

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

EXETER 870 CLAYCRAFT, L.P.,	:	
c/o Ice Miller LLP	:	
250 West Street, Suite 700	:	Case No.
Columbus, OH 43215	:	
	:	Judge
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
ADB SAFEGATE AMERICAS LLC,	:	
700 Science Boulevard	:	
Gahanna, OH 43230	:	
	:	
c/o CT Corporation System	:	
4400 Easton Commons Way, Suite 125	:	
Columbus, OH 43219	:	
	:	
<i>Defendant.</i>	:	

COMPLAINT FOR DECLARATION OF RIGHTS AND DAMAGES

Now comes Plaintiff Exeter 870 Claycraft, L.P. (“Landlord”), through undersigned counsel, who submits for its Complaint against Defendant ADB Safegate Americas LLC (“Tenant”), the following:

INTRODUCTION

1. In 2019, Tenant entered into a four-year lease for the commercial property located at 870-950 Claycraft Road, Gahanna, OH 43230 (the “Property”). Under the terms of the lease agreement, Tenant agreed to timely remit Tenant’s rent payments and Tenant’s allocation of operating expenses (*i.e.*, expenses incurred by Landlord resulting from Landlord’s managing, operating, equipping, policing, protecting, lighting, insuring, repairing, and maintaining the Property for Tenant’s exclusive benefit) to Landlord. Even though Tenant agreed to make these payments—and after Tenant expressly benefited from Landlord’s managing, operating, equipping, policing, protecting, lighting, insuring, repairing, and maintaining the Property—Tenant now

refuses to remit payment for the expenses that are due and owing by it. Instead, Tenant accuses Landlord of failing to provide notice of the expenses due, and Tenant unilaterally decided that Landlord waived its right to collect those operating expenses. The evidence speaks to the contrary. Landlord has consistently asserted its right to collect the outstanding expenses and unequivocally has not waived its right to collect those payments. Tenant relies on an unfounded excuse to skirt its payment obligations that has no basis at law, in equity, or under the terms of the parties' lease agreement.

2. The relief now sought by Landlord is straightforward: Landlord seeks Court intervention to recover the sums that are rightfully due and owing to it as a result of Tenant's breaches of the lease and to declare Landlord's rights under that lease in light of Tenant's breaches.

PARTIES, JURISDICTION, AND VENUE

3. Landlord Exeter 870 Claycraft, L.P. is a Delaware limited partnership authorized to conduct business in the State of Ohio, with a principal place of business of 605 S. Front Street, Suite 320, Columbus, OH, 43215.

4. Tenant ADB Safegate Americas LLC is a Delaware limited liability company with a principal place of business of 700 Science Boulevard Gahanna, OH 43230. Tenant has leasehold rights in the Property located at 870-950 Claycraft Road, Gahanna, OH 43230.

5. This Court has jurisdiction to issue a judgment for monetary damages and declare Landlord's rights pursuant to R.C. Chapter 2721, *et seq.*

6. Venue is proper in this Court pursuant to Civ.R. 3(C)(3) and 3(C)(5), because Tenant conducted activity here that gave rise to Landlord's claims for relief and because the Property is situated here.

GENERAL ALLEGATIONS

A. Tenant's Obligations Pursuant to the Lease.

7. On November 25, 2019, Tenant entered into a Lease Agreement (the "Lease") with Trevi Enterprises, LLC. ("Trevi") for the Property, located at 870-950 Claycraft Road, Gahanna, OH 43230. A true and accurate copy of the Lease is attached hereto as Exhibit A.

8. The Term of the Lease was four years, with renewal options to add up to two additional years. (Ex. A, §§ 2, 30.)

9. Pursuant to the Lease, monthly rent was comprised of Fixed Rental costs and Monthly Installments, as follows:

3. <u>RENT</u>				
Yr	Square Feet	PSF	Fixed Rental	Monthly Installments
1	52500	\$3.33	\$174,825	\$14,568.75
2	52500	\$5.00	\$262,500	\$21,875.00
3	52500	\$5.10	\$267,750	\$22,312.50
4	52500	\$5.20	\$273,105	\$22,758.75

(a) All payments of Fixed Rental shall be due in advance on or before the first day of each and every calendar month during the term of this Lease at 8400 Industrial Parkway, Plain City, Ohio 43064, or such other place as Landlord may from time to time designate, without prior demand thereof and without any set off or deduction. In the event that the Commencement Date shall occur on a day other than the first day of a calendar month, the Fixed Rental payment for the first partial calendar month shall be prorated based upon the number of days from the Commencement Date to the end of such month and shall be due and payable on the Commencement Date.

(*Id.* at § 3(a).)

10. In addition to the rent payments prescribed in Section 3 of the Lease, Tenant agreed to pay to Landlord, as "additional rent," an amount equal to Tenant's proportionate share of the

costs and expenses resulting from Landlord's operation and maintenance of the Property (Tenant's "Operating Expense Allocation"). (*Id.* at § 12(a).)

11. The Lease further provided that "Tenant shall pay any and all sums of money or charges required to be paid by Tenant as additional rent under this Lease promptly when the same are due, without any deduction or set off." (*Id.* at § 3(b).)

12. Pursuant to the Lease, should Tenant fail to make timely payments, the Lease provided (*id.* at § 3(c)):

(c) In the event that Tenant shall fail to pay Fixed Rental payments on the date when due, or shall fail to pay any other rental payment or charge due from Tenant to Landlord hereunder on the date when due, and if such failure shall continue for a period of ten (10) days after written notice of such failure from Landlord to Tenant, Tenant shall be deemed to be in default hereunder and in addition to such payment Tenant shall pay a late payment charge equal to five percent (5%) of the amount of such payment.

13. In sum, the Lease provided that Tenant shall pay on or prior to the first day of each month: Fixed Rent, Monthly Installments, and any other sums of money due to Landlord, including 1/12 of Tenant's Operating Expense Allocation, as "additional rent[.]" (*Id.* at §§ 3, 12(a)-(b).) In the event Tenant fails to pay the amounts due on or before the first of each month, Landlord shall provide written notice to Tenant allowing Tenant a 10-day period to cure. (*Id.*) And, in the event Tenant fails to cure after the 10-day notice period, Tenant is deemed to be in default and Landlord is entitled to late fees equal to 5% of the missed payment(s). (*Id.*)

B. Assignment.

14. On or about October 26, 2020, Trevi assigned all of its rights and duties under the Lease to Landlord. A true and accurate copy of the Assignment and Assumption of Leases is attached hereto as Exhibit B.

15. Tenant acknowledged the Lease Assignment and affirmed the Lease details in a Tenant Estoppel on or about October 5, 2020 (the “Tenant Estoppel”). A true and accurate copy of the Tenant Estoppel is attached hereto as Exhibit C.

16. As the successor-in-interest, Landlord now possesses all rights and duties prescribed to Trevi or “Landlord” as defined under the terms of the Lease.

C. Tenant’s Operating Expense Allocation.

17. As noted above, pursuant to the terms of the Lease, Tenant had a duty to pay Tenant’s Operating Expense Allocation in monthly installments. (Lease, § 12(a)-(b).)

18. Specifically, the Lease provided that “Landlord, prior to the last day of each calendar year, [will] prepare an estimate of the Landlord’s anticipated Operating Expenses for the next calendar year and shall notify Tenant in writing on or before January 1 of each calendar year of the Tenant’s Operating Expense Allocation for that calendar year. . . . Tenant shall pay to Landlord monthly installments in advance on the first day of each calendar month during the term of this Lease an amount equal to one twelfth (1/12th) of Tenant’s Operating Expense Allocation, as said amount is estimated from time to time by Landlord.” (*Id.* at § 12(a)-(b).)

19. In order to calculate Tenant’s Operating Expense Allocation, the Lease provided that Landlord was to compile all costs and expenses paid by Landlord, and then calculate the proportionate share to be paid by Tenant, based on the square footage rented by Tenant at the Property. (*Id.* at § 12(c)-(d).) Landlord’s costs and expenses used to calculate Tenant’s Operating Expense Allocation “shall include all costs and expenses of any kind or nature incurred by Landlord in managing, operating, equipping, policing, protecting, lighting, insuring, repairing and maintaining the Property[.]” (*Id.* at § 12(c).)

20. The Lease also provided that “[w]ithin forty five (45) days after the end of each calendar year of the term of this Lease, or any renewal term thereof, Landlord shall furnish to Tenant a statement of the actual amount of Tenant’s proportionate share of Landlord’s Operating Expense incurred by Landlord during the preceding calendar year.” (*Id.* at § 12(b).)

21. The Lease also provided for a reconciliation method to ensure that Tenant’s Operating Expense Allocation reflected the proper share attributed to Tenant. (*Id.* (“In the event that Tenant’s proportionate share of Landlord’s Operating Expense for such calendar year exceeds the payments made by Tenant to Landlord pursuant to this Article 12 (b) during such calendar year, Tenant shall, within ten (10) days after Landlord has furnished such statement, pay to Landlord the amount of such excess. In the event the amount of such excess is not paid within ten (10) days after Landlord has furnished such statement, such excess shall bear interest at the Default Rate commencing with the tenth (10th) day after Landlord has furnished such statement until said excess is paid by Tenant. In the event that Tenant shall have paid to Landlord during such calendar year an amount for Landlord’s Operating Expense which exceeds the amount due from Tenant to Landlord for such calendar year, the amount of such overpayment shall be credited against the next payment which shall become due from Tenant to Landlord for Landlord’s Operating Expense, or at the end of the Lease term, refunded to Tenant.”).)

D. Default Under the Lease.

22. In the Lease, the parties also set forth in detail what actions and omissions constitute a default by Tenant of the Lease. Specifically, the Lease provided that the following shall constitute an event of default by Tenant:

- a. “The failure, neglect or refusal of Tenant to pay any installment of Fixed Rental or additional rent at the time and in the amount as herein provided, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due

and payable under the terms hereof if such failure continues beyond the date set forth in Section 3(c) hereof when a late payment charge is due.” (*Id.* at § 20.)

- b. “The failure, neglect or refusal of Tenant to keep and perform any of the covenants, conditions or stipulations herein contained and covenanted and agreed to be kept and performed by it and such failure, neglect or refusal shall continue for a period of more than thirty (30) days after notice thereof in writing is given by Landlord to Tenant; provided, however, that if the cause for giving such notice involves the making of repairs or other matter reasonably requiring a longer period of time than such thirty (30) day period, Tenant shall be deemed to have complied with such notice within said period of time if Tenant is diligently prosecuting compliance with said notice or has taken the proper steps or proceedings under the circumstances to prevent the seizure, destruction, alteration or other interference with the Demised Premises by reason of non compliance with the requirements of any law or ordinance or with the rules, regulations or directions of any governmental authority, as the case may be.” (*Id.*)

23. In the event of a default as enumerated in Section 20, the Lease provided (*id.* at § 20(b)):

(b) Upon the occurrence of any event of default as set forth in Article 20(a) hereof, then Landlord, in addition to other rights or remedies that Landlord may have as provided by law, shall have: (i) the right to declare this Lease terminated and the term ended, and/or (ii) the right, with or without terminating this Lease, to enter the Demised Premises with process of law and the right to remove all partitions and properties from the Demised Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost and expense of Tenant without prior notice to Tenant or to resort to legal process and without being deemed guilty of trespass or becoming liable for loss or damage which may be occasioned thereby.

24. Further, “[i]n the event that a lawsuit is brought by Landlord for recovery of possession of the Demised Premises, for recovery of rent or any other amount due under the provisions of this Lease, or by either Landlord or Tenant because of the breach of any other covenant herein contained on the part of Tenant or Landlord respectively to be kept and performed, and a breach shall be established, the non-prevailing party shall pay to the other party all expenses incurred therefor, including reasonable attorneys’ fees.” (*Id.* at § 20(d).)

25. Pursuant to Section 23 of the Lease, any notice provided to Tenant under the Lease “shall be sent by United States certified mail, return receipt requested, postage prepaid or by a nationally recognized overnight delivery service such as Federal Express or UPS” or by email at michael.morrow@adbsafegate.com. (*Id.* at § 23.)

26. Further, the Lease provided (*id.* at § 22):

22. NO WAIVER

One or more waivers of a breach of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or for any act by Tenant requiring Landlord’s consent or approval shall not be deemed to render unnecessary Landlord’s consent or approval to or for any subsequent similar act by Tenant. No breach of a covenant or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver be in writing and signed by Landlord.

27. In sum, the Lease enumerated the bases of default and specifically included, “The failure, neglect or refusal of Tenant to pay any installment of Fixed Rental or additional rent at the time and in the amount as herein provided, or to pay any other monies agreed by it to be paid promptly when and as the same shall become due and payable[.]” (*Id.* at § 20.) In the event Tenant fails to timely remit all amounts due and owing to Landlord, Landlord is then entitled to all remedies available at law and, Landlord is entitled to recover all expenses including reasonable attorneys’ fees. (*Id.* at § 21.) Moreover, no breach on the part of Tenant shall be deemed a waiver by Landlord, unless such waiver is in writing and signed by Landlord. (*Id.* at § 22.)

E. Tenant Fails to Pay Tenant’s Operating Expense Allocation.

28. On March 1, 2020, Tenant’s Lease term began.

29. On February 28, 2024, Tenant’s Lease term concluded.

30. Throughout the four-year term of the Lease, Tenant timely remitted its Fixed Rent payments and Monthly Installments pursuant to Section 3 of the Lease.

31. For the 2020 calendar year, Landlord calculated Tenant's Operating Expense Allocation to total \$6,759.89. (*See* 2020 Operating Expense Reconciliation, a true and accurate copy of which is attached hereto as Ex. D.)

32. On or about September 9, 2021, Landlord provided notice of Tenant's 2020 Operating Expense Allocation to Tenant. (*Id.*)

33. On or about May 4, 2022, Tenant remitted its 2020 Operating Expense Allocation to Landlord.

34. For the 2021 calendar year, Landlord calculated Tenant's Operating Expense Allocation to total \$96,526.55. (*See* AR Billings/Adjustments for 2021, a true and accurate copy of which is attached hereto as Ex. E.)

35. On or about December 19, 2022, Landlord provided notice of Tenant's 2021 Operating Expense Allocation to Tenant. (*Id.*)

36. However, to date, Tenant has failed to remit payment of the 2021 Operating Expense Allocation to Landlord.

37. For the 2022 calendar year, Landlord calculated Tenant's Operating Expense Allocation to total \$32,168.97. (*See* AR Billings/Adjustments for 2022, a true and accurate copy of which is attached hereto as Ex. F.)

38. On or about August 27, 2023, Landlord provided notice of Tenant's 2022 Operating Expense Allocation to Tenant. (*Id.*)

39. However, to date, Tenant has failed to remit payment of the 2022 Operating Expense Allocation to Landlord.

40. For the 2023 calendar year, Landlord calculated Tenant's Operating Expense Allocation to total \$50,537.11. (*See* AR Billings/Adjustments for 2023, a true and accurate copy of which is attached hereto as Ex. G.)

41. On or about November 8, 2024, Landlord provided notice of Tenant's 2023 Operating Expense Allocation to Tenant. (*Id.*)

42. However, to date, Tenant has failed to remit payment of the 2023 Operating Expense Allocation to Landlord.

43. For the 2024 calendar year, Landlord calculated Tenant's Operating Expense Allocation to total \$16,292.36. (*See* AR Billings/Adjustments for 2024, a true and accurate copy of which is attached hereto as Ex. H.)

44. On or about November 18, 2024, Landlord provided notice of Tenant's 2024 Operating Expense Allocation to Tenant. (*Id.*)

45. However, to date, Tenant has failed to remit payment of the 2024 Operating Expense Allocation to Landlord.

46. Upon information and belief, Tenant's refusal to remit payment to Landlord is based solely on the fact that the AR Billings/Adjustments were not delivered to Tenant within 45 days of the end of each calendar year.

F. Tenant Failed to Cure its Breaches and Landlord Has Exhausted All Remedies Prior to Filing Suit.

47. On or about March 13, 2025, Landlord issued a Final Notice of Demand for Payment (the "Final Notice"). A true and accurate copy of the Final Notice is attached hereto as Exhibit I.

48. The Final Notice was delivered to Tenant via overnight delivery at 700 Science Boulevard, Gahanna, OH 43230.

49. In the Final Notice, Landlord provided Tenant with written notice that Tenant owed Landlord \$222,347.81, comprised of past due Operating Expense Allocations, late fees, and accrued interest on the missed payments. (*Id.*) Landlord also advised that it was applying Tenant's security deposit in the amount of \$20,000 towards Tenant's past due balance. (*Id.*) Landlord also demanded that Tenant remit the outstanding balance within 10 days of the date of the Final Notice. (*Id.*)

50. On or about March 26, 2025, Tenant, through counsel, responded to the Final Notice (Tenant's "Response Letter"). A true and accurate copy of Tenant's Response Letter is attached hereto as Exhibit J. In its Response Letter, Tenant affirmed that Landlord may apply Tenant's security deposit to the 2024 Operating Expense Allocation. (*Id.*) Tenant further refused to remit payment to Landlord for the remaining past due amounts.

51. In the Response Letter, Tenant's basis for its refusal to remit payment rested entirely on the timing of Landlord's Operating Expense Allocations for 2021-2023.

52. On March 28, 2025, Landlord, through counsel, responded to Tenant's Response Letter (the "March 28 Letter"). A true and accurate copy of the March 28 Letter is attached hereto as Exhibit K.

53. In the March 28 Letter, Landlord rejected Tenant's position that any Operating Expense Allocation reconciliation was untimely. Landlord further advised that its yearly expense reconciliation, even if such reconciliation occurred outside of the period provided in Section 12(b) of the Lease, was **not** a permanent, incurable waiver of Landlord's right and obligation to perform such reconciliation. (*Id.*) Landlord also advised Tenant that if Tenant does not remit payment by April 4, 2025, Landlord intended to pursue its rights and remedies to recover those past due amounts. (*Id.*)

54. As of the date of this filing, Tenant has not replied to the March 28 Letter, and, further, Tenant has not paid the balance owed for the outstanding Operating Expense Allocations for 2021-2023.

55. As a result of Tenant's failure to remit the balance owed, Landlord has sustained damages and continues to sustain damages. Attached hereto as Exhibit L is a table of the accruing damages, in part, through November 1, 2027.

56. Landlord now seeks Court intervention to declare Landlord's rights pursuant to the Lease and to recover all amounts due and owing to Landlord as a result of Tenant's breach of contract and defaults pursuant to the terms of the Lease.

COUNT I
(Breach of Contract)

57. All prior allegations are incorporated as if fully restated herein.

58. The Lease is a valid contract entered into by Tenant.

59. Landlord assumed the rights and obligations afforded to Trevi Enterprises, LLC under the terms of the Lease.

60. Landlord fulfilled all of its obligations pursuant to the Lease.

61. Landlord provided notice of Tenant's Operating Expense Allocation to Tenant for 2021, 2022, 2023, and 2024.

62. Without justification, Tenant breached the terms of the Lease by failing to pay the Operating Expense Allocations for 2021, 2022, 2023, and 2024 for the Property.

63. Despite written notice provided by Landlord, Tenant has failed to cure its breaches.

64. As a result of Tenant's breaches, Landlord has incurred and is entitled to damages in an amount no less than \$25,000, plus attorneys' fees, costs, expenses, and pre-and post-judgment interest.

COUNT II
(Declaratory Judgment)

65. All prior allegations are incorporated as if fully restated herein.

66. Landlord requests a declaratory judgment to declare Landlord's rights pursuant to the Lease, specifically, that:

- a. The Lease is a valid and binding contract between Landlord and Tenant;
- b. Pursuant to Sections 3 and 12 of the Lease, Tenant was required to remit Tenant's Operating Expense Allocation to Landlord for the 2021, 2022, 2023, and 2024 calendar years;
- c. Landlord did not waive its right to collect Tenant's Operating Expense Allocation for the 2021, 2022, 2023, and 2024 calendar years;
- d. Because Tenant failed to remit Tenant's Operating Expense Allocation for the 2021, 2022, 2023, and 2024 calendar years, Tenant is in default of the Lease;
- e. Pursuant to Sections 3, 12, and 20 of the Lease, Landlord is entitled to recover from Tenant all past due Operating Expense Allocations, interest, and late fees at 5% of the past due amount; and
- f. Pursuant to Section 20 of the Lease, Landlord is entitled to recover from Tenant all attorneys' fees incurred by Landlord in connection with this action, Tenant's breach of the Lease, and/or Landlord's efforts expended to recover sums due under the Lease.

67. A real controversy exists because the resolution of this dispute will potentially confer rights upon Landlord.

68. This dispute is justiciable because Landlord is suffering harm based on Tenant's intent not to proceed in accordance with the Lease.

69. Immediate and speedy relief is necessary because any delay by Tenant in remitting payment due and owing to Landlord will result in significant loss of revenue to Landlord.

COUNT III
(In the Alternative – Unjust Enrichment)

70. All prior allegations are incorporated as if fully restated herein.

71. Landlord performed services and conferred a benefit upon Tenant, *to wit*: Landlord's managing, operating, equipping, policing, protecting, lighting, insuring, repairing, and maintaining the Property for Tenant's exclusive benefit.

72. Landlord performed these services with the reasonable expectation that it would be compensated for its services. Tenant was aware of Landlord's reasonable expectation for same.

73. Tenant accepted the services from Landlord.

74. Tenant has not compensated Landlord for the services.

75. Tenant has knowingly retained the benefit of the services without compensating Landlord.

76. Tenant has been unjustly enriched by accepting the services without compensating Landlord.

77. It would be inequitable for Tenant to retain the benefits received at the expense of Landlord without compensation to Landlord.

78. As a result, Tenant has been unjustly enriched in an amount to be determined at trial, plus pre- and post-judgment interest, costs, and attorneys' fees.

WHEREFORE, Plaintiff Exeter 870 Claycraft, L.P. prays for judgment against Defendant ADB Safegate Americas LLC as follows:

- a. Compensatory damages suffered by Landlord, including but not limited to: the past due Operating Expense Allocations for 2021, 2022, 2023, and 2024 in the amount of \$166,307.57, plus late fees, interest, and other compensatory damages incurred by Landlord in relation to Landlord's efforts to recover the sums due to Landlord;
- b. Declaratory relief as set forth in Count II;
- c. For pre-judgment and post-judgment interest;
- d. For costs, expenses, and attorneys' fees incurred in preparing and prosecuting this action, under Section 20 of the Lease or otherwise under applicable law; and
- e. For all other and further relief to which Landlord may be entitled at law or in equity.

Respectfully submitted,

/s/ Kristina S. Dahmann

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