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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(MY PLACE HOTELS OF AMERICA,
LLC D/B/A MY PLACE)

NO. 19-2-26234-6 SEA

MY PLACE HOTELS OF
AMERICA, LLC'S ASSURANCE
OF DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Justin Wade, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1. In August 2019, the Attorney General initiated an investigation into My Place Hotels of America, LLC ("My Place") relating to its hiring practices.

1.2. My Place is a limited liability company with its principal office or place of business in Aberdeen, South Dakota. My Place is in the business of providing extended stay transient lodging (hotel) services to the public.

1.3. For the purposes of this AOD, My Place includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

II. INVESTIGATION

2.1. My Place has three (3) stores in Washington. Three (3) of these stores are owned and operated by franchisees and zero (0) are owned and operated by My Place. My Place has

1 sold two (2) additional franchises in Washington, which are not yet operating. Of the two (2)
2 additional franchises in Washington which are not yet open and operating, one (1) is a franchisee-
3 owned franchise and one (1) is a company-owned franchise.

4 2.2. For years, My Place has included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire workers from another franchisee or from My
6 Place (no-poaching provision). Specifically, the standard My Place franchise agreement stated
7 that a franchisee "Not hire, or try to hire, any person who is employed by US, or by any System
8 franchisee, nor, directly or indirectly, induce such person to leave his/her employment." A no-
9 poaching provision restricted franchisees from hiring both employees from a competing
10 franchisee and from My Place's corporate-owned stores.

11 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,
12 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
13 RCW 19.86.030.

14 2.4. My Place expressly denies the conduct described above constitutes a contract,
15 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
16 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
17 a contract, combination, or conspiracy in restraint of trade. My Place additionally denies that it
18 has ever enforced the no-poaching provision. My Place enters into this AOD to avoid protracted
19 and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
20 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of My
21 Place.

22 2.5. This AOD is not a holding of liability in a civil action and is not an injunctive or
23 restrictive order or decree resulting from an action brought by a public agency.

24 III. ASSURANCE OF DISCONTINUANCE

25 3.1. Subject to paragraph 2.4 above, My Place agrees:

26 3.1.1 It will no longer include no-poach provisions in any of its future franchise

1 | agreements;

2 | 3.1.2 It will not enforce no-poaching provisions in any of its existing franchise
3 | agreements, and will not seek to intervene or defend in any way the legality of any no-poach
4 | provision in any litigation in which a franchisee may claim third-party beneficiary status rights
5 | to enforce an existing no-poach provision;

6 | 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
7 | State, and provide them a copy of the AOD upon request;

8 | 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
9 | franchisee in Washington to enforce any existing no-poach provision.

10 | 3.2. Within 60 days of entry of this AOD, My Place will exercise all reasonable
11 | commercial efforts to amend all existing franchise agreements with entities in Washington to
12 | remove any no-poaching provisions in its existing franchise agreements. My Place is under no
13 | obligation to offer any franchisee any monetary or non-monetary consideration to induce them
14 | to accept the proposed amendment of the franchise, and it shall be under no obligation to take
15 | any coercive action against a franchisee that may refuse or decline to agree to any amendment
16 | of its franchise agreement. If any franchise owner is unwilling to consent to the change to its
17 | franchise agreement, prior to the 60-day deadline, My Place shall provide the name and address
18 | of the resisting franchisee and the name and address of the franchisee's registered agent to the
19 | Office of the Attorney General.

20 | 3.3. As they come up for either renewal or renegotiation during the ordinary course
21 | of business, My Place will amend all of its existing franchise agreements on a nationwide basis
22 | to remove any no-poach provision.

23 | 3.4. Within 30 days of the conclusion of the time periods referenced in this section
24 | III, My Place will submit a declaration to the Attorney General's Office signed under penalty of
25 | perjury stating that all provisions of this agreement have been satisfied.
26 |

1 IV. ADDITIONAL PROVISIONS

2 4.1. This AOD is binding on, and applies to My Place, including each of its respective
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
5 affiliates, partnerships, and joint ventures, or other entities through which My Place may now or
6 hereafter act with respect to the conduct alleged in this AOD.

7 4.2. This is a voluntary agreement and it shall not be construed as an admission of
8 law, fact, liability, misconduct, or wrongdoing on the part of My Place. By entering into this
9 AOD, My Place neither agrees nor concedes that the claims, allegations and/or causes of action
10 which have or could have been asserted by the Attorney General have merit and My Place
11 expressly denies any such claims, allegations, and/or causes of action. However, proof of failure
12 to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby
13 placing upon the violator the burden of defending against imposition by the Court of injunctions,
14 restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the
15 Consumer Protection Act. The Attorney General acknowledges that neither this AOD nor proof
16 of failure to comply with this AOD shall be prima facie evidence of violation of any other law,
17 including the law of any other state.

18 4.3. My Place will not, nor will it authorize any of its officers, employees,
19 representatives, or agents to state or otherwise contend that the State of Washington or the
20 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
21 Paragraph 2.2 with respect to the No-Poach Provision in My Place's franchise agreement.

22 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
23 Division of the Attorney General's Office under the Consumer Protection Act and any other
24 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have
25 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
26 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's

1 Office shall not file suit or take any further investigative or enforcement action with respect to
2 the acts set forth above that occurred before the date of entry of this AOD.

3 APPROVED ON this _____ day of _____, 2019.

4

5

JUDGE/COURT COMMISSIONER

6 Presented by:

7 ROBERT W. FERGUSON
8 Attorney General

8

9 
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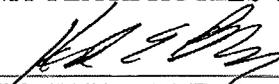
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Attorneys for State of Washington

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16 Agreed to and approved for entry by:
17 MY PLACE HOTELS OF AMERICA, LLC

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My Place Hotels of America, LLC
By: Ryan J. Rivett
Its: President