

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

GG UNION SQUARE, LLC,

Plaintiff,

-against-

MI 201 PARK LLC,

Defendant.

Index No.

**SUMMONS**

To the above-named defendant:

MI 201 Park LLC  
c/o Marriott International, Inc.  
10400 Fernwood Road  
Bethesda, Maryland 20817

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Plaintiff's principle place of business and the agreement of the parties.

Dated: New York, New York  
January 11, 2021

SHER TREMONTE LLP

By: 

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

GG UNION SQUARE, LLC,  Plaintiff,  -against-  MI 201 PARK LLC,  Defendant.	Index No.  <b>COMPLAINT</b>
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Plaintiff GG Union Square, LLC (“GG Union Square” or “Plaintiff” or “Tenant”), by its undersigned attorneys, for its Complaint against Defendant MI 201 Park LLC (“Marriott” or “Defendant” or “Landlord”), alleges as follows:

**INTRODUCTION**

1. This action seeks immediate and permanent declaratory relief in connection with Marriott’s unlawful attempt to terminate an Amended and Restated Agreement of Lease dated April 3, 2015 (the “Lease”) and evict GG Union Square from a restaurant and bar (the “Restaurant/Bar”) that is owned and operated by Plaintiff, located in the same building (the “Premises”) as the W New York–Union Square hotel (the “W Hotel”), owned and operated by Marriott. Upon information and belief, Marriott seeks to terminate the Lease in retaliation for claims for damages previously brought by GG Union Square in a separate action pending in this Court (the “NY Damages Action”) and to obtain control of the Premises without paying GG Union Square the termination fee required by a separate option agreement that had been entered between Landlord and Tenant. As further described below, GG Union Square has fully complied with all enforceable obligations under the Lease. The Court should bar Marriott from taking any

further action to terminate the Lease pending the resolution of both the NY Damages Action and this case.

### **JURISDICTION AND VENUE**

2. This Court has personal and subject matter jurisdiction over this action pursuant to CPLR § 301 and § 302(a)

3. Venue is proper in New York County pursuant to CPLR §§ 501 and 503(a) and (c) Venue is also proper in this Court because the mandatory forum selection clause in the Lease states that “any action or proceeding by Tenant against Landlord in respect to any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, county of New York.”

### **THE PARTIES**

4. Plaintiff GG Union Square is a limited liability corporation organized and existing under the laws of Delaware and has its principal place of business in New York, New York.

5. Upon information and belief, Defendant MI 201 Park LLC is a limited liability company organized under the laws of Maryland and under the ownership and control of Marriot International, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business in Bethesda, Maryland.

### **FACTS**

6. Attached as Exhibit A to this Complaint is a copy of the Amended Complaint filed in the NY Damages Action on October 5, 2020. The allegations in that Amended Complaint are incorporated by reference herein.

7. On April 3, 2015, Plaintiff and then-landlord HST Union Square LLC (“HST”) entered into the Lease to appoint GG Union Square as the tenant/owner/operator of the Restaurant/Bar in the W Hotel. The Lease is set to expire on September 30, 2024.

8. In October 2019, Marriott purchased the W Hotel and became the Landlord under the Lease.<sup>1</sup> As described fully in the NY Damages Action, Marriott breached its obligations under the Lease by failing to obtain “all risk” insurance, including business interruption insurance, for the benefit of GG Union Square. On March 16, 2020, Governor Andrew Cuomo issued an executive order requiring New York State bars and restaurants to close due to COVID-19. Since that time, GG Union Square has been able to operate the Restaurant/Bar only for limited periods of time and with limited occupancy.

9. On July 28, 2020, Marriott informed Plaintiff that Marriott had decided to close the W Hotel for at least the month of August 2020. Plaintiff entered into the Lease based upon the continuing operation of the W Hotel. The Lease requires Plaintiff to operate the Restaurant/Bar in a manner designed to enhance the successful business operations of the W Hotel, including the requirements to provide preferential treatment to W Hotel guests, Banquet services to W Hotel guests and others, Room Service to W Hotel guests, and cafeteria service for W Hotel employees. Plaintiff agreed to pay the amount of rent required by the Lease based, in part, on the revenues that Plaintiff would receive from: (a) Banquet services provided to events at the W Hotel involving W Hotel guests; (b) Room Service provided to W Hotel guests; and (c) the Cafeteria service provided to W Hotel employees. The Lease was entered into by both

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<sup>1</sup> In September 2019, HST and GG Union Square entered into an agreement that granted the Landlord the right to terminate the Lease upon the payment of a termination fee to GG Union Square. Upon becoming the Landlord, Marriott became a party to that agreement with the right to terminate the Lease on the terms and conditions set forth in that agreement.

Landlord and Tenant based on the mutual understanding that a high quality hotel would be open for business in the same building as the Restaurant/Bar.

10. During the period from April through July, Plaintiff paid approximately \$133,000 in rent to Defendant while receiving \$30,000 in fixed management fees for banquet and catering services.

11. In August 2020, Marriott converted the Hotel into a residential dormitory for students attending New York University. As part of that conversion, Marriott erected physical barriers separating the former lobby of the W Hotel from the Restaurant/Bar and prohibited all Room Service for the NYU students who were occupying the rooms in what had been the W Hotel. At the same time, Marriott also instructed Plaintiff to discontinue all on-premises food service for employees of the W Hotel. By unilaterally converting the W Hotel into an NYU dormitory, Marriott completely frustrated the business partnership that existed between GG Union Square and Marriott that was embodied in the Lease.

12. During the period from late August through the end of October, GG Union Square continued to operate the Restaurant/Bar, complying with the capacity limits required by the State of New York and City of New York, despite the closure of the W Hotel and opening of the NYU dormitory. GG Union Square also continued to make certain rent payments, without prejudice to its claims in the NY Damages Action. However, the NYU Dorm conversion decimated the patronage of the Restaurant/Bar and, in order to mitigate the damages being suffered by GG Union Square as a result of the NYU Dorm conversion, GG Union Square temporarily closed the Restaurant/Bar as of November 1, 2020. During the following eight weeks, GG Union Square maintained the Premises so that the Restaurant/Bar could be re-opened after Marriott resumed

operations of the W Hotel. On December \_\_, 2020, the State of New York and City of New York issued orders that required all restaurants in New York City to close indefinitely.

13. On December 28, 2020, Marriott sent a letter to GG Union Square (the “December 28<sup>th</sup> Letter”) that purported to terminate the Lease based upon the temporary closure of the Restaurant/Bar in response to the NYU Dorm conversion. In the December 28<sup>th</sup> Letter, Marriott falsely stated that GG Union Square had “abandoned” the Restaurant/Bar. The December 28<sup>th</sup> Letter blithely ignored the fact that GG Union Square was then prohibited by law from operating the Restaurant/Bar. The December 28<sup>th</sup> Letter further states that Marriott intends to seize all personal property of GG Union Square located on the Premises if such property is not removed on or before January 15, 2021.

**FIRST CLAIM FOR RELIEF:  
DECLARATORY JUDGMENT**

14. Plaintiff repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

15. Plaintiff’s purpose in entering into the Lease was to operate the Restaurant/Bar at the W Hotel: (a) pursuant to the lawful occupancy limits applicable to the Restaurant/Bar; (b) in a safe environment provided by the Landlord; and (c) with an operating Hotel in the same building as the Restaurant/Bar. The amount of rent that Tenant agreed to pay to Landlord under the Lease was negotiated and agreed upon based upon the mutual understanding of both Tenant and Landlord that: (a) Tenant could operate the Restaurant/Bar under applicable occupancy limits; (b) Landlord could provide a safe environment for the operation of the Restaurant/Bar, including the air in the premises; and (c) a high quality Hotel would be open for business in the same building as the Restaurant/Bar.

16. In March 2020, the mutual purposes of both Tenant and Landlord concerning the Lease were completely frustrated by the COVID-19 pandemic and the closure orders issued by the State of New York, however sensible those closure orders were under the facts and circumstances that existed in mid-March. Since mid-March 2020, in addition to the government-ordered closures, the mutual purposes of both Tenant and Landlord concerning the Lease have also been completely frustrated by the Landlord's temporary closure of the Hotel and Landlord's operation of an NYU Dorm at the Hotel for the period from late-August 2020 through December 2020.

17. By first closing the W Hotel and then converting the building to an NYU Dorm, Marriott materially breached its obligations under the Lease and, while in breach of the Lease, forfeited any right to terminate the Lease.

18. Plaintiff has no adequate remedy at law.

19. Plaintiff seeks a declaration from this Court that Plaintiff is excused from the payment of rent under the Lease from March 16, 2020 until such time as: (a) the Restaurant/Bar is legally permitted to reopen at full capacity; (b) the Landlord can provide a safe environment in which to operate the Restaurant/Bar, as required by the Lease; and (c) Marriott re-opens the W Hotel, or other high-quality, first-class hotel, and re-integrates the operations of the W Hotel with the Restaurant/Bar. Plaintiff also seeks a declaration that Plaintiff did not breach the Lease by temporarily closing the Restaurant/Bar in response to the NYU Dorm conversion, the Lease has not been terminated and Marriott cannot seek to terminate the Lease while Marriott itself is in breach of the Lease.



**DEMAND FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. Declaratory relief that all rent obligations under the Lease are abated in full until the Restaurant/Bar may operate in a safe environment, at full capacity and with an operating hotel located in the same building;
2. Declaratory relief that Plaintiff did not breach the Lease and the Lease has not, and cannot, be terminated by Marriott while Marriott is itself in breach of the Lease;
3. The costs and disbursements incurred in this action, including reasonable attorneys' fees, as provided by the Lease; and
4. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 11, 2021

SHER TREMONTE LLP

By: \_\_\_\_\_



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