

**ALLEGHENY COUNTY HEALTH DEPARTMENT  
AIR QUALITY PROGRAM**

In the matter of:

ACHD Violation No. 180901

Pittsburgh Hotel, LLC  
360 N. Crescent Drive, Suite 303  
Beverly Hills, CA 90210

Violations of Article XXI (“Air  
Pollution Control”) at facility:

Interstate Hotels & Resorts, Inc.  
2011 Crystal Drive, Suite 1100  
Arlington, VA 22202

Sheraton Pittsburgh Airport Hotel  
1160 Thorn Run Road  
Coraopolis, PA 15108

Maverick Management Group, LLC  
1890 Palmer Avenue, Suite 404  
Larchmont, NY 10538

ATC Group Services LLC  
221 Rue de Jean, Suite 300  
Lafayette, LA 70508

**RESPONSE TO AMENDED ADMINISTRATIVE ORDER  
OF ATC GROUP SERVICES LLC**

Now, pursuant to Article XI of the Allegheny County Health Department Rules and Regulations, ATC Group Services LLC (“ATC”) appeals the Amended Administrative Order (the “Order”) of the Allegheny County Health Department (“ACHD”) issued November 16, 2018, which is attached hereto as Exhibit A. ATC initially responds that the majority of the factual statements in the Order are incorrect and thus, all alleged facts not expressly admitted are denied. As a result, the legal conclusions and associated civil penalties are improper and not supported by the facts or the law. ATC further generally objects to ACHD’s use of improper “group” allegations in the Order without any degree of specificity. As a result, all facts alleged to the group of named respondents are denied by ATC unless expressly admitted.

**I. AUTHORITY**

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.

## II. FINDINGS

3. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 3.

4. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 4.

5. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 5.

6. ATC admits that it is a Delaware limited liability company with a primary place of business at 221 Rue de Jean, 3<sup>rd</sup> Floor, Lafayette, LA 70508 and that it operates an environmental and engineering services company. ATC further admits that it was retained by Maverick Management Group, LLC (“MMG”) to provide an emergency asbestos survey (see Exhibit B), remediation consulting services (see Exhibit C for the Asbestos Abatement and Water Restoration Protocol) and asbestos abatement/mold remediation oversight (see Exhibit D for Asbestos Abatement and Clearance Close-out Report). ATC denies that it was retained by Pittsburgh Hotel LLC (“Pittsburgh Hotel”) and/or Interstate Hotels & Resorts, Inc. (“Interstate”). ATC further denies that it was retained to provide project management services for the asbestos abatement work in the Sheraton Hotel, as demonstrated by the scopes of work defined in the attached Exhibits.

7. Paragraph 7 consists of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

8. Paragraph 8 consists of legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

9. Paragraph 9 consists of legal conclusions to which no response is required. ATC denies that it is an owner or operator of a demolition or renovation activity at the Sheraton Hotel as that term is defined at 40 CFR §16.141. Additionally, ATC contends that group allegations such as in Paragraph 9 are improper.

10. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 10. Paragraph 10 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

11. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 11.

12. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 12.

13. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 13.

14. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 14.

15. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 15. Paragraph 15 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 15 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

16. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 16.

17. ATC admits that it prepared a draft of a report dated June 2, 2017. ATC lacks knowledge or information sufficient to form a belief as to the remainder of the allegations of Paragraph 17. Paragraph 17 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 17 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

18. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 18. Paragraph 18 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 18 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

19. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 19.

20. ATC admits that it was retained by MMG May 25, 2017 to perform an emergency asbestos survey of the water-impacted areas and conference rooms at the Sheraton Hotel. See Exhibit E for the Authorization to Proceed. ATC denies all other allegations in Paragraph 20.

21. ATC admits that it collected bulk sampling on May 23, 2017 and that EMSL Analytical Inc., (“EMSL”) analyzed the samples. ATC further admits that EMSL produced a Test Report dated May 24, 2017 containing the asbestos analysis of bulk materials. ATC lacks knowledge or information sufficient to form a belief as to the remainder of the allegations of Paragraph 21. Paragraph 21 contains factual assumptions to which ATC will hold ACHD to its burden of proof.

22. ATC admits that it collected the wipe samples on May 26, 2017 and that EMSL analyzed the samples. ATC further admits that EMSL produced a Test Report dated May 30, 2017 containing the qualitative asbestos analysis of the samples. ATC lacks knowledge or information sufficient to form a belief as to the remainder of the allegations of Paragraph 22. Paragraph 22 contains factual assumptions to which ATC will hold ACHD to its burden of proof.

23. ATC admits that it submitted a draft report dated June 2, 2017 to MMG (attached as Exhibit F), and, at the request of MMG (attached as Exhibit G), this report was modified and reissued as a final report June 5, 2017 (attached as Exhibit B). ATC lacks knowledge or information sufficient to form a belief as to the remainder of the allegations of Paragraph 23. Paragraph 23 contains factual assumptions to which ATC will hold ACHD to its burden of proof.

24. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 24. Paragraph 24 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 24 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

25. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 25. Paragraph 25 contains factual assumptions to which ATC will hold ACHD to its burden of

proof. Paragraph 25 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

26. ATC admits that it was retained by MMG June 9, 2017, together with the June 29, 2017 Change Order, to perform remediation consulting services to include additional asbestos sampling and remediation protocol. See Exhibit H. ATC denies all other allegations in Paragraph 26. Paragraph 26 contains factual assumptions to which ATC will hold ACHD to its burden of proof.

27. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 27. Paragraph 27 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 27 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, ATC contends that group allegations such as in Paragraph 27 are improper.

28. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 28. Paragraph 28 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 28 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, ATC contends that group allegations such as in Paragraph 28 are improper.

29. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 29. Paragraph 29 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 29 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, ATC contends that group allegations such as in Paragraph 29 are improper.

30. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 30. Paragraph 30 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 30 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

31. ATC admits that it issued the Asbestos Abatement and Water Restoration Protocol (the “Abatement Protocol”) to MMG. ATC lacks knowledge or information sufficient to form a belief as to the remainder of the allegations of Paragraph 31. Paragraph 31 contains factual assumptions to which ATC will hold ACHD to its burden of proof.

32. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 32. Paragraph 32 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 32 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

33. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 33. Paragraph 33 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 33 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

34. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 34. Paragraph 34 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 34 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, ATC contends that group allegations such as in Paragraph 34 are improper.

35. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 35. Paragraph 35 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 35 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

36. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 36. Paragraph 36 contains factual assumptions to which ATC will hold ACHD to its burden of proof. Paragraph 36 also contains legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied. Additionally, ATC contends that group allegations such as in Paragraph 36 are improper.

### III. VIOLATIONS

37. In Paragraphs 37 through 41, ACHD alleges that each of the named respondents violated Article XXI, § 2101.11.a.3, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 38 through 40. ATC was not involved until it was retained by MMG May 25, 2017 to perform an emergency asbestos survey. ATC performed its inspection services May 23<sup>rd</sup> and 24<sup>th</sup> and issued a final report June 5, 2017. ATC's report recommendations to MMG relative to taking necessary precautions to avoid asbestos from endangering the public were not followed, and ATC should not be held responsible for any other party's failure to act. ATC is not an "operator" as defined by Article XXI, § 2101.20 and ATC did not operate any source of air contaminants. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 37 through 41, and objects to the ACHD's attempt to impute knowledge and action upon ATC. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 37, ATC denies those allegations. Paragraphs 37 through 41 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 37 through 41 are in error and should be vacated in their entirety.

38. In Paragraphs 42 through 45, ACHD alleges that each of the named respondents violated Article XXI, § 2101.11.b.4, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. Further, ATC was not involved in the retention of PRISM, the services it provided, or the submission of Asbestos Abatement Permit applications to ACHD. ATC submitted its wipe sample results and relevant reports to MMG; ATC had no obligation or duty to submit any asbestos abatement permit application or to ensure that other parties properly submitted such applications. By way of further response, the services PRISM provided on June 2 and 4, 2017 did not require a permit under § 2101.11.b.4, as the work consisted only of cleaning services for two conference rooms at the hotel, not asbestos removal, encasement or encapsulation.

Article XXI of ACHD Rules and Regulations do not apply to cleaning services, thus no permit was required. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 42 through 45, and objects to the ACHD's attempt to impute knowledge and action upon ATC. To the extent that the ACHD misstates or misinterprets the ACHD Rule given in Paragraph 42, ATC denies those allegations. Paragraphs 42 through 45 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 42 through 45 are in error and should be vacated in their entirety.

39. In Paragraphs 46 through 49, ACHD alleges that each of the named respondents violated Article XXI, § 2105.60, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 47 and 48. Paragraphs 46 through 49 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

40. 37. In Paragraphs 50 through 52, ACHD alleges that each of the named respondents violated federal asbestos regulations, and the ACHD Rules incorporating those regulations, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 51. Paragraphs 50 through 52 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

41. In Paragraphs 53 through 57, ACHD alleges that each of the named respondents violated Article XXI, § 2105.62.h.1, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 54 and 55.

Paragraphs 53 through 57 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

42. In Paragraphs 58 through 60, ACHD alleges that each of the named respondents violated Article XXI, Section 2105.62.k, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 59. Paragraphs 58 through 60 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

43. In Paragraphs 61 through 64, ACHD alleges that each of the named respondents violated Article XXI, Section 2105.63.b.1, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 62 and 63. ATC did not retain, control or supervise SERVPRO. ATC was not involved until it was retained by MMG May 25, 2017 to perform an emergency asbestos survey. ATC performed its inspection services May 23<sup>rd</sup> and 24<sup>th</sup> and issued a final report June 5, 2017. ATC did not retain, control or supervise SERVPRO, nor did ATC have any duty to post the signage. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 61 through 64, and objects to ACHD's attempt to impute knowledge and action upon ATC. To the extent that ACHD misstates or misinterprets the ACHD Rule given in Paragraph 61, ATC denies those allegations. Paragraphs 61 through 64 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 61 through 64 are in error and should be vacated in their entirety.

44. In Paragraphs 65 through 68, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.b.2, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks

knowledge or information sufficient to form a belief as to the allegations of Paragraphs 66 and 67. ATC did not retain, control or supervise SERVPRO. ATC was not involved until it was retained by MMG May 25, 2017 to perform an emergency asbestos survey. ATC performed its inspection services May 23<sup>rd</sup> and 24<sup>th</sup> and issued a final report June 5, 2017. ATC's report recommendations relative to maintaining negative air pressure in the work areas were not followed, and ATC should not be held responsible for any other party's failure to act. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 65 through 68, and objects to ACHD's attempt to impute knowledge and action upon ATC. To the extent that ACHD misstates or misinterprets the ACHD Rule given in Paragraph 65, ATC denies those allegations. Paragraphs 65 through 68 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 65 through 68 are in error and should be vacated in their entirety.

45. In Paragraphs 69 through 74, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.C.1 and Article XXI, § 2105.63.C.2, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 71 and 73. ATC did not retain, control or supervise SERVPRO. ATC was not involved until it was retained by MMG May 25, 2017 to perform an emergency asbestos survey. ATC performed its inspection services May 23<sup>rd</sup> and 24<sup>th</sup> and issued a final report June 5, 2017. This report contained ATC's test results and recommendations. ATC should not be held responsible for any other party's failure to act on or adhere to those recommendations. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 69 through 74, and objects to the ACHD's attempt to impute knowledge and action upon ATC. To the extent that ACHD misstates or misinterprets the ACHD Rules given in Paragraphs 69 and 70, ATC denies those allegations. Decontaminating spaces and notifying ACHD of asbestos contamination were outside of ATC's scope of work. Paragraphs 69 through 74 also contain factual assumptions and legal conclusions to which no

response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 69 through 74 are in error and should be vacated in their entirety.

46. In Paragraphs 75 through 78, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.d, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 76 and 77. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 75 through 78. Paragraphs 75 through 78 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

47. In Paragraphs 79 through 81, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.e, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 80. ATC incorporates its above responses to those restated factual allegations here. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 79 through 81. Paragraphs 79 through 81 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

48. In Paragraphs 82 through 85, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.f, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 83. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 82 through 85. Paragraphs 82 through 85 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

49. In Paragraphs 86 through 88, ACHD alleges that each of the named respondents violated Article XXI, § 2105.63.k, and restates several of the factual allegations stated in Paragraphs 3 through 36, above. ATC incorporates its above responses to those restated factual allegations here. ATC lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 87 and 88. ATC did not retain, control or supervise SERVPRO. ATC was not involved until it was retained by MMG May 25, 2017 to perform an emergency asbestos survey. ATC performed its inspection services May 23<sup>rd</sup> and 24<sup>th</sup> and issued a final report June 5, 2017. This report contained ATC's recommendations relative to restricting access to contaminated areas and collecting final clearance samples. ATC should not be held responsible for any other party's failure to act on or adhere to those recommendations. To the extent that any further response is required, ATC denies its alleged involvement with any actions or inactions alleged in Paragraphs 86 through 88, and objects to ACHD's attempt to impute knowledge and action upon ATC. To the extent that ACHD misstates or misinterprets the ACHD Rule given in Paragraph 86, ATC denies those allegations. Paragraphs 86 through 88 also contain factual assumptions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. ACHD's determination of a violation by ATC and the assessment of a penalty for the allegations in Paragraphs 86 through 88 are in error and should be vacated in their entirety.

#### CIVIL PENALTY

47. In Paragraphs 89 through 97, ACHD assesses a civil penalty, pursuant to the Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, §2109.06.a.1, upon the three named respondents "jointly and severally" for the violations alleged in Paragraphs 37 through 88, and restates several of the factual allegations stated previously in the Order. Respondents incorporate their above responses to those restated factual allegations here. To the extent that any further response is required, ATC denies its alleged involvement with, and liability for, any actions or inactions alleged in Paragraphs 89 through 97, and objects to ACHD's attempt to impute knowledge and action upon ATC. To the extent that ACHD misstates or misinterprets the ACHD Rules given in Paragraphs 89 and 91, Respondents deny those allegations. Paragraphs 89 through 97 also contain factual assumptions and legal conclusions to which no response is

required. To the extent a response is required, the allegations are denied. Respondents further deny and disagree with ACHD's assertion that liability assessed under the Order is joint and several, as is discussed further below.

#### ORDER

48. In Paragraphs 98 through 103, ACHD issues an order, pursuant to Article XXI §§ 2109.03.a.1 and 2105.62.e and the Local Health Administration Law, 19 P.S. § 12010, upon each of the named respondents to pay the assessed civil penalty in accordance with ACHD Rules, again asserting that each is "jointly and severally" liable. Paragraphs 98 through 103 contain legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

#### OBJECTIONS TO THE ORDER

49. ATC denies that it violated the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001-4014, and the ACHD's Rules and Regulations, Article XXI, "Air Pollution Control," as alleged in the Order, and as such, ATC asserts that the civil penalty assessed to it under Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, §2109.06.a.1 is improper and in contravention of law.

50. ACHD's assertion that each of the respondents is "jointly and severally" liable for any civil penalty is contrary to 42 P.S. § 7102.a.2, which provides that "a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability..." Pennsylvania law prohibits the imposition of joint and several liability in this proceeding and requires ACHD to issue a separate civil penalty to each of the respondents, if and when found liable, related to that respondent's liability.

51. ACHD's attempt to require ATC to either forward the penalty amount to ACHD for placement in an escrow account or post an appeal bond to ACHD in the amount of the penalty, prior to having a chance to contest the charges against them, is a violation of due process protected by the Fifth and Fourteenth Amendments to the United States Constitution and the Pennsylvania Constitution.

52. The civil penalty assessed in the Order is excessive in light of ATC's good faith effort to comply.

53. ACHD abused its discretion in calculating the civil penalty by failing to properly apply its own rules regarding the factors to be considered. Additionally, ACHD relied on incorrect factual assumptions while calculating the civil penalty, and as such, the amount of the civil penalty is arbitrary and capricious.

54. ACHD abused its discretion by issuing the Order to ATC who did not cause, contribute to, create or control the conditions or events described in the Order or fall within the purview of the cited statutory or regulatory provisions.

55. ACHD's issuance of the Order and assessment of a civil penalty to ATC is arbitrary and capricious, an abuse of discretion, and/or contrary to law.

#### PRAYER FOR RELIEF

56. ATC respectfully requests that the Hearing Officer declare that:

a. the regulation requiring ATC to prepay the civil penalty or post an appeal bond to ACHD is in violation of due process;

b. the assessment of a single civil penalty to four unrelated respondents, and without considering the individual liability, if any, of each is contrary to Pennsylvania law;

c. the penalty assessed to ATC is without basis in facts or law; and

d. each alleged violation of local and federal law against ATC is without basis in facts or law.

#### MOTION FOR A CLOSED HEARING

57. ATC moves and respectfully requests that any hearing, fact finding, record, and decision related to this Order be closed to the public.

#### RESERVATION OF DEFENSES

58. ATC reserve the right to amend this Appeal and to assert additional defenses upon discovery of further information concerning the factual and legal bases of the Order or as otherwise permitted by law.

Respectfully submitted,

ATC GROUP SERVICES LLC

A handwritten signature in black ink, appearing to read "Ashley Fott". The signature is written in a cursive style with a horizontal line underneath it.

Ashley Fott / Secretary / General Counsel  
ATC Group Services LLC  
5750 Johnston Street, Suite 400  
Lafayette, LA 70508