture

69. The Fifth Amendment to the Operating Agreement of Wythe Berry, effective as of December 31, 2016, includes several important terms concerning the Parties' rights and duties concerning the Hotel venture. *See* Ex. A.

70. In connection with the refinancing transaction, to reinforce that the terms of the Fifth Amendment governed the Parties' entire relationship concerning the Hotel business, irrespective of entity, in February 2017, the Parties separately entered into a Deed of Acknowledgment, Understanding, and Clarification (Side Agreement), agreeing that "[i]n any proceeding or hearing between us, from this day forward, on anything related to the said enterprise, land and building [*i.e.*, the Hotel venture]," the "main and principal agreement that shall be determinative and dispositive between us in any case of doubt, dispute, or, G-d forbid, conflict that may perhaps arise . . . shall be only and solely in accord with what is set forth and explicit in the contract that is known and called by the title 'Fifth Amendment Operating Agreement.'" Ex. B ¶ 2.

71. The Fifth Amendment makes clear that, as a 50% Class A interest holder, Goldman is entitled to a significant share of the economics of the Hotel venture. While Weiss has always held the Managing Member role, and therefore administers day-to-day operations, Goldman's rights are not strictly passive. Rather, Goldman has important oversight, information, and decision-making rights.

72. *First*, Goldman retains several express rights to monitor the Hotel venture's financial condition, including access to accurate and timely financial information regarding the books, records, and accounts of the businesses.

73. Goldman's rights to access, and Weiss's duties to disclose, financial information regarding the Hotel venture business include:

- a. Goldman's right to "an unaudited balance sheet and a profit statement as of the end of each month," as well as the right to "such other information as may be reasonably requested";
- b. Goldman's right to "certified public accounts," on an annual basis, within 75 days of the company's fiscal year close, in a report that "shall include a balance as of the end of such fiscal year; a profit and loss statement of the Company for such fiscal year; a statement of the balance in the capital account of such Member; and the amount of such Member's share of the Company's net income, net losses and other relevant items for Federal income tax purposes"; and
- c. Goldman's right to inspect and audit "all" company "records, books of account, tax and information returns, and reports and statements." Ex. A, Operating Agreement ¶ 9.

74. The agreements of the Operating Affiliates include substantially the same terms. *See* Ex. D ¶ 9; Ex. E ¶ 9; Ex. F ¶ 9.

75. In its rulings to date, the Panel has appropriately read these provisions broadly. Emergency Interim Award (May 10, 2023); Procedural Order 1 (Aug. 22, 2023); Procedural Order 2 (Aug. 24, 2023); Procedural Order 4 (Sept. 13, 2023). Yet, even with the Panel's involvement Weiss has continued to give the terms of these important safeguards short shrift.

76. *Second*, the Parties' agreements contain important provisions to protect members from improper financial leakage and the diversion of cash flows. For example, the Wythe Berry Operating Agreement requires that "[a]ll funds of the Company shall be deposited in the Company's name in such bank account or accounts as shall be designated by the Company," and "[w]ithdrawals . . . shall be made only in the regular course of business of the Company and *shall*

*be made upon the signature of the written designee of both Members.”* Ex. A, Operating Agreement ¶ 10. The Operating Affiliate Agreements also require that “[a]ll funds of the Company shall be deposited in the Company’s name in such bank account or accounts as shall be designated by the Company[.]” Ex. D ¶ 10; Ex. E ¶ 10; Ex. F ¶ 10.

77. Moreover, as to distributions to members of the company, “cash receipts derived from operations . . . such as rents, royalties, fees and other revenues” may only be made “in the . . . order of priority” set out in the agreements. Ex. A, Fifth Amendment ¶ 6(a).

78. The Parties agreed that, after required tax distributions, distributions to members who have contributed capital are prioritized over other distributions. *See id.* As of December 31, 2016, when the Wythe Berry Operating Agreement was last amended, Goldman had contributed approximately \$37.5 million in capital, while Weiss had contributed nothing. Ex. A, Fifth Amendment ¶ 2(b).

79. The Operating Affiliate Agreements operate similarly. For example, the Amended and Restated Operating Agreement of the WVH provides that “[a]vailable cash shall be distributed from time to time in the following order of priority . . . First, to all Members in Proportion to their Unreturned Capital Contributions to the extent thereof,” with “[t]he balance to the Members pro rata to their Percentage Interests.” Ex. D ¶ 8. *Accord* Ex. E ¶ 8 (same distribution requirements for FNB that operates restaurant space); Ex. F ¶ 8 (same distribution requirements for North 12 that operates parking facility).

80. *Third*, as to any substantial decision regarding the Hotel venture, defined as “Major Decisions,” the Fifth Amendment prohibits Weiss taking action “without prior written approval of both Class A Members.” Since Goldman is one of the two Class A members, his consent is necessary to approve any “Major Decision.” Ex. A, Fifth Amendment ¶ 7€.

81. The Fifth Amendment defines “Major Decisions” to include virtually all major transactions that would affect either Party’s interests in the Hotel venture, such as:

- (iv) “the decision to obtain, and the terms and conditions of, any mortgage or other refinancing of the Property”;
- (v) “the budgets for any substantial future development or construction projects;”
- (x) “the acquisition of any real property or any option or interest therein, or the exchange of any part of the Land for any other real property”;
- (xi) “the sale, assignment, transfer, exchange or other disposition of the Property or any improvements therein . . .”;
- (xvi) “do[ing] any act in contravention of this Agreement”;
- (xvii) “employ[ing], or permit[ting] the Company to employ, the funds or assets of the Company in any manner except for the exclusive benefit of the Company”;
- (xix) “tak[ing] action which has a disproportionate effect on any Class A Member, or tak[ing] any action with the intent to discriminate in a prejudicial manner with respect to the rights of any Member under this Agreement”; and
- (xxi) “tak[ing] any of the foregoing actions with respect to the Company’s subsidiaries or affiliates in which both Weiss and Goldman own substantial interests.” Ex. A, Fifth Amendment, Schedule 1.

82. Even for non-Major Decisions, the Fifth Amendment affords Goldman significant authority with respect to certain aspects of business. In particular, the Parties agreed that “Goldman shall be responsible for overseeing matters relating to the funding, financing and

refinancing of Property.” Ex. A, Fifth Amendment ¶ 7(a); *see also* Ex. D ¶ 11; Ex. E ¶ 11; Ex. F ¶ 11 (allocating the same duties to Goldman for the Operating Affiliates).

83. Importantly, pursuant to the Parties’ Side Agreement, which they executed shortly after the Fifth Amendment, the Parties agreed that all of the above-referenced rights from the most recently amended version of the Wythe Berry Operating Agreement would extend to and govern either of them, as to *any* conduct, “without exception,” “that ha[s] any relevance to” “the land, the building and all consequential items, rights, and powers of attorney that belong to and are involved with it, at 111 North 12 St, Brooklyn, NY,” *i.e.*, the Hotel. Ex. B at 1. In the Side Agreement, the Parties made clear that these terms from the most recently amended Wythe Berry Operating Agreement govern the rights and duties of each Party personally, as well as those of “all the corporations registered under our names, whether in whole or in part.” *Id.*<sup>11</sup> Therefore, when it comes to the Hotel venture, Weiss’s duties to Goldman are the same regardless of whether Weiss purports to be acting individually or on behalf of some other entity. And Goldman’s rights relating to the Hotel venture apply regardless of the entity at issue.

Weiss Has Violated and Continues to Violate Duties to Goldman Relating to the  
Hotel Venture by Withholding the Books and Records of the Companies

84. Weiss has violated and is continuing to violate each of the above-described rights.

85. As the Parties’ relationship has deteriorated, Weiss has withheld access to complete and accurate financial information regarding the Hotel venture’s operations from Goldman.

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<sup>11</sup> The translated Side Agreement’s use of the English term “corporation” is not meant to be exclusive of other business entities, such as limited liability companies (“LLCs”). Indeed, at all times, LLCs have been used for all of the Parties’ businesses related to the Hotel venture. In fact, the Side Agreement plainly refers to the Fifth Amendment, which is the Parties’ most recently amended Operating Agreement of their Wythe Berry LLC entity.

86. Access to regular, accurate financial reporting is a simple, straightforward requirement of the Parties' agreements regarding the Hotel venture. *See* Ex. A, Operating Agreement ¶ 9; Ex. D ¶ 9; Ex. E ¶ 9; Ex. F ¶ 9. Even if it were not, as the day-to-day manager of the Parties' joint interests, serving as Managing Member of the relevant companies, Weiss has a fiduciary duty of candor to Goldman. *Alpert v. 28 Williams St. Corp.*, 473 N.E.2d 19, 26 (N.Y. 1984); *Ajettix Inc. v. Raub*, 804 N.Y.S.2d 580, 588 (N.Y. Sup. Ct. 2005).

87. Accurate and timely reporting of financial information is obviously necessary for any interest holder in a business to understand and monitor his interest. Yet Weiss, as Managing Member of the Companies, stopped providing it altogether, thereby attempting to keep Goldman in the dark as to what is happening with Hotel venture's revenues and expenses.

88. This failure to provide basic, required information has continued despite repeated demands from Goldman for information, *see, e.g.*, Ex. J (Feb. 5, 2020 Letter); Ex. K (Jan 30, 2020 Letter)<sup>12</sup>, and several interim awards in this arbitration. *See* Emergency Interim Award (May 10, 2023), Procedural Order 1 (Aug. 22, 2023); Procedural Order 2 (Aug. 24, 2023); Procedural Order 4 (Sept. 13, 2023). Goldman has been thwarted from his oversight functions and needs to understand how the Hotel venture is truly performing, and how and where its cash is flowing.

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<sup>12</sup> Attached as Exhibit J is a February 2020 letter from Goldman to Weiss memorializing Weiss' repeated refusal to provide, following several requests from Goldman for access to or copies of, the books and records of Wythe Berry LLC and each of the Operating Affiliates. Attached as Exhibit K is a January 2020 letter from Goldman to Weiss seeking information regarding Operating Affiliate financial information and demanding a refund for overpayments made to a Weiss-owned entity, Espresso Hospitality Management LLC.



89. In addition to stopping the required regular financial reporting altogether, Weiss has also been evading and stonewalling Goldman's good faith attempts to exercise his right to audit books and accounts. *E.g.*, Ex. L (Feb. 4, 2020 Letter); Ex. M (Feb. 20, 2020 Letter).<sup>13</sup>

90. On information and belief and for the reasons stated below, Weiss began and continues to withhold disclosure of information regarding the relevant books and accounts because this information would reveal that he has diverted and is improperly diverting Hotel venture-related cash flows for his own benefit, to the exclusion of Goldman. This unlawful course of conduct violates Weiss's fiduciary duty of loyalty as Managing Member of the Companies, and his contractual duties under the Parties' agreements.

91. With Weiss so completely—and unlawfully—excluding Goldman from information about the Companies, Weiss is running the Companies in bad faith for his own benefit, and to the exclusion of Goldman.

92. Indeed, putting aside that Weiss is outright refusing to show Goldman the Companies' complete records, on at least one occasion before this proceeding commenced, Weiss accidentally revealed information that – particularly in hindsight given Weiss's recent conduct – exposed one aspect of Weiss's unlawful scheme.

93. On that occasion, Goldman received an email from Weiss's attorney revealing that WVH, *i.e.*, one of the jointly owned Operating Affiliates, had paid an improperly-calculated

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<sup>13</sup> Attached as Exhibit L is a February 2020 letter from Goldman to Weiss providing notice of Goldman's intent to conduct an audit and demanding access to company books and records. Attached as Exhibit M is a February 2020 letter from Weiss responding to Goldman, which (i) obfuscates the history of the Parties' interactions and rights under the relevant agreements, (ii) stonewalls Goldman's demand for timely access to audit the relevant books and records instead maintaining that he will provide access "in due course," and (iii) attached one limited schedule regarding fees paid to one Weiss-owned entity during one calendar year.

management fee to Espresso, another entity wholly-owned by Weiss. As a result, Weiss's wholly owned entity was significantly overpaid.

94. In that instance, Goldman sent a demand for corrected calculations of the Incentive Management Fee and return of an overpayment. In the same letter, Goldman demanded copies of all Monthly Reports for 2019 and all Annual Statements for the years 2016, 2017, and 2018 as required under a pre-existing agreement. Ex. K.

95. Weiss responded the following month, summarily asserting that he has properly managed the agreement between the entities. *See* Ex. M. No repayment has been made. Nor was the required complete and accurate disclosure provided.

96. In February 2020, Goldman sought prompt access to audit the relevant books. Weiss stonewalled. Weiss's response paid lip service to Goldman's rights to access the information, but rejected Goldman's proposed timeline, merely indicating that at some point Weiss would provide access to the information required under the operating agreements. *See* Ex. M.

97. To date, however, many years later, Weiss still has not allowed Goldman complete access to the Companies' records. In fact, as described below, Weiss has taken steps in the opposite direction—to keep Goldman (whose capital financed the Hotel venture) away from true and accurate information about how it is performing.

98. In response to Weiss's refusal to turn over the books and records or permit an audit, Goldman has initiated both this action before AAA, as well as an action in New York Supreme Court in support of this arbitration. Following an emergency motion, the appointed Emergency Arbitrator ordered Weiss to turn over the books and records of the Companies in the Emergency Interim Award (May 10, 2023).

99. Notwithstanding that Emergency Interim Award, Weiss continued to slow-roll productions and did not fully comply. Later, when the full panel (“Panel”) convened, Goldman sought Interim Relief because Weiss still had not complied with the Emergency Interim Award. As a result, the Panel has since issued several Procedural Orders recognizing Weiss’s non-compliance with his duties and repeated AAA awards ordering the production of all books and records of the Companies. *See* Procedural Order 1 (Aug. 22, 2023); Procedural Order 2 (Aug. 24, 2023); Procedural Order 4 (Sept. 13, 2023).

100. Most recently, Weiss submitted a document affirming compliance with the Redfern Chart process set out in Procedural Order 4. Then, knowing full well that a complete production had not been made, Weiss caused his lawyer to move the Panel to lift a protective measure it had implemented as a means to cause Weiss to come into compliance with his books and records obligations. Even with all of this – *as of the date of this Amended Demand, Weiss still has not fully complied.*

101. Amongst the books and records that Weiss had previously withheld from Goldman for years, but has now recently produced in response to AAA interim awards, are Goldman’s Form K-1s for years 2019-2022. As a result of Weiss’s failure to provide Goldman’s tax records in accordance with his fiduciary duties to Goldman, Goldman faces tax penalties on top of the other damages Weiss has caused.

102. Notably, from the partial production Weiss has made, it is clear that he has since been revising and backdating journal entries to the Companies’ accounting records, making them unreliable if not completely fraudulent. *This includes the creation and revision of journal entries to doctor the Companies’ accounting records for months and years-old transactions after arbitrators began to order Weiss to make a full disclosure of the Companies’ books and records.*

103. Weiss's refusal to abide by the terms of the Parties' agreements, as well as Orders issued by this Panel has caused Goldman to incur hundreds of thousands of dollars of legal fees to protect his rights in connection with the Hotel venture.

Weiss has Repeatedly Violated his Duties as Managing Member to the Companies

104. In several ways, including those described below, Weiss has for years repeatedly violated contractual and fiduciary duties he owes to Goldman and the Companies in connection with the Hotel venture.

105. First, as Managing Member of the Companies, Weiss maintains the bank accounts for the Hotel's operations. To protect Goldman from the obvious risk of improper transfers from those accounts by Weiss as Managing Member, the Parties agreed to an important protection for Goldman governing the transfer of funds. Under the Parties' agreement, Weiss must deposit company funds in a company account. Ex. A, Operating Agreement ¶ 10. "Withdrawals from any such bank accounts shall be made only in the regular course of the business of the Company and ***shall be made upon the signature of the written designee of both Members.***" *Id.* (emphasis added). The Parties' Side Agreement extends that important protection to all entities through which the Parties' run their Hotel venture business. Ex. B at 1 (acknowledging, "on our own behalf and on that of all the corporations registered under our names . . . that have any relevance or connection to the said land and building without exception," that their agreement "shall be only and solely in accord with" the latest version of the Wythe Berry Operating Agreement, which preserves the bank account protection from the first such Operating Agreement).

106. Weiss has repeatedly violated that important protection.

107. ***First***, while Weiss previously cut off Goldman from access to most of the relevant accounts, *see In re Wythe Berry Fee Owner, LLC*, Case No. 22-11340-mg, Hearing Tr., Dkt. 62 at

70 (S.D.N.Y., January 17, 2023)<sup>14</sup>, in 2022, Goldman learned that he still had access to one of the Wythe Berry bank accounts. Upon review of transactions within that account, *it appeared that Weiss had caused Wythe Berry to transfer millions of dollars* to an entity called Riverside Developers, USA Inc. (“Riverside”). Riverside is an entity owned completely by Weiss.

108. Weiss has since admitted that Riverside (i) is an entity that he one hundred percent owns and controls, (ii) has been acting as a “general contractor of sorts” for the Hotel venture, and (iii) in 2022, Weiss caused Wythe Berry to pay Riverside millions of dollars for its supposed “materials and labor.” See Ex. N at 75-76; *Goldman v. Weiss*, Index No. 65186/2022, Dkt. 66, Verified Answer at ¶ 75 (N.Y. Sup. Ct. March 10, 2023).<sup>15</sup>

109. Since March 1, 2017, well after the construction of the Hotel on the Property was completed, Weiss has transferred approximately \$21.2 million from the Wythe Berry accounts to an account named Riverside 55 Wythe, which his Riverside entity controls. Of that \$21.2 million transferred out of the Wythe Berry accounts, Weiss has transferred \$11.3 million back into the Wythe Berry accounts from the Riverside 55 Wythe account, meaning a net amount of approximately \$9.9 million has been transferred to his Riverside entity.

110. Of the \$9.9 million, a net of \$3.1 million is allocated under Wythe Berry’s accounting records as a “Fixed Asset” account named “Cash Reserve for Buildout.” Through this

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<sup>14</sup> Attached as Exhibit N is the official transcript from the hearing held on January 17, 2023, before Judge Martin Glenn in the Involuntary Proceeding, *In re Wythe Berry Fee Owner, LLC*, Case No. 22-11340-mg, S.D.N.Y., Dkt. 62. At page 70, Weiss admits under oath that he cut off Goldman’s access to the Hotel venture accounts. In the testimony, Weiss attempts to justify the action by saying that Goldman “emptied” one of the accounts. Weiss ignores that Goldman did so to pay Hotel venture expenses. Moreover, he has no explanation for why it was necessary to suspend Goldman’s right to view the accounts. Nor does it make sense that this would justify completely excluding Goldman from all information about the Hotel venture for the rest of time.

<sup>15</sup> Attached as Exhibit O is Weiss’s Verified Answer to Goldman’s Article 75 Verified Petition, filed on March 1, 2023 in *Goldman v. Weiss*, Index No. 65186/2022 (N.Y. Sup. Ct.).

sub-account alone, \$9.3 million was transferred to Riverside and \$6.2 million was transferred back to Wythe Berry.

111. At no point since has Goldman (or any designee of Goldman) authorized Weiss to transfer any amounts from any of the Hotel venture-related accounts – let alone millions of dollars to an entity wholly owned by Weiss. Nor has Weiss ever asked Goldman (or any designee of Goldman) to approve such transfers. The frequency and amounts transferred between Wythe Berry and Riverside through this “Cash Reserve for Buildout” account, upon information and belief, is yet another scheme to hide Wythe Berry money from Goldman, and to use Wythe Berry funds for the benefit of Weiss and his affiliate entities including as a free line of credit.

112. *Second*, Weiss has also violated his fiduciary and contractual obligations by comingling the funds and assets of North 12 and WVH.

113. Under the each of the Companies’ operating agreements, Weiss is obligated to maintain the accounts for each of the Companies, such that “[a]ll funds of [each] Company shall be deposited in the Company’s name in such bank account or accounts as shall be designated by the Company[.]” Ex. A ¶ 10, Ex. D ¶ 10; Ex. E ¶ 10; Ex. F ¶ 10. Weiss has failed to maintain separate accounts for WVH and North 12.

114. Rather, in 2020, Weiss caused North 12 to stop using its own bank accounts and books to account for its finances, and instead funneled all money through the WVH’s accounts and books. *See* Respondent’s August 30 Letter to Panel (“As of 2020 (through the present), North 12 Parking LLC financials are consolidated with TWVH LLC.”).

115. This has prevented Goldman from receiving any distributions or profits from North 12 as he is entitled to under the North 12 Operating Agreement.

116. North 12 has no obligations nor agreements with the WVH that would explain or justify the comingling of assets. Rather, North 12's sublease for the parking garage is with Wythe Berry. However, Weiss collects management fees from WVH through its Hotel Management Agreement with Espresso ("HMA"), with incentive management fees based on a percentage of the Hotel profits. By comingling North 12's finances through the WVH books, Weiss is enriching himself at the expense of Goldman.

117. *Third*, Weiss has failed to maintain the books and accounts of the Companies accurately, in accordance with his duties under the Parties' agreements and New York Law. That is, Weiss has manipulated the Companies' accounting in ways that benefits him personally at the expense of Goldman. To offer just one example, Weiss has improperly maintained and manipulated the Companies' capital accounts. By way of background, in 2014, the Parties borrowed \$6 million for the Hotel venture ("2014 Loan"). The loan was subject to annual interest at rates as high as 10% per year; Goldman and Weiss personally guaranteed it; and it was secured by Goldman's separate property. By 2019, when Weiss still had not caused the Companies to repay the 2014 Loan, the creditor issued notice of the mandatory redemption of the outstanding principal and interest due, and seized the property Goldman had put up as collateral. The remaining balance of the loan not satisfied by Goldman's property that had been seized was pursued against Weiss as personal guarantor and two of Weiss's parcels were also seized. In 2021, Weiss caused Wythe Berry to record the effect of these events on the books of Wythe Berry, he did so in a way that unfairly distorted the economic contributions of he and Goldman, respectively. In short, Weiss credited his own capital account for value that Goldman had actually contributed. To make matters worse, he did so secretly while withholding information about these accounts from Goldman. On information and belief, this is just one of many examples of distorted,

manipulative accounting practices that Weiss has employed, underscoring the need for an equitable accounting.

118. **Fourth**, Weiss has also failed to segregate any tenant security accounts for any and all of the leases and subleases from Wythe Berry to third-party tenants, including to the Operating Affiliates, thus creating exposure for Wythe Berry under New York law.

119. **Fifth**, Weiss has exploited his position as Managing Member of the Companies to avoid paying priority distributions to Goldman, in violation of his contractual duties under the Operating Agreements, and his fiduciary duties as Managing Member.

120. Pursuant to the Fifth Amendment of the Wythe Berry Operating Agreement, distributions are to be paid in the following order of priority: (1) 40% of the aggregate taxable income to each Class A member for the fiscal year, (2) to all Members in proportion to their Unreturned Capital Contributions, (3) any net office or retail profit to the Class B members, and (4) the balance to the Class A members pro rata to their Percentage Interests. Ex. A, Fifth Amendment ¶¶ 6, 2(c), 2(f). As of the execution of the Fifth Amendment, Goldman's Capital Contribution to the joint venture was \$37,487,114.22, which was reduced by a special capital amount of \$16,200,000, making his Unreturned Capital Contribution equal to \$21,287,114.22. Ex. A, Fifth Amendment at ¶¶ 2(b)-(c), 4(b). Weiss's Capital Contribution to the joint venture was \$0. Ex. A, Fifth Amendment at ¶ 2(b).

121. Under the Operating Affiliate Agreements, distributions are to be paid first to all Members pro rata to taxable loss previously allocated to them to the extent thereof, and the balance to the Members pro rata to their percentage interests (i.e., 50% each). Ex. D ¶ 8; Ex. E ¶ 8; Ex. F ¶ 8.



122. As of September 20, 2023, Wythe Berry's records indicate that Goldman's capital account balance is approximately \$23.6 million, and Weiss's capital account balance is approximately \$6 million. Goldman disputes the accuracy of the capital account records. *See infra* ¶¶ 122-127.

123. Yet, in June 2022, Weiss caused Wythe Berry to distribute approximately \$1.75 million to himself. No corresponding distribution was made to Goldman, despite Goldman's entitlement to receive distributions in proportion to his Unreturned Capital Contribution before Weiss receives any distributions.

124. *Sixth*, Weiss has also used his position as Managing Member of FNB to avoid paying priority distributions to Goldman, in violation of his contractual duties under FNB's Operating Agreement, and his fiduciary duties as Managing Member.

125. In 2023, FNB issued distributions which should have been treated first as capital account reductions, the balance of which should have been issued 50/50 to both Goldman and Weiss. Instead, Weiss unilaterally decided to treat the entire amount (approximately \$5,888,000) as 50/50 distributions, paid to Wythe Berry as 50/50 investments.

126. Weiss's unilateral decision to take what should have been Goldman's profit distribution from FNB and instead cause it to be used as additional investment in Wythe Berry violated the Major Decisions clause of the Fifth Amendment. Ex. A, Fifth Amendment at Schedule I(i) ("The decision to make any permitted calls or requests for additional capital contributions from the Members[.]").

127. Even more egregiously, in accounting for these new investments to Wythe Berry, Weiss did not credit Goldman's 50% portion of said investment under Goldman's capital account, but rather to a new capital account named "All Year."

128. This is yet another effort to avoid paying Goldman his rightful distributions. In fact, recently produced, albeit incomplete, financial records of the Companies show that Weiss has been allocating distributions to Goldman on the Companies' books, and yet withholding issuance of these distributions in violation of his contractual and fiduciary duties to Goldman.

129. Additionally, as described above, by comingling the books and accounts of North 12 and WVH, Weiss is also avoiding paying distributions to Goldman from North 12, while inflating the management fees Espresso collects from the WVH.

130. *Seventh*, Weiss has caused the WVH and North 12 to pay Espresso, his wholly owned entity, management fees in excess of what it is entitled.

131. Between 2016 and July 26, 2019, the parking garage on the Property was operated by Wythe Parking LLC pursuant to a management agreement. Effective July 26, 2019, Weiss caused North 12 to terminate the agreement without the express written consent of Goldman, in violation of the Major Decisions provision of the North 12 Operating Agreement. *See* Ex. F, Schedule I (13) (prior written consent of both Members is required for "the decision to enter into, terminate or accept the surrender of, as applicable, and Property Management Agreement[.]").

132. In 2019, Weiss caused North 12 to pay a recipient, which upon information and belief is affiliated with Weiss, management fees without the required approval under the corporate governance structure the Parties' had put in place. *See* Ex. F, Schedule I (1) (prior written consent of both Members is required for "the terms and conditions of any agreement between the Company and an Affiliate of any Member[.]"); *id.*, Schedule I (13) (prior written consent of both Members is required for "the decision to enter into, terminate or accept the surrender of, as applicable, and Property Management Agreement[.]").

133. As a result, North 12 has paid at least hundreds of thousands of dollars in management fees, in violation of the North 12 Operating Agreement (and Weiss's fiduciary duties).

134. *Eighth*, Weiss has also caused the WVH to pay Espresso management fees in excess of what it was entitled to under the HMA.

135. On September 19, 2019, Weiss caused the WVH to transfer \$1,174,000 from the Hotel operating account to Espresso for pre-opening management fees earned between August 2015 and August 2016, despite previously agreeing with Goldman that the Hotel would not pay the pre-opening management fees before Goldman's capital account had been paid down.

136. Weiss has also caused the WVH to pay Espresso management fees which exceeded the amount it was entitled to under the HMA, by manipulating the calculations of management fees due.

137. The HMA provides that WVH must pay Espresso a Base Management fee equal to the higher of: (1) \$116,667 per month adjusted each calendar year by multiplying the amount by a fraction of CPI for the preceding December/the CPI for December 2015; or (2) an amount equal to the result obtained by multiplying the Adjusted Gross Revenue for the current Fiscal year up to and including the preceding month by 4%. HMA § 8.2(a).

138. Additionally, the HMA provides that Espresso is entitled to an Incentive Management Fee consisting of an amount equal to the result obtained by multiplying the Net Income Before Debt Service, less the Base Management Fee, in excess of the Threshold (defined as \$3.2 million plus 3.2% of Betterments made to the Hotel in the preceding year) by 15%. HMA, § 8.2(b); *id.* §1.1.

139. Weiss caused the WVH to calculate and pay the management fees to Espresso, which contained several errors resulting in significant overpayments to Espresso. *See, e.g.*, Ex. K (Weiss used Gross Operating Profit rather than Net Income Before Debt Service to calculate the 2019 management fees.).

140. Weiss has caused the WVH overpay fees to Espresso based on improper calculations that are inappropriate under and inconsistent with the HMA. Examples of these issues include without limitation: (i) miscalculation of CPI increases when determining the Base Management Fee; (ii) failing to account for all of the necessary reserves in Incentive Management Fee calculations; (iii) failing to adjust the Incentive Management Fees to account properly for capital expenditures and Betterments; and (iv) including revenue in management fee calculations where the same revenues is already subject to management fees under different agreements.<sup>16</sup>

141. *Ninth*, the HMA also expressly excluded certain expenses from being reimbursed to Espresso, including salaries or other compensation of any Espresso employee who does not work full time at the Hotel solely on Hotel business, HMA § 3.3(a), 5.1(a), and any expenses of Espresso's principal or branch offices, HMA § 5.1(a). Yet Weiss caused the WVH to pay Espresso for Espresso-expenses such as employee salaries and benefits invoiced to WVH as "Consulting" and "Purchasing."

142. *Tenth*, as further discussed below, Weiss moved his own personal senior management team and separate entities into office space at the Hotel complex and has occupied

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<sup>16</sup> FNB is managed by WV Hospitality LLC pursuant to the Food and Beverage Operations Management Agreement ("FNB MA"), executed December 21, 2015. Under Article 6, WV Hospitality collects an annual management fee. WV Hospitality LLC's affiliate, Noho Hospitality Group LLC, also collects fees for "back office services" under the FNB MA. North 12 was managed by WV Parking LLC from 2016-2019, then Valet King from 2020 to present, and paid management fees to both management entities.

that space without a lease and without paying rent, effectively causing the Companies to absorb his operating costs that are not reimbursable under any agreement.

143. *Eleventh*, Weiss has abused his position as Managing Member of Wythe Berry to cause it to agree to unfavorable terms with tenants that harmed Wythe Berry, and yet benefitted him and his affiliate entities.

144. On information and belief, Weiss has undisclosed and unauthorized interests in several current and/or former tenants of the Hotel complex, for which he has engaged in self-dealing in violation of his fiduciary duties. Weiss's conduct has included, inter alia, (i) giving those tenants treatment more favorable than other tenants (while not disclosing his interest in those tenants), and (ii) causing the Companies to write off rent due by such tenants when those tenants could not pay rent.

145. For example, Weiss caused Wythe Berry to execute a tenant-favorable lease with an entity called WD49 LLC (which operated a store called Du's Donuts) in August 2016, of which Weiss was a partial owner, without disclosing that relationship to Goldman before the lease was signed. The lease provided that WD49 LLC owed only percentage rent of gross sales, with no base rent as is required for most, if not all of the other tenants at the Hotel complex. In the event that the percentage rent for any contiguous 24-month period was less than \$674,000, Wythe Berry had the option to cancel the lease. The lease with WD49 LLC remained in effect for several years until December 2021, when Weiss caused Wythe Berry to execute a settlement, vacate and surrender agreement with WD49 LLC. Pursuant to the settlement agreement, WD49 LLC paid a settlement payment of \$162,000. By accepting the settlement payment, Weiss caused Wythe Berry to write off significant amounts of unpaid rent that it was owed and permitted WD49 LLC to occupy space at a rate far below the fair market value.

146. Separately, Weiss has admitted that he has caused Wythe Berry to permit another entity, Studio 109, to occupy and operate out of space at the Hotel complex without a lease. *See* Respondent's Responses and Objections to Redfern Request No. 118 ("No written agreement exists"). Notably, as indicated on the 2022-2023 rent roll, Studio 109 is managed by Espresso, Weiss's wholly owned entity. Weiss has breached his fiduciary duties to both Wythe Berry and Goldman in permitting the terms of such a tenancy.

147. Despite Goldman's limited access to financial information of the Hotel venture businesses, as described below, given other recent events that have come to light regarding Weiss's perfidious handling of the Wythe Berry ground Lease, Goldman believes and alleges that Weiss's lawless conduct is much broader than previously recognized, and likely extends to all aspects of the Hotel venture that Weiss was entrusted to operate loyally. In light of the above, which has been identified based on an initial review of a partial disclosures that Weiss has recently made, full forensic accounting of the Companies' finances is necessary to account for and remedy the full extent of Weiss's malfeasance that has disadvantaged Goldman and the Companies.

Weiss Has Improperly Manipulated Various Legal Proceedings to Further His Scheme and Has Wasted and Diverted Wythe Berry and Operating Affiliate Assets in the Process

148. As Weiss's lawless conduct has slowly been revealed through this arbitration, the bankruptcy actions, and the Lease litigation, Weiss has also exploited every opportunity possible to delay, obstruct, and manipulate these proceedings, wasting and diverting the Companies' assets in furtherance of his schemes.

149. In 2021 and 2022, Weiss caused Wythe Berry (the lessee) to withhold required rent payments under the Lease arrangement with Fee Owner, even though Weiss has since admitted in open court that the rent was withheld *based on his own deal strategy*, not out of some complete

inability to pay. *See* Ex. N at 79-80. Specifically, on February 1, 2021, Weiss failed to transfer a required semi-annual payment of \$7,500,000 to Fee Owner.

150. On June 11, 2021, Fee Owner (by that point, controlled by AYH liquidators) commenced a civil action in the Supreme Court of New York, Kings County, Index No. 514152/2021 (“*Wythe v. Wythe*”), against Wythe Berry, as well as and Weiss and Goldman individually, seeking massive damages, a declaratory judgment that the Lease has been terminated, and ejectment of Wythe Berry, and effectively therefore, the Operating Affiliates, from the Hotel complex.

151. In response to the lawsuit, Weiss caused Wythe Berry to retain counsel (the same counsel representing Weiss in this arbitration), to represent Wythe Berry. That counsel also represents Weiss personally (no doubt paid for by the Companies), but not Goldman.

152. On information and belief, to date, Weiss has likely caused Wythe Berry to spend hundreds of thousands of dollars to litigate that action, with no consultation of or approval from Goldman. In doing so, Weiss is purposefully depleting assets of Wythe Berry, thereby prejudicing Goldman’s rights, and is doing so to his own benefit without any consultation with or approval from Goldman.

153. Weiss also unnecessarily prolonged that litigation by refusing to turn over to Fee Owner critical financial information regarding the Hotel venture’s operations and revenues—which Fee Owner is expressly entitled to receive under the Lease as well as under the disclosure rules of that proceeding.

154. Despite Weiss’s attempts to prevent Fee Owner from obtaining access to the same information from the Operating Affiliates, *see Wythe v. Wythe* Dkt. 123 at 11, the court ordered the Operating Affiliates to produce the financial documentation to Fee Owner. *Wythe v. Wythe*

Dkt. 185. Neither Weiss nor any of the relevant Hotel venture-related entities that he functionally controls complied, which led to an order holding several entities, including the Operating Affiliates, in civil contempt on September 30, 2022. *See Wythe v. Wythe*, Dkt. 297.

155. In addition, because Weiss had caused the Wythe Berry to breach the Lease, in December 2021, the court ordered Wythe Berry (lessee) to pay to Fee Owner (lessor) a use and occupancy fee of \$7.5 million semi-annually, for as long as defendants hold over and occupy the premises. *Wythe v. Wythe*, Dkt. 162. On August 1, 2022, however, Weiss caused Wythe Berry to miss its court-ordered \$7.5 million use and occupancy payment, despite its ability to pay, which predictably led the lessor to move for an order to eject Wythe Berry from the Property. *Wythe v. Wythe*, Dkt. 278.

156. Weiss's repeated failures to make rent or use and occupancy payments to Fee Owner caused Fee Owner to default on its own debts, and led Fee Owner's creditors (i.e., the Bondholders) to commence an involuntary Chapter 11 bankruptcy proceeding because Fee Owner was unable to make payments pursuant to the Note and Mortgage to the Bondholders. *See In re Wythe Berry Fee Owner, LLC*, Case No. 22-11340-mg, (S.D.N.Y. Bankr. Oct. 6, 2022) ("Involuntary Proceeding").

157. Weiss continued his pattern of manipulation and delay tactics when he raised a non-meritorious motion to dismiss the Fee Owner Involuntary Proceeding. In a hearing on that motion, Weiss testified under oath in open court. During that testimony, Weiss admitted that he withheld rent payments and had refused to provide financial information for the purpose of delaying proceedings until he could strike a deal with bondholders to purchase the Hotel's note and mortgage. *See Ex. N at 79-80 (Q: "[I]t took a court order for you to pay that 7.5 million, correct?"*



A: “Not that I didn’t want to pay it, I wanted to make a deal with the bondholders and pay it to them, not through a lease.”).

158. Indeed, in the same sworn testimony, Weiss admitted that the Companies had long had the ability to make those required rent payments. As Weiss testified, the Hotel generated approximately \$10-11 million in net income in 2021. He also testified that in 2022, the Hotel generated approximately \$13 million in net income and had an average occupancy rate of approximately 80%, which he admitted is better than the pre-COVID average occupancy rate of approximately 70%. *See* Ex. N at 60-61.

159. Weiss also testified that Wythe Berry received \$1.5 million in 2020, and \$1.7 million in 2021, from the Paycheck Protection Program (“PPP”).<sup>17</sup> In addition, FNB received \$2 million from PPP, and a \$5 million grant in 2021.<sup>18</sup> Notably, while these would have been financing activities of the Companies, Weiss admitted that he never informed Goldman about, much less asked him to approve, any such loans. *See* Ex. N at 65-67.

160. Weiss further admitted that while Wythe Berry had claimed it had insufficient funds to pay rent or use and occupancy fees, it had been paying management fees averaging \$100,000 per month to Espresso, an entity one hundred percent controlled and owned by Weiss. *See* Ex. N at 31-32. In addition to payments being made to Riverside, as described above, this is the second entity, wholly owned and controlled by Weiss, that has received payments from the Hotel venture without approval from Goldman. Thus, Weiss had been enriching himself with the proceeds of

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<sup>17</sup> Wythe Berry is operated by Espresso pursuant to a management agreement executed on December 31, 2016. According to public records, Espresso also received its own separate PPP loans and forgiveness in 2020 and 2021.

<sup>18</sup> FNB is operated by WV Hospitality and Noho Hospitality Group LLC. According to public records, Noho Hospitality Group LLC received its own PPP loans and forgiveness in 2020 and 2021.

the entities he manages instead of paying the rent owed Fee Owner. None of these proceeds have been shared with Goldman.

161. After years of strategically delaying the *Wythe v. Wythe* proceedings with baseless motions and appeals, Weiss ran out of options to delay the proceedings further. On January 26, 2023, Weiss and Fee Owner stipulated that Wythe Berry would make two \$7.5 million payments on January 26, 2023, and February 1, 2023, and upon confirmation of those payments, Fee Owner would withdraw its motion for ejectment. *Wythe v. Wythe*, Dkt. 354.

162. Additionally, Weiss stipulated and agreed to turn over financial information and documents regarding the Hotel venture to Fee Owner and its creditors—but not to Goldman. *See In re Wythe Berry Fee Owner*, No. 22-11340-mg, Dkt. 83 (Feb. 24, 2023); *id.*, Dkt. 90 (Mar. 2, 2023) (order entering stipulation) (As part of this stipulation, Fee Owner and Weiss, on behalf of Wythe Berry, also agreed to remove the *Wythe v. Wythe* action to federal bankruptcy court as an adversary proceeding to the Involuntary Proceeding.). During the same period, despite repeated attempts to obtain the financial information being shared with Fee Owner, Goldman continued to be stonewalled from accessing the information from both Weiss and Fee Owner.

163. As a result of Weiss's failure to cause Wythe Berry to pay rent to Fee Owner or to make bond payments during 2021, as well as his refusal to produce certain financial information to Fee Owner, on October 5, 2023, the bankruptcy court granted Fee Owner's motion for summary judgment for declaratory relief that the Lease has been terminated, and ruled that Fee Owner is entitled to damages for pre and post-termination rent and interest, damages and attorneys' fees. *See Ex. P, Order Granting Summary Judgment.*<sup>19</sup>

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<sup>19</sup> Attached as Exhibit P is the Order granting Fee Owners motion for summary judgment. *Wythe Berry Fee Owner v. Wythe Berry*, Adv. Pro. Case No. 23-101012, Dkt. 45 at 39-41 (S.D.N.Y. Bankr. October 5, 2023) ("Order Granting Summary Judgment").

164. Similarly, Weiss repeatedly and strategically delayed the Article 75 proceeding (which preceded and facilitated this arbitration), as he had done with other litigation, to prevent Goldman from obtaining the books and records of the Companies which he is contractually entitled to receive under the operating agreements. *See Goldman v. Weiss*, Index No. 65186/2022 (N.Y. Sup. Ct. Sept. 1, 2022). Such delays included two motions to dismiss disputing service of process, and one motion to change venue from New York County to Kings County. The first motion to dismiss claimed that the William Vale Hotel was not Weiss's principal place of business, *id.* NYSCEF Nos. 15-18, though Weiss later admitted that Espresso occupies office space in another building in that very complex. *See Respondent's Responses and Objections to Redfern Request No. 115.* The second motion to dismiss disputing service of process argued that service was ineffective because his teenage son (served at Weiss's home) weighed less than the process server had estimated. *Goldman v. Weiss*, Index No. 65186/2022, NYSCEF Nos. 35-36 (N.Y. Sup. Ct. Nov. 21, 2022). These frivolous motions delayed the special proceeding for months.

165. Once these arbitration proceedings were commenced in March 2023, Weiss repeatedly and continuously flouted and refused to abide by several emergency and interim orders issued by the Emergency Arbitrator and the Panel ordering him to turn over full and continuous access to all books and records of the Companies. *See Emergency Interim Award* (May 10, 2023), *Procedural Order 1* (Aug. 22, 2023); *Procedural Order 2* (Aug. 24, 2023); *Procedural Order 4* (Sept. 13, 2023). As of the date of this Amended Demand, Weiss still has not fully complied.

166. Through his wasteful and disloyal conduct, Weiss has caused Goldman to incur hundreds of thousands of dollars in legal fees to in his attempts to protect his rights in connection with the Hotel venture.

167. Meanwhile, Weiss has caused Wythe Berry to pay for his own personal legal fees in connection with--not only the Lease litigation--but also this arbitration, despite the fact that Goldman's claims prior to the Amended Demand were pursued only against Weiss personally. In effect, Weiss has caused Goldman to shoulder legal fees for both sides of the present dispute even though the Parties agreed that the arbitrators shall award expenses of the arbitration, including reasonable counsel fees, to the Party they find prevailing. Ex. A, Fifth Amendment ¶ 11. Weiss has prevailed on little if anything, to date.

168. Weiss has engaged in this unlawful conduct for personal strategic benefit, to the detriment of Goldman, in violation of his fiduciary duties and in direct violation of the Parties contract, which precludes Weiss from "tak[ing] any action which has a disproportionate effect on [Goldman]," or "tak[ing] any action with the intent to discriminate in a prejudicial manner with respect to the rights of any Member under this Agreement" and "with respect to the Company's subsidiaries or affiliates in which both Weiss and Goldman own substantial interests[,]" such as Fee Owner. *Id.*, Schedule I, Major Decisions at (xix), (xxi).

Weiss's Improper Attempts to Seize Complete Ownership  
and Control of the Hotel Venture to the Exclusion of Goldman

169. In addition to the above course of conduct, Goldman has learned of, and Weiss has admitted to, other improper actions Weiss has taken relating to the interests in the Hotel Property, over which Goldman has lost control because of the AYH bankruptcy and the default on the Series C Bonds.

170. First, as Goldman learned through AYH's public disclosures in Israel and in the New York bankruptcy court, Weiss was secretly negotiating *for months* with the Bondholders to purchase the Note and Mortgage on the Hotel Property (which the Bondholders were assigned

following the defaults by AYH and Fee Owner). Weiss did so without consulting Goldman, much less getting his approval. Nor did Weiss otherwise present the opportunity to the Companies.

171. Weiss should have first presented the corporate opportunity to Wythe Berry, but failed to do so, in breach of his fiduciary duties under the corporate opportunity doctrine.

172. Then, also without disclosure to or seeking input or approval from Goldman or the Companies, Weiss attempted a bid for the remaining Hotel venture-related assets in the AYH bankruptcy.

173. Weiss has since persisted, seeking to cause the Trustee for the Bondholders to revisit its previous decision – *i.e.*, whether to sell its interests in the Note and Mortgage to the third-party or Weiss. In the Involuntary Proceeding, Weiss admitted to and described these attempts to buy the Note and Mortgage in his own name or for one of his separate entities in which Goldman holds no interest. *See* Ex. N at 45-56, 50-56.

174. Next, similar to his conduct in the Involuntary Proceeding and the *Wythe v. Wythe* litigation, Weiss sought to disrupt and delay AYH bankruptcy proceeding through nonmeritorious objections to the AYH Chapter 11 Plan and in a related adversary proceeding in the AYH bankruptcy, so that he might strike a deal with the bondholders himself. *See In re All Year Holdings Limited*, No. 21-12051, Dkt. 140 ¶ 4 (S.D.N.Y. Bankr. Dec. 14, 2021); Ex. H, Adversary Proceeding Amended Complaint.

175. While both Weiss's objection and adversary proceeding in the AYH bankruptcy have since been dismissed, and the Chapter 11 Plan has been confirmed, *see In re All Year Holdings Limited*, No. 21-12051, Dkt. 352, AYH's interests have been transferred to a wind-down trust, whose actions are directed by AYH's creditors (who are the same as Fee Owner's creditors). *See id.* Weiss has admitted in open court that he still wished to negotiate unilaterally with Fee

Owner's creditors to strike a deal that would give him exclusive control over the Hotel. *See* Ex. N.

176. After the *Wythe v. Wythe* litigation was removed to bankruptcy court, Weiss engaged in unilateral negotiations with the Bondholders (exclusive of Goldman or the Companies) to purchase the fee simple ownership of the Hotel Property on his own.

177. Weiss did all of this to obtain interests in the Hotel Property for himself without first presenting the opportunities to Wythe Berry (or any of the other Companies) as was required pursuant to his fiduciary duties under New York law.<sup>20</sup>

178. Indeed, Weiss has taken these actions without so much as informing Goldman, let alone allowing for his input. Yet, based on the Parties' above-described agreements, which *inter alia*, expressly extend the Fifth Amendment's restrictive covenants on Major Decisions to any personal dealings Weiss may attempt to have concerning the Hotel venture, Weiss is prohibited from taking these actions without Goldman's participation and approval. Ex. A, Fifth Amendment ¶ 7(e); Ex. B ¶ 2.

179. Any of the transactions unilaterally proposed by Weiss would plainly be Major Decisions regarding the Parties' Hotel venture-related business, as defined in the Fifth Amendment. Major Decisions expressly include, among others, Weiss's "decision to obtain . . . any mortgage or other . . . refinancing of the Property," Ex. A, Fifth Amendment, Schedule I, Major Decisions, at (iv), "the acquisition of any real property or any . . . interest therein," *id.* at (x), "do[ing] any act in contravention of [the Parties' Agreement]," *id.* at (xvi), "employ[ing] or permit[ing] the Company to employ, the funds or assets of the Company in any manner except for

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<sup>20</sup> *See* Respondent's Responses and Objections to Redfern Request No. 224 ("Respondent has no recollection of the presentation of any business opportunities [to the Companies], and no records of any such presentation has been located.").

the exclusive benefit of the Company,” *id.* at (xvii), “tak[ing] action which has a disproportionate effect on [Goldman], or taking any action with the intent to discriminate in a prejudicial manner with respect to the rights of [Goldman], *id.* at (xix); and “tak[ing] any of the foregoing actions with respect to the Company’s subsidiaries or affiliates in which both Weiss and Goldman own substantial interests,” *id.* at (xxi).

180. Were Weiss ultimately successful in this scheme, he would have effectively held all of the Property-side interests in the Hotel venture, leaving Goldman’s only interest as that of a non-managing member in the lessee Companies, from which Weiss has continually sought to exclude Goldman. Indeed, were Weiss to achieve this result, he would have no doubt sever the Lease, formed a new tenant to operate the Hotel, and eject the tenant entity in which Goldman has an interest.

181. To make matters worse, not only was Weiss impermissibly attempting to purchase the Note and Mortgage through a deal with the Bondholders without involving Goldman, but Weiss also positioned himself to be the only bidder on the Hotel Property’s Note and Mortgage with actual information about the Hotel venture’s financial performance. By doing so, Weiss was ensuring that no one else (including Goldman) could organize an effective competing bid to acquire the Hotel Property interest that Goldman controlled before the AYH bankruptcy.<sup>21</sup>

182. Weiss’s duplicitous and unlawful scheme to enrich himself by doubling his interest in the Hotel venture at a fire sale price, imminently threatened irreparable harm to Goldman’s continuing, legitimate interest in the Hotel venture. Weiss’s actions are plainly barred by the

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<sup>21</sup> While other bidders could have had similar concerns, which the bankruptcy court could seek to protect, Goldman’s concerns are unique. Unlike other potential bidders, Goldman has long been legally entitled to the information that Weiss is withholding; Weiss has a contractual and fiduciary duty to provide it to Goldman; and, as described below, Goldman has an arbitration agreement with Weiss that allows Goldman to enforce his unique rights in this AAA proceeding.

Parties' express agreements, and violate Weiss's duties as a fiduciary to Goldman and to the Companies, in his capacity as Managing Member.

Weiss's Self-Interested, Disloyal Conduct Has Compromised  
the Companies' and Goldman's Remaining Interest in the Hotel Complex

183. By taking actions to purchase the Hotel Property and Hotel assets exclusively for his own benefit, Weiss neglected and acted adversely to the interests of the Companies. Weiss's attempts to purchase the Hotel Property purportedly stalled out in mid-August around the same time this Panel enjoined him from closing a deal unless and until he made a full disclosure of the Companies' books and records to Goldman. *Unwilling to provide Goldman with a complete set of records of the Companies, on September 29, 2023, Weiss instead served notice that he would be causing Wythe Berry to vacate the Hotel Property before it was required to do so.*<sup>22</sup> Weiss's decision to cause Wythe Berry to vacate was based entirely on his own impasse in attempts to buy the Property outright – not based on the best interests of the Companies and his partner, Goldman.

184. On October 5, 2023, the bankruptcy court granted Fee Owner's motion for summary judgment in the *Wythe v. Wythe* action, declaring the Lease terminated and finding Fee Owner entitled to damages. *See* Ex. P, Order Granting Summary Judgment.

185. Thus, in several different ways, Weiss's conduct has set the Companies on a course that will leave them with no claim to, or ability to occupy, any of the valuable real estate that has formed the key value proposition of their underlying businesses since day one. Weiss's actions are wasteful, disloyal, and flatly inconsistent with his fiduciary duties as a matter of New York law.

Respondent Weiss is a Fiduciary to Goldman and the Companies

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<sup>22</sup> Early Vacate Notice served on Goldman on September 29, 2023, is attached as Exhibit Q.



186. Under New York law, Weiss is a fiduciary the Companies and to Goldman.

187. Weiss was and is a fiduciary to the Companies because he has always served as their Managing Member, with day-to-day control of operations including bookkeeping, and all tax matters.

188. Weiss also was and is a fiduciary to Goldman. From the very start of the venture, Goldman served primarily as the “money partner,” sourcing nearly all of the joint venture’s capital including with millions of dollars from his own pocket, while Weiss was entrusted to handle Companies’ operations. Weiss had superior access to and control over information about the venture, and as such had a special relationship with and was entrusted to make decisions for the benefit of Goldman. Weiss accepted and never relinquished that duty.

189. When aspects of the Parties’ joint venture were reduced to written agreements, including in the operating agreements of the Companies and amendments thereto, Weiss’s role as a fiduciary (in the context of the broader joint venture) persisted.

190. In addition, for each of the Companies, under each of the relevant operating agreements, Weiss assumed the role of and in practice functioned as Managing Member controlling day to day operations of the Companies, with superior access to information about their operations and bookkeeping. None of the Parties’ operating agreements explicitly disclaimed the fiduciary duty Weiss had to Goldman.

191. Therefore, for separate and independent reasons, Weiss owed to Goldman and to the Companies all fiduciary duties recognized under New York law, including the duties of loyalty, good faith, care, disclosure, and candor.

The Parties Agreed to Resolve All Disputes Related to the Hotel  
Venture in AAA Arbitration in New York, New York

192. The Parties (and the Companies) have agreed to arbitrate these disputes because they are disputes between relating to the Parties' Hotel venture. *See* Ex. A, Fifth Amendment ¶ 11. Indeed, as the Parties' agreed, "[a]ny dispute arising under [the Fifth Amendment to the Wythe Berry LLC Operating Agreement] . . . shall be determined by the American Arbitration Association ["AAA"], New York, New York in accordance with its rules then governing." *Id.* Shortly thereafter, the Parties also agreed to submit all other Hotel venture-related disputes to arbitration according to the same terms. Specifically, the Parties' Side Agreement extended the terms of the Fifth Amendment, *i.e.*, the source of the above mandatory arbitration clause, such that it applies and governs the resolution of any dispute between Goldman and Weiss, whether individually or through an entity, so long as the dispute relates to the Hotel venture. Ex. B ¶ 2.

193. The New York Supreme Court, in Goldman's related Article 75 proceeding, has unsurprisingly also observed (repeatedly) that this dispute is subject to mandatory arbitration before AAA in its Decision and Order denying Weiss's motions to dismiss and to change venue. *E.g., Goldman v. Weiss*, Index No. 65186/2022, Dkt Nos. 56, 57 (Feb. 27, 2023).<sup>23</sup>

194. AAA's Commercial Arbitration Rules govern this proceeding because this is a domestic commercial dispute governed by an arbitration provision that selects AAA "without specifying particular rules." AAA Commercial Arbitration Rules, R-1.

195. The Parties' agreement is silent as to the constitution of the tribunal.

196. The arbitrator(s) should resolve the substantive claims according to New York law, which the Parties also selected in the Fifth Amendment, Ex. A, Fifth Amendment ¶ 10, and incorporated by reference shortly thereafter in their Side Agreement, Ex. B.

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<sup>23</sup> Attached as Exhibit R is the Decision and Order denying Weiss's motions to dismiss and to change venue in the Article 75 special proceeding, *Goldman v. Weiss*, Index No. 65186/2022, Dkts. 56, 57 (Feb. 27, 2023).

197. Per the Parties' agreement, the arbitration award "may include equitable relief." Ex. A, Fifth Amendment ¶ 11.

198. In addition, the arbitrator(s) "shall award expenses of the arbitration, including reasonable counsel fees, to the party [the arbitrator(s)] find[s] prevailing." *Id.*

199. Consistent with the Parties' agreement, the arbitration shall be held in New York, New York.

### CLAIMS

#### **Count I: Improperly Withholding Financial Information and Access to Inspect and Audit Books and Accounts Relating to the Hotel Venture**

200. Goldman re-alleges all preceding allegations.

201. Weiss has violated a number of duties to Goldman by withholding financial information, refusing to allow Goldman to audit the Companies, and refusing to make a full disclosure of the Companies' books and records.

202. Weiss breached the clear terms of the Wythe Berry Operating Agreement, as amended most recently in the Fifth Amendment, by withholding financial information to which Goldman is entitled.

203. Weiss has failed to provide timely, complete, and accurate financial information regarding the Hotel venture in violation of the Wythe Berry Operating Agreement, despite repeated "reasonabl[e] requests" from Goldman. Ex. A, Operating Agreement ¶ 9.

204. Faced with Weiss's refusal to supply complete and accurate reporting required under the agreements, Goldman has invoked, and Weiss has rebuked, Goldman's right to inspect and audit "all" company "records, books of account, tax and information returns, and reports and statements." *Id.*

205. The Wythe Berry Operating Agreement, as amended, which the Parties' have agreed governs all rights and disputes between them relating to the Hotel venture, affords Goldman an unqualified, absolute right to this information, and there is no basis upon which Weiss could withhold it. Nor has Weiss attempted to provide any basis for his conduct. Rather, Weiss has outright flouted the Parties' agreements, and has stonewalled all attempts by Goldman to access the information—which Goldman needs to understand the status of and to protect his interests in the Hotel venture and the cash flows it has generated and continues to generate.

206. Weiss has taken a similar approach as to financial information about the Operating Affiliates.

207. The Operating Affiliate Agreements each include substantially the same terms as the Wythe Berry Operating Agreement concerning Goldman's rights to accurate and timely financial reporting, and access to the books and records. *See* Ex. D ¶ 9; Ex. E ¶ 9; Ex. F ¶ 9. Moreover, the Parties extended the terms of the Wythe Berry Operating Agreement, as amended in the Fifth Amendment, to all of the Parties' Hotel venture-related interests, regardless of entity. *See* Ex. B. By doing so, the Parties reaffirmed Goldman's entitlement to the information, regardless of entity, which should not be controversial given that Goldman was primarily responsible for funding the venture.

208. Yet, as with information Weiss has refused to provide concerning the ground lessor entity (Wythe Berry), Weiss has withheld information, and rebuked requests for access to information concerning, the Operating Affiliate finances.

209. Despite several AAA Awards ordering Weiss to produce all of the books and records of all of the Companies, Weiss has failed to comply. *See* Emergency Interim Award (May

10, 2023); Procedural Order 1 (Aug. 22, 2023); Procedural Order 2 (Aug. 24, 2023); Procedural Order 4 (Sept. 13, 2023).

210. For each of these reasons, Weiss has and continues to materially breach the Parties' agreements, including provisions of the Companies' operating agreements concerning financial reporting and access to financial information and books and records about the Hotel venture.

211. Among other problems with Weiss's conduct, in his scheme to keep information away from Goldman, he caused the Companies to withhold Form K-1s that had been issued to Goldman. As Managing Member of the Companies, Weiss was tasked with the obligations as the "Tax Matters Member" for the Operating Affiliates, Ex. D ¶ 9; Ex. E ¶ 9; Ex. F ¶ 9, and had the power to appoint a "tax matters member" for Wythe Berry. Ex. A, Fifth Amendment ¶ 7(g). Weiss is and always has been obligated based on his contractual and fiduciary duties to cause the Companies to "forward to each person who was a Member during the preceding fiscal year a true copy of the [Companies'] information return filed with the [IRS] for the preceding fiscal year" "within seventy-five days after the end of each fiscal year[.]" Ex. A ¶ 9; Ex. D ¶ 9; Ex. E ¶ 9; Ex. F ¶ 9. Yet, for fiscal years 2019-2022, Weiss deliberately withheld, and/or caused the Companies to withhold, the information returns for the Companies and similarly failed to provide Goldman with his Form K-1s, which Goldman would have needed to complete his personal tax returns.

212. Beyond the specific rights described in the operating agreements, Weiss also owes a fiduciary duty of candor to Goldman, the non-managing member of each of the Companies. More broadly, irrespective of entity, Weiss owes a fiduciary duty to Goldman as a result of his role in and superior access to and control of information concerning the Parties' joint venture to develop and operate the Hotel venture.

213. By withholding access to financial information and blocking Goldman's attempts to inspect and audit the Hotel venture books and records, Weiss has violated and continues to violate his fiduciary and contractual duties to Goldman.

214. Weiss's refusal to provide access to the information has not been without acute consequence for Goldman.

215. For example, shortly before AYH commenced bankruptcy and insolvency proceedings, Weiss's refusal to comply with these information-sharing requirements, effectively nullified Goldman's ability to exercise his authority for "matters relating to the funding, financing and refinancing of the Property." Ex. A, Fifth Amendment ¶ 7(a). On that occasion, in October 2021, Goldman sought to refinance the Hotel venture, amidst the pandemic-driven financial turmoil; yet Weiss's misconduct effectively blocked a refinancing transaction that Goldman had arranged. Goldman had identified a lender that predictably required the Hotel venture's financial information before it would fund the loan but could not provide the information because of Weiss's refusal to honor Goldman's good faith request for information to which he was already entitled. *See* Ex. I. Goldman and the joint venture were damaged as a result of Weiss's breach.

216. Additionally, Weiss's refusal to share or provide access to the information with Goldman while strategically striking a deal to share said information with Fee Owner to his own benefit, is an intentional action "to discriminate in a prejudicial manner with respect to" Goldman "with respect to the Company's subsidiaries or affiliates in which both Weiss and Goldman own substantial interests" in violation of the Major Decisions provision of the Fifth Amendment. Ex. A, Fifth Amendment, Schedule I, Major Decisions, at (xix), (xxi).

217. As a consequence of Weiss's bad faith conduct, in violation of Goldman's rights under several theories of law, Goldman seeks the relief described in the final relief section below.

218. Goldman also seeks a determination that he has prevailed, and an “award [of] expenses of the arbitration, including reasonable counsel fees.” Ex. A, Fifth Amendment ¶ 11.

219. The Parties have agreed to arbitrate these issues, and their agreement to arbitrate expressly empowers the arbitrator(s) to order the requested relief, *id.*, which is necessary to rectify the vacuum of information Weiss has created for Goldman concerning the Hotel venture.

**Count II: Improper Pursuit of Unauthorized “Major Decisions” to Acquire Complete Control and Ownership of the Hotel Venture**

220. Goldman re-alleges all preceding allegations.

221. Weiss has repeatedly violated the Parties’ mutual covenants as part of the Wythe Berry Operating Agreement that prohibit either from engaging in “Major Decisions” concerning the Hotel venture, as defined in the Parties’ agreement, “without prior written approval of both Class A Members.” Ex. A, Fifth Amendment ¶ 7(e). Because Goldman is a Class A member, Weiss may not pursue any such “Major Decision” without Goldman’s consent.

222. The Side Agreement extended the latest version of the Operating Agreement’s terms, including the Parties’ mutual “Major Decision” covenants, to “any[] [dealings between the Parties and their entities] related to the said enterprise, land and building [i.e., the Hotel venture].” Ex. B. Accordingly, regardless of whether Weiss purports to be acting in the name of Wythe Berry, an Operating Affiliate, or some other entity he controls, or even on his own behalf, any “Major Decision” concerning the Hotel venture first requires Goldman’s express consent.

223. Yet, without Goldman’s knowledge, let alone consent, Weiss has attempted to bid for the remaining Hotel-related assets in the AYH bankruptcy and has sought (and/or is still seeking) to negotiate a unilateral deal with the Trustee for the Series C Bondholders that excludes Goldman. *See In re All Year Holdings Limited*, No. 21-12051, Dkt. 140 at ¶ 4 (S.D.N.Y. Bankr. Dec. 14, 2021); *id.* at Dkt. 203 at 2 (Sept. 1, 2022) (indicating that Weiss offered to purchase the

Note and Mortgage on August 24, 2022); *see also* Ex. N at 45-46, 50, 51-54, 56 (Weiss's testimony describing his repeated attempts to purchase the note and mortgage from the Bondholders). Any of these proposed transactions would plainly be Major Decisions concerning Hotel venture. *See* Ex. A, Fifth Amendment, Schedule 1, Major Decisions ¶¶ (iv) ("the decision to obtain . . . any mortgage or other financing of the Property"), (x) ("the acquisition of any real property . . . or interest therein"), (xvi) ("do any act in contravention of this Agreement"), (xvii) ("employ, or permit the Company to employ, the funds or assets of the Company in any manner except for the exclusive benefit of the Company"), (xix) ("take action which has a disproportionate effect on any Class A Member, or take any action with the intent to discriminate in a prejudicial manner with respect to the rights of any Member under this Agreement"), (xxi) ("take any of the foregoing actions with respect to the Company's subsidiaries or affiliates in which both Weiss and Goldman own substantial interests.").

224. Because Goldman never consented to any such Major Decisions, Weiss's conduct has been and continues to be in breach of Weiss's contractual duties to Goldman.

225. Separate and apart from his contractual duties, as managing member of all four joint operating Companies, Weiss owes a fiduciary duty of loyalty to Goldman, who is a non-managing member of each entity.

226. Weiss has violated and continues to violate his fiduciary duty of loyalty to Goldman by taking these prohibited actions, which are designed to benefit only Weiss, to the exclusion of Goldman. If successful, Weiss's scheme would severely upset the Parties' mutually agreed balance of interests and control in the Hotel venture: Weiss would own 100% of the ground lessor and control the ground lessee. The potential for such an inequitable outcome is precisely why the Parties agreed to the Major Decisions restrictions, which expressly protect against "action which



has a disproportionate effect on any [either Weiss or Goldman],” as well as “any action [taken] with the intent to discriminate in a prejudicial manner with respect to the rights of any Member under [the] Agreement[s].” Ex. A, Fifth Amendment, Schedule 1 ¶ (xix).

227. Even if Weiss has now failed, Goldman has incurred significant expenses and costs as he has attempted to assert and protect his rights to mitigate against the damage that Weiss would have caused had he succeeded.

228. In all events, as a consequence of Weiss’s scheme, which violates Goldman’s rights under several theories of law, Goldman seeks the relief described in the final relief section below.

229. In addition, should the arbitrator(s) determine that Goldman has prevailed, Goldman seeks an “award [of] expenses of the arbitration, including reasonable counsel fees.” Ex. A, Fifth Amendment ¶ 11.

230. The Parties have agreed to arbitrate these issues, and their agreement to arbitrate expressly empowers the arbitrator(s) to order the requested relief. *Id.*

### **Count III: Weiss’s Improper Usurpation of the Companies’ Opportunities**

231. Goldman re-alleges all preceding allegations.

232. Since 2021, Weiss has actively orchestrated an illegal scheme to cause Fee Owner to default on the Note and Mortgage secured by the fee simple interest in the Hotel property so that he could purchase it for himself at a discount. As a result, for years Weiss has sought and pursued a deal with Fee Owner, as well as the creditors of Fee Owner to purchase either or both of the remaining 50% interest in Fee Owner that Weiss did not already own and the assets of Fee Owner, i.e., the fee simple ownership of the Hotel Property. In doing so, Weiss usurped a corporate opportunity from Wythe Berry.

233. Weiss owes a fiduciary duty of undivided loyalty to Wythe Berry and its interests. As Managing Member of a limited liability company, the rule of undivided loyalty is relentless and supreme.

234. Due to its ongoing relationship with Fee Owner, both through the existing ground Lease for the Hotel Property, as well as the history of being under common control, Wythe Berry had a tangible expectancy that it would get the opportunity to pursue the fee simple ownership of the Hotel Property from Fee Owner and/or renegotiate the terms of its Lease.

235. Weiss acted disloyally when he failed to present the opportunity to Wythe Berry at all – and instead pursued the assets of fee owner for his own benefit.

236. As Managing Member with exclusive powers of direction of Wythe Berry, before pursuing a corporate opportunity, Weiss was obligated to present the opportunity to Wythe Berry by making a full disclosure of all material facts regarding the opportunity to Goldman, the other member of the closely held limited liability company.

237. Not only did Weiss fail to make a full disclosure to Goldman, “he excluded his coventurer from any chance to compete,” by simultaneously withholding all pertinent financial information regarding the Hotel venture and excluded Goldman “from any chance to enjoy the opportunity for benefit that had come to [Weiss] alone by virtue of his agency.” *Meinhard v. Salmon*, 249 N.Y. 458, 465 (1928).

238. While Weiss apparently has now failed to reach a deal to purchase the fee simple ownership in the Hotel complex, his diversion of the opportunity from Wythe Berry has now resulted in the complete loss of the Parties’ control over the Hotel and Hotel Property, as Wythe Berry has issued an Early Vacate Notice, *see* Ex. Q, and the Lease has been terminated. *See* Ex. P, Order Granting Summary Judgment.

239. Had Weiss properly presented the opportunity to the company, i.e., by including Goldman, consistent with his fiduciary duties, Wythe Berry would have been able to preserve its access to the Hotel complex. Instead, the Companies face the prospect of soon having to vacate the Hotel complex entirely, leaving little chance that they will be able to continue to operate.

240. As a result of his fiduciary breaches, Wythe Berry is entitled to recover damages from Weiss, and other relief as identified in further detail below.

241. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an “award [of] expenses of the arbitration, including reasonable counsel fees.” Ex. A, Fifth Amendment ¶ 11.

**Count IV: Unauthorized Transfers and Improper Distributions of Hotel Venture Assets Benefitting Weiss to the Exclusion of Goldman**

242. Goldman re-alleges all preceding allegations.

243. Weiss has violated several duties owed to Goldman and the Companies, including Weiss’s fiduciary duties and important provisions of the Wythe Berry Operating Agreement, which were designed to protect the Companies and their non-managing member, Goldman, from improper financial leakage and the siphoning of assets caused by Weiss, the Managing Member.

244. In particular, the Wythe Berry Operating Agreement requires that that “[a]ll funds of the Company shall be deposited in the Company’s name in such bank account or accounts as shall be designated by the Company,” and “[w]ithdrawals . . . shall be made only in the regular course of business of the Company and shall be made upon the signature of the written designee of both Members.” Ex. A, Operating Agreement at ¶ 10 (emphasis added). While it has been years since Goldman or any Goldman designee has authorized such transfers out of Wythe Berry accounts, Weiss has caused, and, on information and belief, continues to cause Wythe Berry to

make these types of unauthorized and improper transfers. Indeed, Goldman certainly did not approve any transfers to a Weiss-owned entities in 2021 or 2022. These unauthorized transfers are in direct violation of Goldman's and the Companies' rights.

245. The Parties agreed that these protections similarly extend to accounts of the Operating Affiliates. Specifically, the Parties' 2017 Side Agreement extended the most recent version of the Wythe Berry Operating Agreement, including above-described pre-authorization requirement for fund transfers, to "any[] [dealings between the Parties and their entities] related to the said enterprise, land and building [i.e., the Hotel venture]," regardless of entity. Ex. B. Weiss, however, has violated and continues to violate those requirements concerning transfers from accounts of the Operating Affiliates, just as he has with transfers from the accounts of Wythe Berry.

246. Weiss is causing unauthorized transfers from Wythe Berry and Operating Affiliate accounts for "expenses" that are not actually expenses of the Hotel venture and are unnecessary to operate the Hotel venture. On information and belief, Weiss has done so for his own exclusive benefit (e.g., in an attempt to depress artificially the profitability of interests that he has contemporaneously attempted to purchase from Series C Bondholders and the AYH liquidators in the bankruptcy).

247. One clear example is Weiss's repeated failures to pay rent on the Hotel complex's ground Lease, which has predictably led to expensive, wasteful, and unnecessary litigation, funded by Hotel venture cash flows. Weiss breached his fiduciary duty by causing Wythe Berry to withhold payments improperly from Fee Owner, despite plain contractual and court-ordered duties to make the payments. Weiss has also caused the relevant entities to take frivolous actions and positions that unnecessarily prolong and multiply the proceedings in the Lease litigation, including

withholding information plainly required to Fee Owner under the Lease and under the relevant rules of procedure. Weiss has created a situation where costly legal fees have eroded and continue to erode profits that the Hotel venture would otherwise be producing. Weiss has advanced no good reason for such actions, about which he refuses even to communicate with Goldman. Accordingly, for these reasons as well, Weiss's conduct violates his duties.

248. Weiss has also improperly and illegally caused the Companies to pay for own personal legal expenses where he is not entitled to do so, including fees arising from this arbitration and the preceding Article 75 proceeding.

249. He has done so while simultaneously taking frivolous actions and positions that unnecessarily prolong the proceedings. For example, Weiss has continued to withhold information plainly required to Goldman under the operating agreements, the Emergency Interim Award, and several Procedural Orders of the appointed Panel. Weiss's malfeasance has created a situation where costly legal fees have eroded and continue to erode profits that the Companies would otherwise have for distribution, particularly to Goldman who is entitled to such distributions pursuant to the agreed-upon distribution scheme in the Parties' agreements.

250. In addition, at least some of the improper transfers that Weiss has caused from accounts of Wythe Berry and the Operating Affiliates also violate Goldman's rights for another reason: some of the unauthorized transfers have been, and, on information and belief, continue to be made to Weiss-owned entities. When Weiss causes transfers from the accounts of joint entities to accounts of entities that only Weiss owns, he effectively bypasses distribution safeguards that are memorialized in each of the operating agreements that operate the Hotel venture: "distribut[ions] [of] cash receipts derived from operations . . . such as rents, royalties, fees and

other revenues” may only be made “in the . . . order of priority” set out in the agreements. Ex. A, Fifth Amendment ¶ 6; *See also* Ex. D ¶ 8; Ex. E ¶ 8; Ex. F ¶ 8.

251. To the extent such unauthorized transfers have been made to Weiss-owned entities, on information and belief, they are not for legitimate operating expenses. By causing Wythe Berry and Operating Affiliates to make such unauthorized transfers to Weiss-owned entities, he is bypassing agreed-upon distribution priority for Hotel venture cash flows, extracting improper assets that should instead accrue to Goldman. Such improper transfers have disproportionately and unjustly enriched Weiss to the exclusion of Goldman, and are actions taken by a Managing Member to the disadvantage of a non-managing member. Accordingly, beyond the contractual problems that these transfers represent, the transfers to Weiss-owned entities are a plain violation of Weiss’s fiduciary duties.

252. As a consequence of the above-described conduct, Goldman seeks the relief described in the final relief section below.

253. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an “award [of] expenses of the arbitration, including reasonable counsel fees.” Ex. A, Fifth Amendment ¶ 11.

**Count V: Weiss’s Multi-Million Dollar Fraud (Misrepresentation & Concealment) on Goldman In Connection With Goldman’s Attempts to Collect Funds Under the Wythe Berry Ground Lease to Avoid a Default on Bonds Had Been Issued to Refinance the Hotel Complex**

254. Goldman re-alleges all preceding allegations.

255. Weiss committed fraud against Goldman by misrepresenting and concealing the available funds in the Companies’ accounts when a bond payment deadline was approaching in August 2019, and after Goldman repeatedly asked Weiss about what funds that the Companies had

available to satisfy that obligation. In practice, the Companies did not abide by the formal processes in the Lease to make the semiannual bond payments. Rather, the customary practice was to pull together available funds from the Companies' accounts to contribute to the bond payment, coordinating by and through Goldman.

256. As described above, in August 2019, upon multiple inquiries from Goldman regarding the funds available in the Companies' operating accounts as the August payment deadline was approaching, Weiss repeatedly stalled and then materially misrepresented to Goldman that funds were not available—all while knowing that these communications were false and funds were, in fact, available to the Companies that could have been used to the bond payment. Weiss did so intentionally, to keep Goldman from the truth as to the availability of funds to satisfy the bond payment.

257. As part of the scheme, and as a pretext for fraudulent statements to Goldman, Weiss caused the Companies to transfer \$4,000,000 in funds belonging to the Companies (out of a Hotel operating account) to the account of an entity wholly owned and controlled by Weiss (exclusively). Weiss did so intentionally, despite his duties of candor to Goldman, which included the duty to disclose this material information.

258. For his part, Goldman justifiably relied on Weiss's material misrepresentation and pursued funding elsewhere, requiring him to agree to unfavorable non-market terms and conditions. Ultimately, in effect, Weiss fraudulently induced Goldman to contribute additional capital to the Hotel venture.

259. Goldman, who solicited financing on unfavorable, non-market terms to satisfy that August 2019 bond payment, sustained damages as a result of his reliance on Weiss. Goldman's

damages were then amplified as Weiss acted wastefully and disloyally with the funds that Goldman had effectively been fraudulently induced into contributing to the Hotel venture.

260. The above-described conduct constitutes at least fraudulent misrepresentation and fraudulent concealment as to Goldman.

261. On information and belief, this was not the only instance of similar fraudulent conduct by Weiss as he disloyally operated as the Managing Member of the Companies. Despite Goldman's significant efforts for some time to enforce his rights to see the full books and records of the Companies, Weiss still has not made a full and fair disclosure. Accordingly, Goldman reserves all of his rights to further amend this Amended Demand to identify additional specific acts of fraud as they are discovered hereafter.

262. Weiss acted in bad faith and breached his fiduciary duties when he intentionally concealed and failed to disclose material information regarding the funds available for the bond payments, which Wythe Berry was obligated to pay.

263. Goldman seeks the relief described in the final relief section below. To the extent the Panel determines any part of this claim is derivative, the Companies, by and through Goldman, seek the relief described in the final relief section below.

264. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an "award [of] expenses of the arbitration, including reasonable counsel fees." Ex. A, Fifth Amendment ¶ 11.



**Count VI: Improperly Causing the Companies to Divert Funds to Weiss By Way of Unauthorized Transfers to Weiss Directly and/or Through Weiss's Wholly Owned Entities, Where Such Transfers Were Not Approved Under Any Authorized Agreement of the Joint Venture**

265. Goldman re-alleges all preceding allegations.

266. The above-described fraudulent conduct exemplifies a broader course of disloyal conduct by Weiss, in plain breach of his fiduciary duties both to Goldman and the Companies. Over the course of several years, Weiss engaged in several schemes to overbill the Companies and otherwise pilfer, convert, and siphon away the Companies assets to enrich himself at Goldman's expense, in violation of his contractual and fiduciary duties. Weiss's schemes have taken several forms and are only now beginning to be exposed in earnest because of the partial (and still incomplete) books and records productions Weiss began to make after the interim injunctive measures that this Panel awarded to protect Claimant Goldman, as reflected in Procedural Orders No. 1 – 4. Several examples that Claimant Goldman has begun to uncover are provided below. In addition to supporting independent claims for conversion, unjust enrichment, breach of contract, and breach of fiduciary duty, these examples underscore the dire need for the requested equitable accounting claim that follows.

*\$4 Million Transfer from a Company Account to Wholly Owned Weiss Entity to Conceal Company Assets from Goldman*

267. The above-described fraudulent conduct exemplifies a broader course of disloyal conduct by Weiss, in breach of his fiduciary duties both to Goldman and the Companies. It signifies Weiss's utter disregard for provisions of agreements under which Weiss agreed to operate the Companies and be a steward of its assets. And it further underscores the (at best) indifference Weiss had with respect to the rights of Goldman.

268. As described above, in 2019, Weiss knowingly and intentionally caused a \$4 million transfer from an operating account of WVH to an account of one of Weiss's wholly owned entities, Espresso. He did so—admittedly—to hide from Goldman the existence of millions of dollars in WVH assets—a plain violation of his duty of candor to Goldman.

269. Beyond the fiduciary duty problems with the transfer, it violated contractual provisions of the Parties' agreements governing the Hotel venture. For example, pursuant to Section 10 of the WVH Operating Agreement, “[a]ll funds of the Company shall be deposited in the Company's name in such bank account or accounts as shall be designated by the Company[.]” Ex. D ¶ 10. By removing \$4 million from WVH operating account and depositing them into an Espresso account, Weiss plainly violated his contractual duties under the WVH Operating Agreement.

270. The transfer similarly qualifies as conversion. Weiss exercised unauthorized control over the \$4 million to which the WVH had a legal right, and interfered with that right when he transferred the funds out of the WVH's account. Weiss's conduct demonstrated dominion over the WVH funds and constitutes conversion.

271. Neither Weiss nor Espresso did anything to earn that \$4 million. Nor has Weiss contended otherwise, since Goldman learned of the transfer as a result of the disclosures that followed this Panel's procedural orders in and around August 2023. The transfer thus also represented an unjust enrichment of in favor of Weiss, at the expense of the Hotel and Weiss's joint venture partner, Goldman.

*Years of Transfers of the Companies' Funds to "Reimburse"  
a Wholly Owned Weiss Entity for Non-Reimbursable Expenses*

272. One of Weiss's longer-term schemes to enrich himself at the expense of Goldman and the Companies involved transfers of funds that Weiss caused from accounts of WVH to accounts owned by Riverside (Weiss's wholly owned entity).

273. At least from 2019 and 2021, Weiss improperly caused WVH to pay his wholly owned entity (Espresso) for Weiss's own "expenses" that neither Goldman nor the Companies ever agreed the Companies would pay.

274. As relevant, the HMA (under which the payments were purportedly made) prohibits Weiss's wholly-company (Espresso) from invoicing expenses for reimbursement in connection with Weiss's management of the Hotel in certain ways – including specifically a prohibition against reimbursed compensation for Weiss's employees who are not working full time at the Hotel and working exclusively on Hotel business. HMA § 3.3(a), 5.1(a).

275. Yet, for years, Weiss caused Espresso to bill for, and caused WVH to pay invoices for, Weiss's expenses that are not reimbursable under the HMA.

276. These payments were made based on invoices that generically referenced "Consulting" and "Purchasing." In reality, Weiss was charging the Companies for his own compensation expenses owed to his separate employees – who he has since admitted do not work for the Hotel.

*Miscalculated & Inflated Management Fees Paid to Weiss*

277. Weiss similarly caused improper transfers from the Companies' accounts under the guise of management fee payments, where the underlying amounts were miscalculated and inflated in violation of the HMA, in favor of Weiss, to the detriment of Goldman and the Companies. As

a result, Weiss caused WVH to overpay management fees to his wholly owned company Espresso based on amounts that were calculated in ways that did not follow the HMA. §§ 1.1, 8.2(a)-(b).

278. To the extent such unauthorized transfers have been made to Weiss-owned entities, on information and belief, they are not for legitimate operating expenses, or expenses that WVH is contractually obligated to pay under the HMA. By causing WVH to make such unauthorized transfers to Weiss-owned entities, Weiss is bypassing agreed-upon terms as to what Weiss can and cannot bill (several times over) for managing the Hotel.

279. Moreover, these improper invoices and payments are effectively Weiss's end-run around the distribution priority for Hotel venture profits, which Weiss devised and implemented in violation of his duties to siphon assets away from the Companies that otherwise would have and should have accrued to Goldman. Such improper transfers disproportionately and unjustly enriched Weiss to the exclusion of Goldman and the Companies, and are actions taken by a managing member to the disadvantage of a non-managing member and the Companies.

280. The above-described conduct occurred in violation of the Companies agreements, including the HMA. This misconduct was also a violation of Weiss's fiduciary duties.

281. Weiss has also siphoned away the Companies assets with a scheme involving improper transfers to Riverside, one of his wholly owned entities.

*Additional Unauthorized Management Fees Paid to  
a Wholly Owned Weiss Company in Connection with North 12 Parking*

282. As Managing Member of North 12, Weiss owed that entity (and Goldman) contractual and fiduciary duties in connection with the North 12 Operating Agreement. Between 2016 and July 26, 2019, the parking garage on the Property was operated by Wythe Parking LLC pursuant to a management agreement. Effective July 26, 2019, Weiss caused North 12 to terminate the agreement without the express written consent of Goldman, in violation of the Major Decisions

provision of the North 12 Operating Agreement. *See* Ex. F, Schedule I (13) (prior written consent of both Members is required for “the decision to enter into, terminate or accept the surrender of, as applicable, and Property Management Agreement[.]”).

283. Then, in 2019, upon information and belief, Weiss caused North 12 to make unauthorized payments without Goldman’s express consent, again, in violation of the Major Decisions provision.

284. On information and belief, the recipient of these payments from North 12 is affiliated with Weiss, and received at least \$300,000 in management fees. Weiss did so in violation of the North 12 Operating Agreement and his fiduciary duties. *See* Ex. F, Schedule I (1) (prior written consent of both Members is required for “the terms and conditions of any agreement between the Company and an Affiliate of any Member[.]”); *id.*, Schedule I (13) (prior written consent of both Members is required for “the decision to enter into, terminate or accept the surrender of, as applicable, and Property Management Agreement[.]”).

*Millions in Unexplained and Unapproved Transfers to Riverside,  
Yet Another Wholly Owned Weiss Company*

285. As another example, Weiss has abused his position as Managing Member of the Companies by causing the transfer funds belonging to Wythe Berry from Wythe Berry accounts to accounts of another one of Weiss’s wholly owned entities, Riverside.

286. By way of background, Riverside was an entity previously involved in the Hotel complex’s construction. Since March 1, 2017, however – well after completion of the Hotel complex – Weiss has caused numerous, repeated transfers back and forth between the accounts of Wythe Berry and Riverside. The amounts have been significant. And although Weiss caused some of the money transferred out to the Riverside account later to be transferred back into the Wythe Berry account, the net outflows to Riverside amount to nearly \$10 million.

287. As Weiss has admitted in open court, when questioned about such transfers (during Fee Owner's Involuntary Proceeding), Riverside (i) is an entity that he wholly owns and controls, (ii) has been acting as a "general contractor of sorts" for the Hotel venture, and (iii) at least in 2022, Weiss caused Wythe Berry to pay Riverside millions of dollars for its supposed "materials and labor." *See* Ex. N at 75-76; Ex. O ¶ 75.

288. At no point since has Goldman (or any designee of Goldman) authorized Weiss to cause Wythe Berry to agree to "the budgets for any substantial future development or construction projects" on the Hotel Property. Ex. A, Fifth Amendment Schedule I (v).

289. Upon information and belief, there is no justification for these transfers and they represent yet another scheme on the part of Weiss to hide Wythe Berry money from Goldman. Indeed, the back-and-forth nature of the transfers, coupled with their frequency and magnitude, plainly reflect Weiss's practice of using Wythe Berry funds as his own free line of credit, for which neither the Companies nor Goldman were ever compensated.

290. To make matters worse, as Weiss helped himself to Wythe Berry's cash, he meanwhile caused Wythe Berry not to repay the 2014 Loan which was costing the Hotel venture dearly in ongoing interest payments to service that \$6 million loan. *See supra* ¶ 117 (the 2014 Loan).

291. By transferring millions of Wythe Berry's funds into a Riverside account, Weiss has converted the funds and unjustly enriched himself and his wholly owned companies at Wythe Berry's expense. Through this scheme, as with the others described herein, Weiss has acted and continues to act in blatant violation of his contractual and fiduciary duties.

Transfers to Pay Weiss's Personal Legal Bills for Issues Not Properly Chargeable to the Companies, Including Cases Stemming from Weiss's Disloyal Conduct

292. Weiss has similarly siphoned away the Companies' assets by causing the Companies to pay for his own personal legal expenses when those services are for his own exclusive benefit and are attributable to his own misconduct otherwise described herein.

293. Although this is one area where disclosures thus far have been particularly incomplete, it is clear that Weiss has caused Wythe Berry to pay for his personal legal fees associated with at least several separate proceedings, including this arbitration. Meanwhile, Weiss has not caused Wythe Berry to pay Goldman for his legal fees associated with any of the above-mentioned disputes, even though Goldman is also a party to all such proceedings.

294. By using Wythe Berry funds to pay for his personal legal fees that benefitted Weiss exclusively and disproportionately, Weiss has breached his fiduciary duties to the company.

295. Additionally, Weiss has used his role as Managing Member, with exclusive control over the accounts to cause Wythe Berry to pay his personal legal expenses and Weiss unjustly enriched himself at Wythe Berry's expense.

\* \* \*

296. In all cases, as the party responsible for all or nearly all of the capital contributions to the Companies, as Goldman's capital accounts should and will reflect when properly accounted for, the above-described misconduct by Weiss has effectively diverted away undistributed Company profits to which Goldman otherwise would have been entitled pursuant to the Parties' agreed upon scheme of distribution for the Hotel joint venture (until Goldman's original capital contributions are distributed in full). Thus, Goldman is the true party who has ultimately suffered the economic brunt of the duplicitous conduct of Weiss described above. Accordingly, Goldman personally seeks the relief described in the final relief section below. To the extent the Panel

determines any part of this claim is derivative, the Companies, by and through Goldman, similarly seek the relief described in the final relief section below.

297. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an “award [of] expenses of the arbitration, including reasonable counsel fees.” Ex. A, Fifth Amendment ¶ 11.

**Count VII: Improper Accounting Practices, Comingling of the Companies’ Assets, and the Failure to Pay Distributions Provided for Under the Companies’ Operating Agreements**

298. Goldman re-alleges all preceding allegations.

299. As part of the broader scheme of operational and financial irregularities described herein, Weiss has failed to keep accurate books, has improperly comingled assets distinct entities, and has failed to pay distributions to Goldman where required under the Companies’ operating agreements. Examples of these issues are below. These issues further underscore the need for a complete and thorough accounting so that Goldman’s interests can be properly protected.

300. *First*, Weiss has violated important provisions of the North 12 and WVH Operating Agreements and his fiduciary duties designed to protect the Companies and their non-managing member, Goldman, from improper financial leakage and the siphoning of assets caused by Weiss, the managing member. Specifically, Weiss has failed to keep accurate financial records and maintain North 12 company funds in a North 12 bank account, as required in the North 12 Operating Agreement, Ex. F ¶ 10, by comingling the funds and records of North 12 Parking with those of the WVH since 2020. *See* Respondent’s August 30 Letter to Panel (“As of 2020 (through the present), North 12 Parking LLC financials are consolidated with TWVH LLC.”).



301. Weiss's conduct also a breach of his duty of loyalty to Goldman. Since Goldman is entitled to the distribution of profits from North 12, by comingling the accounts and records of North 12 and WVH, Weiss has prevented Goldman from receiving any distributions or profits he otherwise would be entitled to when profits are produced by the Hotel complex parking operation, as provided for in the North 12 Operating Agreement. Ex. F. ¶ 8.

302. This improper comingling of assets benefits Weiss and his wholly owned entity to the exclusion of Goldman. Because Weiss's wholly owned entity Espresso received incentive management fees based on the profits of the WVH, *see* HMA, § 8.2(b); *id.* §1.1., by comingling the accounts and records of North 12 and WVH, Weiss is inflating the incentive management fee paid to Espresso and enriching himself to Goldman's detriment.

303. **Second**, as another example of Weiss's malfeasance that underscores the need for an equitable accounting, Weiss has violated his contractual duties to Goldman by failing to pay profit distributions to Goldman as required under the FNB Operating Agreement. *See* Ex. E ¶ 8.

304. Rather than transmitting profit distributions to Goldman, as provided for under the FNB Operating Agreement, Weiss effectively has forced a capital contribution to Wythe Berry on Goldman's behalf by diverting Goldman's portion of the FNB profits to Wythe Berry.

305. Weiss's conduct runs directly contrary to the Major Decisions covenants in the Fifth Amendment of the Wythe Berry Operating Agreement because he failed to obtain Goldman's written consent before causing a capital call at Wythe Berry. *Id.*, Schedule I (i).

306. Beyond the contractual problems with Weiss's conduct, the failure to pay Goldman distributions and failure to account appropriately for the new investments in Wythe Berry in Goldman's capital account, are also plain violations of Weiss's fiduciary duties to Goldman.

307. *Third*, Weiss's mismanagement has further compounded the need for an equitable accounting because he has failed to maintain accurate capital accounts on Wythe Berry's books.

308. Instead of characterizing the above-mentioned capital contribution from FNB to Wythe Berry as a capital contribution from Goldman, Weiss allocated the capital contribution to a capital account titled "All Year."

309. Additionally, as described in further detail earlier in the Amended Demand, Weiss caused the Parties' Wythe Berry capital accounts to reflect inaccurately the Parties' relative economic contributions toward satisfying Wythe Berry's 2014 Loan. In particular, Weiss overvalued his own contribution (by millions), while undervaluing Goldman's (by millions).

310. Weiss's failure to keep accurate records of the Parties' relative capital contributions to the Hotel venture (and to distort those records in his own favor, while keeping the same records from Goldman) represents yet another jarring violation of his contractual and fiduciary duties.

311. *Fourth*, as another example of Weiss's malfeasance that underscores the need for an equitable accounting, Weiss has been operating the Companies in blatant disregard of the scheme of distribution for profits provided for in the Companies' operating agreements.

312. Indeed, while Weiss continues to withhold a significant amount of the Companies' books and records, the incomplete records produced to date make clear that Weiss has recorded profits on the Companies' books, but has disregarded the scheme of distribution that the Companies' operating agreements require.

313. To take one glaring example, in June 2022, Weiss has caused Wythe Berry to distribute approximately \$1.75 million to himself, which the Wythe Berry Operating Agreement did not permit because Goldman's unreturned capital contributions were still being withheld from and otherwise not distributed to Goldman.

314. Weiss's failure to pay Goldman distributions from the Companies are plain violations of Weiss's and the Companies' contractual obligations to Goldman under the Companies' operating agreements. *See* Ex. A, Fifth Amendment ¶¶ 6, 2(c), 2(f); Ex. D ¶ 8; Ex. E ¶ 8; Ex. F ¶ 8.

315. Weiss's failure to pay Goldman his distributions owed, whilst paying himself distributions in violation of the distribution priority is also a breach of Weiss's fiduciary duty of loyalty to Goldman.

\* \* \*

316. In all cases, as the party responsible for all or nearly all of the capital contributions to the Companies, as Goldman's capital accounts should and will reflect when properly accounted for, the above-described misconduct by Weiss has effectively diverted away undistributed Company profits to which Goldman otherwise would have been entitled pursuant to the Parties' agreed upon scheme of distribution for the Hotel joint venture (until Goldman's original capital contributions are distributed in full). Thus, Goldman is the true party who has ultimately suffered the economic brunt of the duplicitous conduct of Weiss described above. Accordingly, Goldman personally seeks the relief described in the final relief section below. To the extent the Panel determines any part of this claim is derivative, the Companies, by and through Goldman, similarly seek the relief described in the final relief section below.

317. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an "award [of] expenses of the arbitration, including reasonable counsel fees." Ex. A, Fifth Amendment ¶ 11.

**Count VIII: Equitable Accounting**

318. Goldman re-alleges all preceding allegations.

319. Both under the Companies' operating agreements, and under New York law, because of fiduciary status as Managing Member of the relevant LLCs, Weiss is obligated to provide Goldman with timely, accurate, and complete financial reporting, as well as access to inspect and audit books and records when so demanded. Since approximately 2017, however, Weiss has failed to comply with these contractual and fiduciary duties, effectively blocking efforts to resolve the financial problems and blinding Goldman as to what is happening with respect to the assets and accounts of Wythe Berry and the Operating Affiliates. For his part, Goldman has for years made repeated, good faith financial proposals and has made demands for information and access. *See, e.g.*, Exs. I, J, K, L, M. Goldman has also been awarded interim relief by the Emergency Arbitration and the appointed Panel each of which has ordered Weiss to provide full and continual access to the books and records of the Companies. Yet Weiss has stonewalled at every turn and refuses to comply with such orders.

320. Given the complexity of the Hotel venture and the several intertwined entities, an equitable accounting is necessary to rectify the books and accounts of the Companies and to determine the extent to which Weiss has mismanaged and dissipated the Companies' funds and the Parties' capital accounts.

321. Particularly given what has recently come to light about Weiss's conduct, including: (1) Weiss's recent alteration of the historical financial records of the Companies, (2) Weiss's diversion of FNB profits to Wythe Berry, (3) his failure to maintain separate books and accounts for North 12, (4) his misuse of company funds to pay for his personal legal fees, amongst other wrongful conduct discussed above, to better understand the scope of Weiss's bad acts and to

gauge what damages are owed to Goldman, and/or the Companies in this action and to rectify the books and accounts of the Companies, the arbitrators should order an equitable accounting of all assets and accounts of the Companies. Based on the results of the accounting, Goldman reserves the right to amend the allegations and request for relief in this Amended Demand for Arbitration.

322. As a consequence of the above-described conduct, and because Weiss's schemes have been so pervasive that no other remedy would adequately remedy the full extent of the damages Weiss's conduct has caused, Goldman seeks the equitable accounting. To the extent the Panel views any part of this claim as derivative, Goldman further requests the equitable accounting on the Companies behalf. Finally, for purposes of this claim, the Companies themselves are being named as defendants—so that the Panel is vested with sufficient authority to order adjusted distributions to be paid to Goldman, and/or a return of funds be made to the Companies, as the Panel finds equitable following the accounting.

323. This is a dispute that the Parties agreed to arbitrate, and the arbitration agreement allows the arbitrator(s) to award such equitable relief. *See* Ex. A, Fifth Amendment ¶ 11. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an “award [of] expenses of the arbitration, including reasonable counsel fees.” *Id.*

**Count IX: Weiss Has Engaged in Self-Dealing When Acting as a Landlord to Commercial Sub-Tenants of Wythe Berry at the Hotel Complex**

324. Goldman re-alleges all preceding allegations.

325. In several respects, Weiss has abused his position as Managing Member of Wythe Berry by engaging in transactions with the Company in which he has an interest in Wythe Berry's counterparty. There are several examples of these issues – all of which again underscores the need for a full and fair equitable accounting to protect the interests of Goldman, the Companies' non-managing member – to whom Weiss has been acting disloyally for years:

326. *First*, As discussed above, Weiss has caused Wythe Berry to allow Weiss and his affiliated entities to occupy office space in the Hotel complex without a written lease and without paying rent in violation of the HMA. HMA § 5.1(a); *see* Respondent's Responses and Objections to Redfern Request No. 115.

327. *Second*, Weiss also caused Wythe Berry to execute a tenant-favorable lease (which only required percentage rent to be due) with WD49 LLC while Weiss held an undisclosed and unapproved personal interest in the same tenant.

328. Upon information and belief, Weiss permitted WD49 LLC to occupy space at a rate far below the fair market value.

329. *Third*, Weiss has caused Wythe Berry to agree to release one or more delinquent tenants from obligations following the nonpayment of rent owed to Wythe Berry, while also holding undisclosed interests in the same tenants. *See* Respondent's Responses and Objections to Redfern Request No. 118.

330. In the case of WD49 LLC, for example, when Weiss caused Wythe Berry to execute the settlement and vacate agreement, he caused Wythe Berry to write off significant amounts of unpaid rent that the entity was otherwise owed without satisfying the outstanding deficiency himself. Meanwhile, Weiss executed a separate settlement agreement between that tenant and one of his development companies, collecting funds for his own entity's benefit that could have been used to satisfy some of the same entity's overdue rent to Wythe Berry.

331. Weiss's breaches of his contractual and fiduciary duties of loyalty to Wythe Berry, while unjustly enriching and benefitting his own affiliated entities, constitutes self-dealing and conversion of the Hotel complex space.

332. *Fourth*, Weiss has permitted another entity, Studio 109, to occupy and operate out of space at the Hotel Property without a lease. *See* Respondent's Responses and Objections to Redfern Request No. 118 ("No written agreement exists"). On information and belief, Studio 109 is managed by Espresso, Weiss's wholly owned entity.

333. Weiss has breached his fiduciary duties to both Wythe Berry and Goldman in permitting the terms of such a tenancy.

334. As a consequence of the above-described conduct, Goldman seeks the relief described in the final relief section below.

335. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an "award [of] expenses of the arbitration, including reasonable counsel fees." Ex. A, Fifth Amendment ¶ 11.

**Count X: Weiss's Has Breached His Fiduciary Duties Loyalty and Care by Mismanaging the Companies to his Own Ends Such that He has Failed to Protect the Interests of Goldman and the Companies**

336. Goldman re-alleges all preceding allegations.

337. Weiss has mismanaged the Companies by continually operating them to his own ends, in violation of his fiduciary duties, causing waste and ultimately likely running the entire Hotel venture into the ground when he was recently unable to buy the Property interest at a fire sale price. Weiss's conduct has created unwarranted expense, risk, and legal exposure for the Parties and the Companies. Examples follow.

338. *First*, Weiss acted in bad faith and breached his fiduciary duties of care and loyalty to Goldman as co-venturer under the operating agreements when he refused to engage with Goldman regarding refinancing and opportunities to cure the outstanding Hotel venture debt

including in October 2019 and in October 2021, despite Goldman's repeated and urgent requests in the face of potential default on the bonds.

339. Weiss's failure to act was a part of his scheme to manipulate Goldman's financial difficulties to his own benefit, i.e., to create a situation through which he could purchase the Hotel Property interests himself. Weiss's failure to engage contributed directly to Goldman's distress, which has had material consequences for Goldman (and the Companies), including the AYH bond default, the AYH Chapter 11 bankruptcy proceeding, and the disposition of Hotel Property in connection with the Fee Owner bankruptcy.

340. **Second**, Weiss failed to cause Wythe Berry the cure its default on the Lease payments owed to Fee Owner, even when sufficient funds were available to do so. Instead, Weiss pursued his own self-interests to the detriment of the Companies and Goldman, as he sought to pursue a deal to purchase the remaining Hotel venture interest personally. *See* Ex. N at 79-80 (Q: "[I]t took a court order for you to pay that 7.5 million, correct?" A: "Not that I didn't want to pay it, I wanted to make a deal with the bondholders and pay it to them, not through a lease.").

341. Weiss's failures to act in the best interests of the Companies and Goldman led Wythe Berry and Parties to be subject to litigation and liability in the *Wythe v. Wythe* litigation, as well as the loss of interests in the Hotel Property.

342. **Third**, as he was operating the Hotel venture, Weiss has failed to segregate tenant security accounts from the other accounts of Wythe Berry, as is required under New York law, creating legal exposure of Wythe Berry.

343. **Fourth**, Weiss's mismanagement extended to the Operating Affiliates when he caused the Operating Affiliates to fail to comply with a court order requiring the Operating Affiliates to produce certain financial information to Fee Owner in the *Wythe v. Wythe* Lease



litigation, Dkt. 185, resulted in the court issuing an order holding the Operating Affiliates, in civil contempt on September 30, 2022. *See Wythe v. Wythe*, Dkt. 297.

344. Weiss caused the Operating Affiliates to fail to comply in order to maintain his unilateral access and use of Hotel venture financial information to ensure he was the only party with complete information to purchase the Hotel Property interests.

345. Weiss's failure to consider or engage in conversations regarding refinancing or sale, and failure to cure the rent default and to engage with Goldman regarding potential refinancing or sale ultimately led to the Fee Owner's legal action against the Parties and the Companies. This has led to Wythe Berry's announcement that it will be vacating the Hotel Property, *see* Ex. Q, Early Vacate Notice, the Lease being terminated, *see* Order Granting Summary Judgment, Ex. P, and the loss of control of the Hotel Property for both Parties. Weiss's conduct violated his fiduciary duties to the Companies, and his fiduciary duties to Goldman as a coventurer.

346. As a consequence of the above-described conduct, Goldman (and to the extent the Panel views these claims as derivative, Goldman, on behalf of the Companies) seek the relief described in the final relief section below.

347. The Parties have agreed to arbitrate these issues and the arbitration agreement allows the arbitrator(s) to award such relief. Upon the arbitral award sought herein, Goldman further seeks a determination that he has prevailed and an "award [of] expenses of the arbitration, including reasonable counsel fees." Ex. A, Fifth Amendment ¶ 11.

### **RELIEF REQUESTED**

For the reasons described above, the arbitrator(s) should grant, award, and order the following relief in favor of Goldman.

1. Final Relief Requested:

- a. A declaration that:
- i. The Parties have agreed to arbitrate the issues presented for resolution in this Amended Demand for Arbitration;
  - ii. Goldman has prevailed in this arbitration and is entitled to an award of expenses including reasonable attorneys fees;
  - iii. Goldman is entitled to access, inspect, copy, and audit all financial information, reporting, records, books and accounts of Wythe Berry LLC and the Operating Affiliates;
  - iv. Goldman is entitled to receive all financial reporting identified in the Wythe Berry LLC and Operating Affiliate operating agreements;
  - v. Weiss has materially breached the Parties' agreements and his contractual duties to Goldman, by the conduct described and alleged in the Claims above;
  - vi. Weiss has materially breached his fiduciary duties to Goldman by the conduct described and alleged in the Claims above;
  - vii. Weiss has materially breached his fiduciary duties to the Companies by the conduct described and alleged in the Claims above;
  - viii. Weiss has materially breached his contractual and fiduciary duties to Goldman and the Companies such that an equitable accounting is warranted.

- b. An Order requiring:
- i. Weiss immediately to make a full and complete disclosure of all financial records and books and accounts of Wythe Berry LLC and the Operating Affiliates;
  - ii. Weiss to provide Goldman with to access, inspect, copy, and audit all financial information, reporting, records, books and accounts of Wythe Berry LLC and the Operating Affiliates;
  - iii. Weiss to provide Goldman with all financial reporting identified in the Wythe Berry LLC and Operating Affiliate operating agreements;
  - iv. Awarding an equitable accounting of assets and accounts of Wythe Berry LLC, the William Vale Hotel LLC, the William Vale Hotel FNB LLC, and North 12 Parking LLC, that returns Goldman to the position he would have been in had Weiss abided with his contractual and fiduciary duties with interest.
- c. An Order restricting and enjoining:
- i. Weiss from future breaches of Parties' agreements that entitle Goldman to complete access to accurate financial information, and the right to inspect the books and records of, Wythe Berry LLC and the Operating Affiliates;
  - ii. Weiss from taking further steps to acquire any interest in the Hotel venture, or taking steps to pursue any other "Major Decision, without Goldman's express consent;
  - iii. Weiss from making any transfers from the accounts of Wythe Berry LLC or any Operating Affiliate without Goldman's express consent;

- iv. Weiss from making any distributions from the accounts of Wythe Berry LLC or any Operating Affiliates without Goldman's consent; and
- v. Weiss from making any distributions from Wythe Berry LLC or any Operating Affiliate in violation of the Parties' agreed schedule of priority of distributions in the agreements;
- d. An Order awarding Damages, including disgorgement and restitution from Weiss to Goldman in an amount to be determined by the arbitrators following full disclosure of the requested financial records, books, and accounts of the Parties' entities and the requested equitable accounting—sufficient to make Goldman whole and return him to the financial position he would have been in absent Weiss's violations, plus interest;<sup>24</sup>
- e. An Order awarding putative damages from Weiss to Goldman in an amount to be determined by the arbitrators due to the extreme degree of Weiss's gross, wanton, or willful fraud or other morally culpable conduct;
- f. An Order imposing a constructive trust on:
  - i. any "Major Decision" transaction that Weiss successfully completes prior to the final resolution of this arbitration, such that Goldman may participate *pari passu* with Weiss, or any Weiss-controlled entity, in any "Major Decision" transaction done without Goldman's consent; and

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<sup>24</sup> Pursuant to the Commercial Arbitration Rules and Mediation Procedures, Administrative Fee Schedules, Amended and Effective May 1, 2018, this is an arbitration for both Undetermined Monetary Claims and Nonmonetary Claims. To initiate the arbitration, Claimant Goldman is filing this Demand (along with exhibits, including the documents reflecting the Parties' agreement to arbitrate) by email, and will pay the initial filing fee of \$7,700 when the AAA case filing team provides the appropriate link.

- ii. any assets that Weiss has succeeded in siphoning out of the Hotel venture, to the extent necessary to satisfy his liabilities to Goldman and/or the Companies in connection with the outcome of this arbitration;
- g. An Order against Weiss in Goldman's favor awarding costs and expenses of this arbitration (and all related judicial proceedings), including but not limited to reasonable counsel fees, filing fees, and arbitrator compensation; and
- h. Such other relief that the arbitrator(s) determine to be equitable and just.

Dated: October 13, 2023

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