



Maura Healey, Governor
Kimberley Driscoll, Lieutenant Governor
Gina Fiandaca, Secretary & CEO
Jeffrey Gonneville, Interim General Manager



March 16, 2023

Via Overnight Mail and Email

Ashkenazy Acquisition Corporation
150 East 58th Street, 39th Floor
New York, New York 10155
Attn: Joe Press

RE: **NOTICE OF DEFAULT** (“Notice”) under the Amended and Restated Lease Agreement dated as of June 7, 2016, as affected by that certain Assignment and Assumption of Ground Lease dated as of August 21, 2017, as further amended by that certain First Amendment to Amended and Restated Lease Agreement dated as of May 9th, 2019 (collectively, the “Lease”) by and between Massachusetts Bay Transportation Authority (“Landlord”) and AAC South Station Property, LLC (“Tenant”) with respect to premises located at the intersection of Summer Street and Atlantic Avenue, Boston, Massachusetts known as the South Station Head House (the “Leased Premises”).¹

Dear Mr. Press:

Landlord issues this letter reluctantly. South Station is an iconic institution used by thousands of MBTA customers each day and one that hosts several elements of the MBTA’s transportation system. Its successful and professional operation and management is critical to our customers’ experience. Many of the issues raised in this Notice have become chronic. After working with Tenant on these and other issues over the past several months, Landlord finds that it must issue this Notice in an attempt to cure these deficiencies and to enforce Landlord’s rights in the Lease.

Pursuant to the provisions of Section 11.1 (Event of Default) of the Lease, this Notice is to serve as a formal **NOTICE OF DEFAULT** from Landlord to Tenant that Tenant is in default of the covenants, terms, provisions and conditions of the Lease including, without limitation, the following:

- Section 3.10—Failure to maintain Shared Equipment;²
- Section 5.1.1—Failure to operate the Leased Premises and the Improvements in a manner similar to that of first class office and retail space in downtown Boston;
- Section 5.1.8—Failure to manage, operate, clean, secure monitor, inspect, insure, protect, maintain, repair, replace and keep the Leased Premises and Improvements³

¹ All initial capitalized terms used herein and not otherwise defined shall have the meanings respectively ascribed to such terms in the Lease.

² Defined as “the equipment owned by Landlord described in **Exhibit T** located within the Leased Premises which serves both the Leased Premises and other portions of the Building and/or Mass Transportation Facilities.”

³ Defined as “all tenant improvements, systems, facilities, utilities, signs, lighting and landscaping and other improvements now or hereafter located on or within the Leased Premises; provided, however, that the term “Improvements” shall not be deemed to mean or include (i) furniture, fixtures, machinery or equipment belonging to Occupancy Subtenants, (ii) the MBTA Mass Transportation

located therein and all equipment, facilities, systems in a condition similar to that of first-class office and retail space in downtown Boston.

- Exhibit C – Failure to comply with the inspection and maintenance protocols and the operating standards and specifications for key systems and equipment contained therein.

Specifically, in connection with the foregoing, Tenant has:

- Failed to have properly maintained the Fire pump and associated equipment (i.e. backflow preventer) located in Basement Room-40 (Sprinkler/Fire Pump Room);
- Failed to have repaired in a timely manner both the Escalators between the first floor of the Headhouse and the MBTA Red Line subway concourse, and the passenger elevator in the East Lobby of the Headhouse, as well as place adequate temporary wayfinding signs for transit users.
- Failed to comply with the inspection and maintenance protocols for key systems and equipment, including, but not limited to:
 - **HVAC Systems**
 - Ventilation, ductwork & AHUs – air filters, pumps, fans etc.
 - Boilers – water treatment, gas connections/meters, exhaust vents
 - Submittal of an adequate water treatment program to extend the lifespan of mechanical equipment – i.e. boilers, cooling tower
 - AC – water treatment, chillers, cooling towers
 - Building EMS – sensors, thermostats, controller device etc.
 - **Life Safety**
 - Fire Pump, sprinklers, alarm system and all FSS components
 - Fuel tank
 - Escalator & elevator certificates & inspections
 - **Plumbing**
 - Backflow preventers
 - Water pumps & valves
 - Drainage, sewage, including subtenants
 - **Power & Electrical**
 - Main switchgear, sub-panels, sub-transformers, and all MCC panels
 - Backup generator and diesel fuel tank

As a result of this occurrence of an Event of Default, pursuant to Section 5.1.5(c) of the lease, Landlord demands it be allowed to immediately inspect and review: Tenant's vendor contracts; purchase orders; work orders; maintenance and repair records and logs; daily cleaning logs; and related

Facilities, or (iii) any improvements constructed on the Leased Premises by Landlord or others after the Commencement Date pursuant to the rights reserved by Landlord under Section 3.5 hereof.”

similar documentation relating to the performance of Tenant's cleaning, maintenance, repair and replacement obligations under this Lease.

In addition, pursuant to Section 5.1.5(b)(i), Landlord demands that Tenant immediately grant Landlord access to Tenant's Books and Records regarding any and all payments required for maintenance of the premises pursuant to Section 4.6, as well as any other relevant section of the Lease.

Pursuant to Section 11.1(b) of the Lease, Tenant has thirty (30) days to effect repairs to correct each of these deficiencies.

Further, pursuant to Section 11.6 of the Lease, Landlord is entitled to recover any Third-Party Costs and Expenses incurred by Landlord in enforcing the Lease and Tenant's obligations and covenants thereunder, together with an administrative charge equal to fifteen percent (15%) of such costs.

Tenant is hereby notified that if Tenant shall fail to immediately commence and diligently perform such repairs and submit the requested documentation herein within thirty (30) days from the date of this Notice, Landlord may exercise any and all of its rights and remedies with respect to said default available under the Lease, at law or in equity, including, without limitation, the exercise of self-help at Tenant's expense.

Any exercise of self-help by Landlord or the acceptance by Landlord of rent or any other payment due to Landlord from Tenant during Tenant's default and/or following any termination of the Lease shall not constitute a waiver of default or a waiver of any other Landlord right under the Lease with respect to the default. In addition, any failure or delay on the part of Landlord to exercise any right or take any action authorized by the Lease shall not constitute a waiver of any Landlord rights or waiver of any Tenant default. Landlord expressly reserves all of its rights, remedies, powers, and privileges under the Lease, at law or in equity.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard Henderson", is written over a light gray rectangular background.

Richard Henderson
Chief Real Estate Officer
MBTA

cc: John Birnbaum, Esq., AAC
Anthony Moccia, Esq., Eckert Seamans Cherin and Mellott
Stephen Bartlett, Foley Hoag