

audit Allowances, CTF learned for the first time that Marriott has been secretly receiving and retaining exclusively for itself approximately 70% of the A/V Fees that CTF had been paying Molloy under the Molloy Agreements. In an e-mail dated February 13, 2002, Marriott finally responded to CTF's long-standing information requests concerning the Molloy Agreements by revealing, for the first time, that of the \$1,032,000 CTF had paid to Molloy for the A/V Services in 2000, Molloy actually only retained approximately 30% of the A/V Fee and Marriott secretly pocketed the balance, or by Marriott's later admission, the astonishing sum of \$706,809. The extraordinary result is that to fund these undisclosed kickbacks from Molloy to Marriott, CTF was unknowingly paying Molloy nearly 300% of its actual invoice expenses.

123. Plainly, if CTF had been informed of this massive mark-up in Molloy's fees solely to finance a kickback scheme to Marriott, CTF would never have agreed to the arrangement. Marriott knew that CTF did not have this information, which was peculiarly in Marriott and Molloy's possession.

124. In all of its many presentations and discussions concerning MVP, Marriott never disclosed this highly material term of its secret arrangement with Molloy. By wilfully withholding this information, Marriott is guilty of breach of fiduciary duty, fraudulent concealment, and is also in breach of its explicit disclosure obligations under the 1999 Agreement, both to disclose the material terms of all existing programs as of April 1999, and to continue disclosing such terms on an ongoing basis. (See supra ¶ 58.)

125. The kickbacks Marriott received from Molloy fall squarely within the 1999 Agreement's definition of Allowances -- as "payments, benefits, discounts or allowances of any nature whatsoever that are provided to Marriott (including any affiliate) in connection with a

purchase or other contractual arrangement between Marriott and a third party in connection with any Hotel(s)." As such, they were, and are, subject to the Allowance Cap and the disclosure rules established under the 1999 Agreement.

126. By retaining more than \$706,000 in Molloy kickbacks in 2000 alone, Marriott secretly exceeded the Allowance Cap by nearly 300% -- excluding the other Allowances Marriott has kept as its purported entitlement under the Cap. Marriott's improper retention of the Molloy kickbacks directly violated the 1999 Agreement.

127. Marriott's fraudulent concealment of the Molloy kickbacks also violated the specific disclosure requirements in the Agreements. Concealing the existence of the Molloy kickbacks, Marriott falsely represented in the annual certifications submitted pursuant to the 1999 Agreement (see supra ¶ 51) that all of its program charges and fees under the 1999 Agreement were proper. Until CTF specifically requested the details of Marriott's payments to Molloy, Marriott never revealed its actual retention of the Molloy kickbacks.

128. CTF wrote to Marriott on March 5, 2002 to express its surprise at the revelation of undisclosed kickbacks from Molloy and to demand that Marriott: (1) provide a full accounting of all A/V Fees that had been paid to or retained by Marriott during fiscal years 1999, 2000, and 2001; (2) disgorge all such retained fees; and (3) cease and desist from further retention of any portion of the A/V Fee.

129. In response, on March 15, 2002, Marriott baldly refused to comply, although Marriott admitted that it never disclosed to CTF that it was receiving 70% of the fee to Molloy. Marriott erroneously -- and arrogantly -- claimed that "[n]othing in the [1999] Agreement obligates Marriott to disclose the amount of profit" it was earning from Molloy, which was

information that "Marriott had no independent obligation to volunteer."

130. It is precisely this cat-and-mouse attitude that Marriott has taken toward its fiduciary disclosure obligations that compels CTF to petition the Court for the injunctive and declaratory relief requested herein.

131. On March 28, 2002, CTF issued a notice of default to Marriott based on its fraudulent collection and continued retention of the Molloy kickbacks and its failure to submit to an audit. In a last ditch effort to tranquilize CTF and to preempt its inevitable resort to this Court for legal and equitable relief, Marriott tendered a check to CTF on April 8, 2002 in the amount of \$2,027,000, representing the purported total of the Molloy kickbacks retained by Marriott both the Hotels and the HPI Portfolio. Thus Marriott proposed to return to CTF \$1,714,323 in kickbacks attributable to the Hotels. Marriott coupled the check with a petition for arbitration before the American Arbitration Association, even though CTF never agreed to arbitrate its disputes with Marriott. To the contrary, the Agreements both specifically reaffirm CTF's right to a judicial forum.

#### **Marriott Refuses to Cooperate with CTF's Audit of Allowances**

132. On February 6, 2002, CTF notified Marriott that it was exercising its right to review, inspect and audit Marriott's records concerning Allowances and transactions entered into on behalf of CTF, as explicitly granted under the Agreements. Marriott has vigorously resisted complying with this audit request, first by failing for several weeks to respond at all, then by claiming, on March 4, 2002, without any specificity, that the request was burdensome and a mere "fishing expedition." After an introductory meeting, a second meeting to discuss the audit was at long last scheduled (roughly six weeks after the initial demand). Marriott threatened

to cancel the meeting on the pretense that Marriott would not proceed unless CTF agreed to enter into a new confidentiality agreement, even though such a condition is nowhere in the Management Agreement's unconditional audit and inspection provisions.

133. CTF objected to Marriott's effort to thwart the audit by imposing a new confidentiality condition. However, when it became clear (as in CTF's Avendra request) that Marriott would not remove the artificial roadblock it had erected to the commencement of the audit unless CTF acquiesced, it did so under protest to Marriott's condition.

134. Most recently, Marriott has refused to proceed with the audit unless and until CTF revises its audit request to "narrow" the scope to conform to the limited scope that Marriott deems "sufficient and adequate." Of course, under the unequivocal terms of the Management Agreement, the audit right belongs to CTF and the determination of what documents are "sufficient and adequate" to complete the audit is a matter committed to CTF and its auditors' sole discretion. Nonetheless, to advance the audit and accommodate Marriott's supposed concerns, CTF was prepared to attempt to modify the audit request but first needed Marriott's specific feedback on the initial February 6, 2002 audit request. Marriott has categorically refused to provide any specific response, referencing Marriott's wholly inadequate and nonspecific March 4, 2002 response which did not substantively address the items on the audit request, much less clearly identify the particular documents Marriott would or would not produce. By insisting on a "revised list" as the basis for the audit to proceed, and yet refusing to provide the feedback necessary to revise that list, Marriott continues to obstruct CTF's exercise of its audit rights.

135. As a result of Marriott's continued stonewalling and gamesmanship in

violation of its fiduciary and contractual duties, CTF has still not received any substantive response to its audit request, much less any of the underlying information requested in that request.

136. CTF therefore seeks the Court's assistance in enforcing its audit rights under the Agreements.

**COUNT I**  
**Breach of Contract**  
**(the Management Agreement)**  
**(Against the Marriott Defendants)**

137. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 136 as if fully set forth herein.

138. The Management Agreement constitutes a binding and enforceable contract between CTF and RHOC.

139. Because at all relevant times hereto RHOC acted as the agent of Marriott, under its complete domination, control and direction, Marriott assumed the obligations of RHOC under the Management Agreement, caused RHOC's material breaches of the Management Agreement, and is therefore jointly and severally liable for such breaches.

140. CTF has duly performed all conditions, covenants and promises required to be performed by it under the Management Agreement.

141. In clear and material breach of their obligations under the Management Agreement, the Marriott Defendants have, inter alia:

- a. improperly delegated core agency purchasing duties to Avendra without CTF's consent;

- b. imposed, or threatened to impose, improper charges and fees on the Hotels in violation of the Management Agreement;
- c. diverted money that should have been paid to CTF by improper payment of improper fees and charges to Marriott's affiliates, including Avendra;
- d. diverted money due to CTF by improperly soliciting and retaining kickbacks from Molloy and by improperly soliciting and applying "Restricted Allowances";
- e. engaged in transactions for goods and services on behalf of the Hotels with Marriott's affiliates, including Avendra, without CTF's consent, and without ensuring the competitiveness of such transactions;
- f. refused to provide a proper accounting of fees, charges and Allowances (including Sponsorship Funds) imposed or collected by Marriott and its affiliates to the Hotels;
- g. failed to maintain accurate and complete books, records and financial statements for the Hotels; and
- h. failed to provide access to books, records and material agreements and to submit to an audit despite repeated demands by CTF.

142. CTF has provided the Marriott Defendants written notice of the breaches identified above, which constitute events of default under the Management Agreement, and the Marriott Defendants have failed to cure said events of default within the periods specified by the Management Agreement.

143. CTF has suffered and will continue to suffer damages as a direct result of Defendants' breaches of their obligations under the Management Agreement.

**COUNT II**  
**Breach of Contract**  
**(the 1999 Agreement)**  
**(Against the Marriott Defendants)**

144. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 143 as if fully set forth herein.

145. The 1999 Agreement constitutes a binding and enforceable contract between CTF and the Marriott Defendants.

146. CTF has duly performed all conditions, covenants and promises required to be performed by it under the 1999 Agreement.

147. In material and willful breach of their obligations under the 1999 Agreement, the Marriott Defendants have, inter alia:

- a. improperly delegated core agency purchasing duties to Avendra without CTF's consent;
- b. imposed, or threatened to impose, improper fees, charges, costs and/or allocations on the Hotels, including improper procurement fees;
- c. diverted money that should have been paid to CTF by improper payment of improper fees and charges to themselves and their affiliates and by soliciting and accepting secret kickbacks from Molloy;
- d. engaged in transactions for goods and services on behalf of the Hotels with affiliates, without obtaining CTF's consent, and without ensuring the competitiveness of such transactions;
- e. failed to provide CTF with disclosure of all material terms of Marriott's programs,

such as the receipt of kickbacks from Molloy, Marriott's solicitation and use of Unrestricted Allowances and Sponsorship Funds or the extent of benefits Marriott derives from Avendra;

- f. refused to provide a proper accounting of Allowances, or of the fees and charges by Marriott and its affiliates;
- g. failed to maintain accurate and complete books, records and financial statements for the Hotels; and
- h. failed to provide access to books, records and material agreements and to submit to an audit despite repeated demands by CTF.

148. CTF has provided the Marriott Defendants written notice of the breaches identified above, which constitute events of default under the Management Agreement, and the Marriott Defendants have failed to cure said events of default within the periods specified by the Management Agreement.

149. CTF has suffered and will continue to suffer damages as a direct result of the Marriott Defendants' breaches of their obligations under the 1999 Agreement.

**COUNT III**  
**For Breach of Fiduciary Duty**  
**(Against the Marriott Defendants)**

150. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 149 as if fully set forth herein.

151. By virtue of the role played by the Marriott Defendants as Manager under the Agreements, an agency relationship was explicitly created and continues to exist between CTF and the Marriott Defendants. Pursuant thereto CTF was entitled to, and did, repose trust



and confidence in RHOC to manage and operate the Hotels to maximize the profitability of the Hotels, including by the handling of revenues, operating funds, Allowances and other proceeds related thereto. Accordingly, a special confidential fiduciary relationship was created and continues to exist between the CTF and the Marriott Defendants.

152. By virtue of the Marriott Acquisition and its resultant complete domination and control of RHOC, Marriott is the alter ego of RHOC and has therefore acquired and assumed the fiduciary obligations of RHOC toward CTF.

153. By virtue of the agency and confidential relationships existing between CTF and the Marriott Defendants, the Marriott Defendants owe to CTF fiduciary duties in operating the Hotels, including, without limitation, fiduciary obligations and utmost duties of good faith, fair dealing, full disclosure, loyalty, care and candor.

154. In purchasing any goods or services on behalf of CTF and/or the Hotels, the Marriott Defendants owed CTF a fiduciary duty of full disclosure and a duty to refrain from seeking any profit to themselves or their affiliates by virtue of their agency relationship except with the knowledge and consent of CTF.

155. In violation of the foregoing fiduciary duties to CTF, the Marriott Defendants have, inter alia:

- a. secretly diverted to themselves and their affiliate Avendra the potential economic benefits derived from centralized purchasing on behalf of the Hotels;
- b. failed to maximize the profitability of CTF by, inter alia, entering into a series of agreements concerning Avendra contrary to CTF's interests, designed solely to promote Defendants' interests;

- c. participated in undisclosed self-interested and affiliated transactions to the detriment of CTF;
- d. improperly delegated non-delegable agency duties to Avendra;
- e. diverted monies that should have been paid to CTF by, inter alia, the improper imposition of their own or their affiliates' fees and charges and through the receipt of undisclosed kickbacks;
- f. violated their duty of candor by failing to disclose material facts about benefits, including kickbacks, received by the Marriott Defendants in connection with transactions and contracts on behalf of the Hotels;
- g. refused to provide a proper accounting of fees, charges and Allowances assessed or retained by Marriott and/or Marriott affiliates, including Avendra; and
- h. failed to maintain accurate and complete books, records and financial statements for the Hotels.

156. Such conduct, which has continued to occur even after the Marriott Defendants were placed on notice of the consequences of such misconduct in 1999, was intentional, wilful, malicious and wanton.

157. CTF has suffered and will continue to suffer economic and other injuries as a result of the Marriott Defendants' breaches of their fiduciary duties.

**COUNT IV**  
**For Aiding and Abetting Breach of Fiduciary Duty**  
**(Against Marriott and Avendra)**

158. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 157 as if fully set forth herein.

159. Pursuant to the Management Agreement, RHOC owed a fiduciary duty to CTF as the sole and exclusive agent managing and operating the Hotels. In addition, CTF reposed trust and confidence in RHOC to manage and operate the Hotels in CTF's interests.

160. By committing the acts and omissions described above, RHOC violated its fiduciary duties to CTF.

161. By virtue of the Marriott Acquisition, and its subsequent complete domination and control of RHOC, Marriott directed and knowingly participated in, aided and abetted, and caused and contributed to RHOC's breach of fiduciary duties in order to maximize the illicit returns to Marriott. By virtue of its knowing participation in the Marriott Defendants' unauthorized delegation of core agency duties, detrimental and uncompetitive agreements, and soliciting and receiving kickbacks, rebates, discounts and other undisclosed consideration, Avendra also knowingly participated in the Marriott Defendants' breach of fiduciary duties in order to maximize the illicit returns to Marriott.

162. Such conduct was intentional, wilful, malicious and wanton.

163. CTF has suffered and will continue to suffer as a result of Marriott's and Avendra's aiding and abetting RHOC's breaches of fiduciary duty.

**COUNT V**

**For Fraud**

(Against the Marriott Defendants)

164. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 163 as if fully set forth herein.

165. As alleged above, the Marriott Defendants fraudulently concealed numerous improper charges, fees and self-interested transactions.

166. The Marriott Defendants were obligated to disclose these charges, fees and transactions under the Agreements and under their common law fiduciary duties described above.

167. The monthly financial statements and reports provided by RHOC, at Marriott's direction, to CTF during the period from April 1999 through the present falsely stated and/or concealed material facts concerning the actual results of operation of the Hotels in that these statements did not disclose, inter alia, the amount of improper and erroneous charges and fees, the amount of unauthorized and improper transactions with Marriott affiliates, and the amount of consideration received by the Marriott Defendants from self-dealing or affiliated transactions which properly belonged to CTF and the amount of Allowances diverted by the Marriott Defendants to their own purposes.

168. The Marriott Defendants also misrepresented the benefits and actual costs of MVP, and concealed their scheme to obtain secret kickbacks from Molloy in order to induce CTF's participation in MVP.

169. The Marriott Defendants intentionally made the false and misleading material misstatements described above (see supra ¶¶ 43, 95, 124, 147 and 162-168), knowing that they were untrue, misleading and/or concealed material facts which the Marriott Defendants had an affirmative fiduciary and contractual duty to disclose, with the intent that CTF would rely on them.

170. CTF reasonably and justifiably relied on these representations and omissions to its detriment not knowing that they were false and misleading.

171. In furtherance of their fraudulent scheme to benefit Marriott at the expense of CTF, the Marriott Defendants intentionally utilized Marriott affiliates, including Avendra, to

launder the improper profits derived from the Marriott Defendants' secret affiliated transactions  
in order to conceal such profits from CTF.

172. CTF was damaged by an amount to be determined following discovery and at trial as a direct and proximate result of the Marriott Defendants' fraud.

**COUNT VI**  
**For Conversion**  
**(Against the Marriott Defendants)**

173. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 172 as if fully set forth herein.

174. The Marriott Defendants have improperly taken the Hotels' funds as their own, improperly paid amounts to be established at trial to themselves, their affiliates and others, including Avendra, improperly accounted for, failed to account for, or deliberately concealed the amount of such payments and otherwise misappropriated funds as to which they have no right, including kickbacks from Molloy and certain Allowances and Sponsorship Funds.

175. Such improper use by the Marriott Defendants of these funds violates CTF's right to possession of such funds and constitutes a conversion.

176. CTF has been directly damaged as a result of the Marriott Defendants' conversion, in an amount to be determined at trial.

**COUNT VII**  
**For Intentional Misrepresentation**  
**(Against the Marriott Defendants)**

177. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 176 as if fully set forth herein.

178. As described above (see supra ¶¶ 162-69) the Marriott Defendants

willfully and intentionally misrepresented and omitted to disclose to CTF material facts related to their management of the Hotels, including material facts related to kickbacks from vendor contracts, such as Molloy, and improper charges and fees allocated to the Hotels.

179. Moreover, as further described above (see id.) the Marriott Defendants intentionally misrepresented to CTF that their vendor agreements were competitive, and concealed the vendor kickbacks provided to Defendants and their affiliates.

180. Also as described in this Complaint (see supra ¶¶ 162-69; infra ¶¶ 245-246) the Marriott Defendants sent false and misleading financial statements concerning the Hotels to CTF that did not disclose, among other things, improper charges, profits from self-interested transactions, vendor kickbacks and other payments.

181. Because of their fiduciary relationship with CTF, the Marriott Defendants had a duty to disclose material facts related to the management of the Hotels to CTF.

182. CTF justifiably relied on the Marriott Defendants' misrepresentations that CTF and/or the Hotels were benefitting from competitive prices in the marketplace for these vendor contracts.

183. CTF also justifiably relied on the Marriott Defendants' intentional misrepresentations that the Marriott Defendants would operate the Hotels to maximize value to CTF based on their expertise in the promotion, management and operation of hotels, and their representations that they were honest and trustworthy in connection with the operations of and accounting for the Hotels.

184. These representations were false when made, or were made recklessly and/or with conscious disregard for their materiality to CTF and CTF's detrimental reliance

thereon.

185. As a result of CTF's reliance on the Marriott Defendants' misrepresentations, CTF has suffered economic damages. Accordingly, CTF seeks recovery of monetary compensation in an amount to be determined at trial by jury.

186. CTF furthermore seeks punitive damages in an amount to be determined at trial because the Marriott Defendants' misrepresentations were willful, malicious, wanton, reckless and oppressive and/or were made in conscious disregard for the rights of CTF.

#### COUNT VIII

##### For Negligent Misrepresentation (Against the Marriott Defendants)

187. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 186 as if fully set forth herein.

188. In making the representations referred to at paragraphs 179 to 182, the Marriott Defendants assumed a duty to take all reasonable care to ensure that such representations were accurate and complete in every particular.

189. In failing to ensure the accuracy and completeness of such representations, on which CTF relied, the Marriott Defendants have violated that duty of care.

190. CTF was damaged by an amount to be determined following discovery and at trial as a direct and proximate result of the Marriott Defendants' negligent misrepresentations and omissions.

#### COUNT IX

##### For Breach of Covenant of Good Faith and Fair Dealing (Against the Marriott Defendants)

191. CTF repeats and realleges each and every allegation contained in

paragraphs 1 to 190 as if fully set forth herein.

192. The Agreements both contained an implied covenant which imposes on the Marriott Defendants a duty to act in the highest good faith and to act fairly and honestly in their dealings with CTF and not to deprive CTF of the benefits of these agreements.

193. The Marriott Defendants materially breached this implied covenant of good faith and fair dealing by, inter alia: (1) disregarding the promise to maximize the Hotels' profitability; (2) engaging in undisclosed self-dealing and affiliated transactions designed to benefit Marriott, at the expense of CTF and the Hotels; (3) imposing improper and/or undisclosed fees, charges and allocations on the Hotels; and (4) failing to provide information to CTF upon request concerning such affiliated transactions, and such improper fees, charges and allocations.

194. CTF furthermore seeks punitive damages in an amount to be determined at trial because the Marriott Defendants' misconduct was willful, malicious, wanton, reckless and oppressive and/or were made in conscious disregard for the rights of CTF.

**COUNT X**  
**For Tortious Interference with Contract**  
**(Against Marriott and Avendra)**

195. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 194 as if fully set forth herein.

196. The Agreements constitute a binding and enforceable contract between the parties thereto.

197. Avendra (and Marriott, in the case of the Management Agreement) knew of the existence of this contractual relationship.



198. Avendra (and Marriott, in the case of the Management Agreement), through their intentional actions to illicitly profit from RHOC's management of the Hotels by the acts described above, caused or significantly contributed to RHOC's material breaches of the Agreements.

199. Avendra (and Marriott, in the case of the Management Agreement) through their intentional actions to illicitly profit at the expense of CTF by promoting or causing RHOC's violation of its fiduciary duties and contractual obligations to CTF, acted without legal justification.

200. By virtue of the Marriott Defendants' material breaches of the Agreements, caused at the behest of Avendra (and Marriott, in the case of the Management Agreement), CTF has suffered and will continue to suffer damages in an amount to be determined at trial.

201. CTF furthermore seeks punitive damages in an amount to be determined at trial because Marriott's and Avendra's misconduct was willful, malicious, wanton, reckless and oppressive and/or were made in conscious disregard for the rights of CTF.

**COUNT XI**  
**For Unjust Enrichment**  
**(Against All Defendants)**

202. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 201 as if fully set forth herein.

203. Defendants engaged in the acts described above for the purpose of, among other things, enriching themselves at the expense of CTF, and have, in fact, been so enriched through their receipt of, inter alia: (1) improper charges, fees and allocations; (2) undisclosed rebates, kickbacks and other consideration from transactions entered into on behalf of CTF; and

(3) profits garnered at CTF's expense from the promotion of Avendra.

204. Accordingly, CTF is entitled to recover actual, compensatory and consequential damages and Defendants should be required to disgorge any profits they have unjustly made at the expense of CTF.

205. CTF furthermore seeks punitive damages in an amount to be determined at trial because Defendants' misconduct was willful, malicious, wanton, reckless and oppressive and/or were made in conscious disregard for the rights of CTF.

**COUNT XII**  
**For Constructive Trust**  
**(Against All Defendants)**

206. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 205 as if fully set forth herein.

207. Defendants have received and retained funds in violation of their fiduciary duties to CTF, including, inter alia: (1) funds obtained by imposing on the Hotels undisclosed and improper charges, fees and allocations; (2) funds, rebates, kickbacks and other consideration obtained directly and indirectly from third parties and affiliated parties through improper self-dealing or affiliated transactions and/or improper use of allowances; and (3) funds obtained or withheld as part of the acts of conversion alleged above.

208. In further violation of their duties of fair dealing and full disclosure, Defendants have imposed, or threatened to impose, costs on the Hotels for promotion of Avendra, without conferring any corresponding benefit on the Hotels or obtaining the knowing consent of CTF.

209. By virtue of the Defendants' confidential and fiduciary relationship to

CTF, the proceeds and profits derived by Marriott and its affiliates from these programs, including their investment in Avendra, are impressed with a constructive trust for the benefit of CTF.

210. By virtue of Defendants' violation of the relationship of trust and confidence then existing between them and CTF, Defendants hold these excess monies as a constructive trustee for CTF's benefit.

**COUNT XIII**  
**For a Declaratory Judgment: CTF's**  
**Rights under the Agreements**  
**(Against All Defendants)**

211. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 210 as if fully set forth herein.

212. An actual controversy has arisen and now exists between CTF and the Marriott Defendants concerning their respective rights and duties under the Agreements.

213. CTF desires a judicial determination of its rights and duties under the Management Agreement, declaring, inter alia, that:

- a. each of the Marriott Defendants are agents of CTF;
- b. each of the Marriott Defendants are in a confidential relationship with CTF;
- c. each of the Marriott Defendants are fiduciaries of CTF;
- d. each of the Marriott Defendants are bound by the terms of the Agreements;
- e. Marriott is the alter ego of RHOC, and/or caused the contractual breaches complained of herein, and is liable for the contractual breaches, breaches of fiduciary duty committed by RHOC, including the receipt of rebates, discounts and profits

from affiliated and/or undisclosed transactions;

- f. the Marriott Defendants improperly retained the Molloy kickbacks and are not entitled to recover the sums relating to the Hotels comprised in its check for \$2,027,000;
- g. the Marriott Defendants improperly delegated core agency duties to Avendra, alternatively, created a sham entity by which to evade fee restrictions;
- h. Marriott is not entitled to charge any procurement fee on purchases by Avendra and any such Fees already imposed are improper;
- i. the acts and omissions described above constitute material breaches of the Agreements which have not been cured within the applicable cure periods;
- j. the acts and omissions described above constitute violations of the Marriott Defendants' fiduciary duties to CTF, warranting remedies of disgorgement of any profits earned by the Marriott Defendants, including management and other fees paid to date; and
- k. transactions between or among Marriott, RHOC and Marriott-affiliates to which CTF has not knowingly and expressly consented, including Avendra, are voidable at the option of CTF.

214. CTF is entitled to terminate the Agreements at will, without cost and without further notice.

**COUNT XIV**  
**For an Equitable Accounting**  
**(Against the Marriott Defendants)**

215. CTF repeats and realleges each and every allegation contained in

paragraphs 1 to 214 as if fully set forth herein.

216. By virtue of the Marriott Acquisition, and its subsequent complete domination and control of RHOC, Marriott is the alter ego of RHOC and has therefore assumed the disclosure and accounting obligations of RHOC toward CTF.

217. Under the Agreements, the Marriott Defendants were granted, and currently exercise, exclusive control and operation of the Hotels, including, without limitation, the exclusive possession and control of the accounts, books and records, financial records and accounting system for the Hotels.

218. Through undisclosed fees, charges and affiliated transactions, and the receipt of undisclosed Allowances, the Marriott Defendants and/or their affiliates have improperly received unknown amounts, which rightfully belong to CTF.

219. As fiduciaries, the Marriott Defendants must account to CTF for all expenses and costs incurred and all profits derived from their agency.

220. A full accounting is needed to apprise CTF of the full extent of the improper fees, charges and transactions committed by the Marriott Defendants, and the corresponding amounts due and owing to CTF.

221. CTF has no adequate remedy at law.

222. For these and other reasons that CTF may determine after further discovery, the Court should grant CTF an accounting of all financial matters relating to the Hotels and the Agreements, including but not limited to all matters relating to funds and resources flowing to the Marriott Defendants, their affiliates and others and any funds that should have been paid to CTF.

COUNT XV  
For an Audit Pursuant to the Agreements  
(Against the Marriott Defendants)

223. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 222 as if fully set forth herein.

224. Section 4.4 of the Management Agreement provides that all "books of account and other records reflecting the results of the Business of [the] Owner . . . shall be available to Owner and its representatives at all reasonable times for examination, audit, inspection, copying and transcription . . . ." This obligation continues throughout the Management Agreement and survives termination for a period of three years.

225. Section IV(A)(5)(a) of the 1999 Agreement provides that "Marriott shall maintain sufficient and adequate records of all such Unrestricted Allowances received by Marriott in order to enable CTF[] to review and audit such allowances on demand."

226. By its letter dated February 6, 2002, CTF has given Marriott reasonable notice of its intention to audit the books and records of the Hotels pursuant to the above-referenced provisions of the Agreements (collectively the "Audit Obligations").

227. As alleged above, Marriott has concealed its receipt of Allowances, and has converted so-called Unrestricted Allowances to its own purposes.

228. In failing to furnish the books and records of the Hotels for audit in the manner and to the extent specified by CTF, the Marriott Defendants are in material breach of the Audit Obligations. Unless and until the Marriott Defendants are ordered to honor the Audit Obligations, CTF has no adequate remedy at law.

229. CTF is entitled to an order directing the Marriott Defendants to make

available for examination, audit, inspection, copying and transcription:

- a. all documents and other information requested to in CTF's February 6, 2002 letter; and/or
- b. all such other books of account and other records as CTF and its designated auditors may request reflecting: (i) the results of the Hotels; and (ii) all such Allowances (as defined in the Agreements), including Unrestricted Allowances and Sponsorship Funds as have been received by Marriott.

**COUNT XVI**  
**For Violation of RICO, Section 1962(c)**  
**(Against All Defendants)**

230. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 229 as if fully set forth herein.

231. Section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), prohibits any person associated with an enterprise engaged in interstate commerce (a "RICO Enterprise") to participate in the conduct of such RICO Enterprise's affairs through a pattern of racketeering activity. This case involves three RICO Enterprises.

232. First, the Marriott Defendants have transformed the Hotels from an otherwise legitimate business into an "enterprise" within the meaning of RICO by operating them and conducting their business and affairs through a pattern of racketeering activity (hereinafter "Enterprise I"). The purpose of Enterprise I was to create a business vehicle that Defendants could use for their unlawful ends. Specifically, having induced CTF to continue to entrust Marriott to be Manager of the Hotels, and having abused that role in order to skim off unautho-

rized, undisclosed profits, kickbacks, allowances and "Sponsorship Funds," the Marriott

Defendants placed themselves in a position to bilk the Hotels by their unlawful acts, and to earn improper profits at the expense of CTF.

233. The association-in-fact among the Marriott Defendants and Avendra, by which they committed their unlawful acts, is also an "enterprise" within the meaning of RICO (hereinafter "Enterprise II"). One of the purposes of Enterprise II was to earn improper profits through a scheme and artifice to defraud.

234. The association-in-fact between Molloy and the Marriott Defendants was a further enterprise within the meaning of RICO (hereinafter "Enterprise III"). One of the purposes of Enterprise III was to earn improper profits through a scheme and artifice to defraud.

235. All of the Enterprises are structured through written contracts, oral agreements, and corporate (and similar entity) ownership. Enterprise I was formed upon the Marriott Acquisition and Marriott's assumption of the role as Manager under the Management Agreement, was furthered both by the inducements of Marriott to prevent termination of the Management Agreement and memorialized in the 1999 Agreement. Enterprise II was formed and structured in part by the written agreements between Marriott and Avendra appointing Avendra as Marriott's purported purchasing agent including the PSA, additional details of which lie peculiarly within Marriott's and Avendra's knowledge, as well as the arrangements between Marriott and the other purported Founders establishing Avendra, such as the Letter of Intent, other details of which lie peculiarly within Marriott's, Avendra's and the Founders' knowledge. Enterprise III was formed by agreements and arrangements between Molloy and the Marriott Defendants, details of which lie peculiarly within their knowledge.



236. As evidenced by the conduct described in this Complaint, from the date of the 1999 Agreement, through and including the date of the filing of this complaint, the Marriott Defendants unlawfully, willfully, and knowingly conducted the businesses and affairs of Enterprise I, from the date of at least January 2001, the Defendants conducted the business and affairs of Enterprise II, and from at least October 2000, the Marriott Defendants and Molloy conducted the business and affairs of Enterprise III, through a scheme and artifice to defraud by falsely purporting and promising to render faithful and honest services as fiduciaries, by falsely promising to take only certain amounts and types of compensation from CTF, by taking unlawful and prohibited compensation, by making false and fraudulent representations and entries in books and records, and by concealing the fact that they had done so. The scheme and artifice to defraud was effected by means of multiple violations of the mail and wire fraud statutes of the United States, 18 U.S.C. §§ 1341 and 1343.

237. From the date of the 1999 Agreement, through and including the date of the filing of this complaint, the Defendants unlawfully, willfully, and knowingly conducted the businesses and affairs of the Enterprises by soliciting, accepting, inducing, or agreeing to accept certain undisclosed monetary or equivalent benefits from third parties with the intent to violate their statutory and common-law duties as agents of CTF. These acts constituted multiple acts of embezzlement and theft in violation of Article 27, section 132 of the Code of Maryland and section 22-3211 of the D.C. Code, as well as violations of 18 U.S.C. §§ 1341 and 1343.

238. Moreover, insofar as every bank deposit of funds obtained from plaintiffs in violation of 18 U.S.C. §§ 1341 and 1343 (including transfers to Marriott's own account from the account it maintains as agent for CTF at Mellon Bank) furthered Defendants' ability to

conduct their fraudulent schemes directed at plaintiffs, such bank deposits constitute money laundering transactions in violation of 18 U.S.C. § 1956(a)(1)(A)(i) and are therefore predicate acts within the meaning of 18 U.S.C. § 1961(1)(B).

239. The multiple acts and omissions in violation of 18 U.S.C. §§ 1341, 1343, 1956(a) and Md. Ann. Code art. 27, § 132 constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961.

240. The scheme and pattern described in this complaint has been ongoing since at least 1999, and continues to date, a period of almost 3 years. Because the scheme and pattern described in this complaint is part of the ongoing corporate policy of Defendants, it poses the imminent threat that it will continue indefinitely unless redressed, and that it will harm multiple victims, in addition to CTF.

241. The pattern of racketeering activity described in this complaint was separate and distinct from the Enterprises themselves, in that the acts constituting such pattern exceed the true purpose and scope of the agreements and ownership structure described in the foregoing paragraphs.

242. All of the Enterprises are ongoing entities and associations with no finite term, and will exist until Defendants terminate them or their unlawful conduct is enjoined.

243. All of the Enterprises engage in and affect interstate commerce. Enterprise I, among other things, manages hotels throughout the United States which are used by persons in interstate commerce, and purchases goods and services in interstate commerce, and enters into contracts with vendors of goods and services that in themselves involve the movement of goods and services in interstate commerce. Enterprises II and III purchase and sell

goods and services in interstate commerce, uses the channels of interstate commerce, and are themselves a conduit and channel of interstate commerce.

244. In furtherance of their scheme and artifice to defraud, the Defendants, with specific intent to defraud, used the United States postal service, private or commercial interstate carriers, and wire communications in interstate commerce to commit multiple violation of the mail and wire fraud statutes of the United States, 18 U.S.C. §§ 1341 and 1343.

245. Among the communications (including mailings and deliveries) by Marriott to CTF in furtherance of this scheme were:

- a. The correspondence by which Marriott secured CTF's entry into the various Molloy Agreements:
  - i. a letter send via Airborne Express on October 26, 2000 from W. David Mann, Assistant General Counsel of Marriott ("Mann") to Patrick Gaffney, Chief Financial Officer of CTF ("Gaffney"), inviting CTF to execute the Molloy Agreements and enclosing drafts thereof for various of the Hotels including: Atlanta Waverly, Austin, Bedford, Chicago, Cottonwoods Resort, Esmeralda Resort, Harborplace/Baltimore, Mayflower and Oak Brook. By letter dated November 8, 2000, CTF returned these contracts, separately executed on behalf of each of these Hotels.
  - ii. a letter send by Airborne Express dated November 20, 2000 from Mann to Gaffney, inviting CTF to execute Molloy Agreements for the following individual Hotels: Atlanta Concourse, Cleveland, Dallas, Denver, Nashville, Oakbrook, Orlando Resort, PineIsle Resort, St. Louis and

Westchester. Soon thereafter, CTF returned Molloy Agreements executed for each of these Hotels.

- b. A series of reports, sent by post and/or electronic means by Marriott's finance department periodically after the date of the 1999 Agreement to CTF's finance department (the "Periodic Charge Reports"), each purporting to give a true report of each Program Charge incurred during such period, all of which were materially deceptive because:
- i. each of the Periodic Charge Reports for the periods from May 1999 to at least December 2001 fraudulently and deliberately concealed kickbacks from Molloy;
  - ii. each of the Periodic Charge Reports from at least April 2001 to March 2002 fraudulently and deliberately concealed from CTF any details of the Sponsorship Funds being diverted by Defendants;
  - iii. each of the Periodic Charge Reports deliberately concealed the extent to which third party payments were being improperly classified by Marriott as Restricted Allowances and used for Marriott's own benefit (such as in the "Renaissance Street Restaurant and Bar Program"), which profit to Marriott should have been accounted to CTF; and
  - iv. each Periodic Charge Report purported to give a true statement of the Program Charges, whereas for the reasons described hereinabove the Program Charges were materially misstated.
- c. A series of reports, sent by post each month from May 1999 to March 2002 from

Marriott to CTF, containing period profit and loss statements for the Hotels ("Monthly P&L's") and electronically each month containing monthly trial balances ("Monthly Trial Balances"). Each of the Monthly P&L's and Monthly Trial Balances was false in that each of them purported to reflect accurately the operating profits generated by the Hotels, and CTF relied on these as a reasonable monthly guide as to the operation of the Hotels. In fact:

- i. The Monthly P&L's and Monthly Trial Balances for May 1999 to February 2002 concealed moneys that ought to have been reported as a reduction in operating expenses to the Hotels, whereas they were secretly appropriated by Marriott as part of the A/V Fee;
- ii. The Monthly P&L's and Monthly Trial Balances for at least March 2001 to March 2002 concealed moneys that ought to have been reported as a reduction in operating expenses to the Hotels, whereas they were secretly diverted by Marriott and/or Avendra as Sponsorship Funds and/or other supposed Unrestricted Allowances;
- iii. Each of the Monthly P&L's and Monthly Trial Balances deliberately concealed the extent to which vendor payments were being improperly classified by Marriott as Restricted Allowances and used for Marriott's own benefit (such as in the "Renaissance Street Restaurant and Bar Program"), which profit to Marriott should have been accounted to CTF;

246. Among the wire communications in interstate commerce in furtherance of the aforesaid scheme and artifice to defraud were:

a. A letter dated April 28, 2000 forwarded by facsimile by Kevin Kimball, Executive Vice President and Chief Financial Officer at Marriott Lodging ("Kimball"), to K. Daniel Heininger, Executive Vice President at CTF ("Heininger"), which letter contained a statement purporting to comply with section VII of the 1999 Agreement by certifying that all charges from April 23, 1999 until December 31, 1999 complied with the 1999 Agreement and listing and classifying any new Programs or material changes in that period (the "1999 Certification"). The 1999 Certification:

- i. falsely certified that Marriott's charges for 1999 were in compliance with the rules set forth in the 1999 Agreement;
- ii. failed to disclose receipt of secret kickbacks from Molloy;
- iii. deliberately and fraudulently omitted to divulge the extent to which vendor payments were being improperly classified by Marriott as Restricted Allowances and used for Marriott's own benefit (such as in the "Renaissance Street Restaurant and Bar Program"), which profit to Marriott should have been accounted to CTF; and
- iv. deliberately and fraudulently omitted to disclose the extent to which Marriott was improperly diverting moneys purportedly classified as Sponsorship Funds.

b. A letter dated April 26, 2001 forwarded by fax by Kimball to Heininger, which letter contained a statement purporting to comply with section VII of the 1999 Agreement by certifying that all charges for fiscal year 2000 complied with the

1999 Agreement and listing and classifying any new Programs or material changes in that period (the "2000 Certification"). The 2000 Certification:

- i. falsely certified that Marriott's charges for 2000 were in compliance with the rules set forth in the 1999 Agreement;
  - ii. deliberately and fraudulently omitted to disclose kickbacks from Molloy; and
  - iii. deliberately and fraudulently omitted to divulge the extent to which third party payments were being improperly classified by Marriott as Restricted Allowances and used for Marriott's own benefit (such as in the "Renaissance Street Restaurant and Bar Program"), which profit to Marriott should have been accounted to CTF.
- c. A series of emails from Patrick Volz, Vice President of Finance and Accounting, Marriott's Renaissance North America division ("Volz"):
- i. Dated March 10, 2000 to Gaffney, purporting to summarize all Unrestricted Allowances for each Hotel during financial year 1999;
  - ii. Dated June 5, 2000 to Gaffney, purporting further to describe Unrestricted Allowances and rebates for the Hotels for financial year 1999;
  - iii. Dated October 17, 2000 to Gaffney, purporting to describe some Restricted Allowances for financial year 1999;
  - iv. Dated April 19, 2001 to Gaffney purporting to report on Unrestricted Allowances for each Hotel for financial year 2000;
  - v. Dated June 28, 2001 to Gaffney purporting to report on marketing allow-

ances for the Hotels' financial year 1999;

- vi. Dated July 25, 2001 to Gaffney giving a revised report on Unrestricted Allowances for financial year 2000; and
- vii. Dated January 5, 2002 to Gaffney purporting to report on rebates for financial year 2001 (collectively the "Volz Emails").

Each of the Volz Emails was deceptive in that, inter alia, they deliberately concealed the true nature of the A/V Fee. Moreover, the January 5, 2002 email was deceptive in that, inter alia, it deliberately concealed the diversion of Sponsorship Funds and the improper use of Unrestricted Allowances by Avendra and/or Marriott.

247. Moreover, by soliciting and accepting kickbacks from vendors for themselves and for Avendra, in violation of their fiduciary duty to CTF, the Marriott Defendants, aided and abetted by Avendra, violated the Maryland embezzlement statute, which states in pertinent part:

If any executor, administrator, guardian, committee, trustee, receiver or any fiduciary shall fraudulently and wilfully appropriate to any use and purpose not in the due and lawful execution of his trust, any money or any other thing of value which may come into his hands as such executor, administrator, guardian, committee, trustee, receiver, or in any other fiduciary capacity, or secrete it with a fraudulent intent to appropriate it to such use or purpose, he shall be deemed guilty of embezzlement, and shall be punished upon conviction by imprisonment in the penitentiary for not less than one year nor more than five years.

Md. Ann. Code art. 27, § 132 (2001).

248. Likewise, to the extent that the conduct referred to in paragraph 247 was perpetrated by the Marriott Defendants from Marriott's corporate offices in the District of



Columbia, they (aided and abetted by Avendra) have violated section 22-3211 of the District of Columbia Code, which states in pertinent part that

[a] person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent:

- (1) To deprive the other of a right to the property or a benefit of the property;  
or
- (2) To appropriate the property to his or her own use or to the use of a third person.

Id. § 22-3211(b). Sub-section 22-3211(a) of the D.C. Code provides relevantly that for the purposes of sub-section 22-3211(b), [t]he term "wrongfully obtains or uses" includes conduct previously known as . . . larceny by trust," thus incorporating all cases of misappropriation and/or fraudulent conversion by a fiduciary, as alleged here.

249. Section 22-3212 of the D.C. Code provides that theft in the first degree, namely misappropriation of property worth in excess of \$250, is punishable by over five years imprisonment.

250. By reason of the foregoing, the Defendants have conducted the affairs of the Enterprises through the aforementioned pattern of racketeering activity, and have violated, and continue to violate, Section 1962(c) of RICO.

251. As already alleged, the business and property interests of CTF have been damaged by reason of the Defendants' racketeering activity.

252. The direct result of the racketeering activity described above has been to seriously diminish the value of the Hotels in CTF's hands. Defendants are chargeable with that decrease in value as damages for violation of RICO.

253. Accordingly, CTF seeks treble damages in such amount as may be proven at the trial of this action or otherwise, recovery of the costs of this litigation, and an award of reasonable attorneys' fees as provided by the federal RICO statute, 18 U.S.C. § 1964(c).

**COUNT XVII**  
**For Violation of RICO, Section 1962(a)**  
**(Against the Marriott Defendants)**

254. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 253 as if fully set forth herein.

255. Section 1962(a) of RICO prohibits a person, as defined in 18 U.S.C. § 1961, from investing, directly or indirectly, income derived from a pattern of racketeering activity in the operation of an Enterprise which affects interstate commerce, in which that person participated as a principal.

256. The Marriott Defendants are "persons" within the meaning of 18 U.S.C. § 1961. Defendants were and continue to be principals in the underlying pattern of racketeering activity of Enterprises I and III as alleged in Count XVI.

257. The Marriott Defendants have received from such racketeering activity proceeds in the form of fraudulent fees, charges, and illegal vendor kickbacks.

258. The Marriott Defendants have also invested these proceeds in new programs that broaden Enterprises I's and III's abilities to procure secret profits from the Hotels, and have been enabled to perpetuate their scheme to defraud by virtue of such investment.

259. The Marriott Defendants invested proceeds from Enterprise I's and III's racketeering activities in Avendra, a joint venture that multiplies Defendants' ability to set prices without competition and charge undisclosed kickbacks.

260. The Marriott Defendants benefitted from the illegal revenues, charges, and kickbacks that they procured through reinvestment in Enterprise I's and III's schemes, and from the attendant diversion of CTF's assets or entitlements.

261. By reason of the foregoing, the Marriott Defendants have violated 18 U.S.C. § 1962(a).

262. The Marriott Defendants damaged CTF by using the illegal proceeds from their racketeering activity to expand Enterprises I's and III's self-dealing transactions and to broaden their purchasing program, by procuring secret kickbacks from vendors, instead of procuring market-based contracts.

263. Accordingly, CTF seeks an award of treble damages, the costs of this litigation, and reasonable attorneys' fees as provided by the federal RICO statute, 18 U.S.C. § 1964(c).

**COUNT XVIII**  
**For Violation of RICO, Section 1962(d)**  
**(Against All Defendants)**

264. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 263 as if fully set forth herein.

265. Section 1962(d) of RICO prohibits a person, as defined in 18 U.S.C. § 1961, from conspiring with others to violate other sections of RICO. The Defendants are "persons" within the meaning of 18 U.S.C. § 1961.

266. It was an object of the conspiracy that the Defendants, and others known and unknown, including vendors of goods and services, would violate RICO, as alleged in Counts XVI to XVII.

267. The Defendants and Avendra reached agreement with other persons, known and unknown, and including, among other, numerous vendors, to commit multiple acts of mail fraud, wire fraud, and commercial bribery in furtherance of the scheme to defraud CTF.

268. The Defendants and Avendra agreed to participate in such racketeering activity and in the affairs of the Enterprises knowing the nature of the conspiracy and that the conspiracy extended beyond themselves to include vendors.

269. In furtherance of the conspiracy, the Defendants committed numerous overt acts, including those alleged in paragraphs 237 through 247 above.

270. CTF was injured by the conspiracy to violate RICO alleged herein.

271. By reason of the foregoing, Defendants have violated 18 U.S.C. § 1962(d), and CTF is entitled to an award of treble damages therefor, the cost of this litigation, and reasonable attorneys' fees as provided by the federal RICO statute, 18 U.S.C. § 1964(c).

#### COUNT XIX

For Violations of Robinson-  
Patman Act, Section 2(c)  
(Against All Defendants)

272. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 271 as if fully set forth herein.

273. Section 2(c) of the Robinson-Patman Act, 15 U.S.C. § 12 et seq., provides, in relevant part, as follows:

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is

acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

274. Defendants engage (or have engaged) in commerce by, among other things, establishing national and regional contracts for the provision of goods, wares, and merchandise to hotels owned, operated or franchised by Marriott and the other Founders, throughout the United States and its territories.

275. The Marriott Defendants, acting as agents for CTF, were authorized and empowered under the Agreements to purchase certain goods, wares, and merchandise on behalf of CTF-owned hotels. Marriott utilized Avendra to effect such purchasing on behalf of CTF-owned hotels.

276. The Marriott Defendants, directly and together with Avendra, have entered into exclusive and/or preferred contracts with particular vendors to provide goods, wares, and merchandise to Marriott owned, operated or franchised hotels, including the Hotels owned by CTF. In this connection, Defendants, though Avendra, have solicited and accepted so-called "Sponsorship Funds," payments by vendors in exchange for the opportunity to access and market goods, wares and merchandise to the Hotels and to execute agreements to sell goods, wares and merchandise to the Hotels.

277. These Sponsorship Funds are acknowledged by the PSA and are paid over to or for Defendants', or their affiliates' benefit. In fact, these Sponsorship Funds so established are kickbacks which have not been paid for services rendered in connection with the sale or purchase of goods, wares, or merchandise by the Defendants on behalf of CTF.

278. The Defendants have sought and required the payment of such kickbacks

deliberately and have concealed their existence from CTF.

279. CTF has been injured and may continue to be injured by these acts because it is restricted in its choice of and access to independent vendors and consequently has paid prices for goods, wares, and merchandise that were higher than it would have paid in the absence of Defendants' kickback scheme.

280. Defendants' kickback scheme is per se unlawful and constitutes per se competitive injury.

281. Moreover, CTF has incurred additional direct competitive injury because the Hotels are in the same business as, or are in competition with, other hotels owned, operated or franchised by the Marriott Defendants. CTF is competitively injured because, inter alia, its Hotels incurred higher purchasing costs than did other hotels owned, operated or franchised by Marriott for goods, wares, and merchandise procured by Defendants on CTF's behalf.

282. By reason of the foregoing, the Defendants have violated Section 2(c) of the Robinson-Patman Act, and CTF is entitled to treble damages therefor, the costs of this litigation, attorneys' fees and prejudgment interest, pursuant to 15 U.S.C. § 15(a).

**COUNT XX**

For Violations of Robinson-  
Patman Act, Section 2(c)  
(Against the Marriott Defendants)

283. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 282 as if fully set forth herein.

284. The Marriott Defendants, acting as agents for CTF, were authorized and empowered to purchase goods, wares, and merchandise on behalf of CTF-owned hotels. Prior to

the formation of Avendra, Marriott utilized its divisions and affiliates (including MarketPlace) to conduct purchasing on behalf of CTF-owned hotels.

285. Prior to the formation of Avendra in January 2001, and until Avendra became operational in around March 2001, the Marriott Defendants entered into exclusive and/or preferred contracts with particular vendors to provide goods, wares, and merchandise to Marriott owned, operated or franchised hotels, including the Hotels owned by CTF. In this connection, the Marriott Defendants solicited and accepted so-called "Sponsorship Funds," payments by vendors in exchange for the opportunity to access and market goods, wares and merchandise to the Hotels and to execute agreements to sell goods, wares and merchandise to the Hotels.

286. For the same reasons set forth in paragraphs 274 and 277 to 279, these Sponsorship Funds comprised illegal kickbacks in violation of the section 2(c) of the Robinson-Patman Act, causing CTF competitive injury in the same manner as referred to in paragraphs 280 and 281. CTF is entitled to treble damages therefor, the costs of this litigation, attorneys' fees and prejudgment interest, pursuant to 15 U.S.C. § 15(a).

**COUNT XXI**  
**For Improper Recourse to Arbitration**  
**(Against the Marriott Defendants)**

287. CTF repeats and realleges each and every allegation contained in paragraphs 1 to 286 as if fully set forth herein.

288. On April 8, 2002, in direct response to CTF's notice of default, and in order to attempt to deprive CTF of its right to a judicial forum, Marriott attempted to commence an arbitration before the American Arbitration Association, sitting in Washington (the "AAA Arbitration"), naming CTF as a co-respondent.

289. In their demand for arbitration in the AAA Arbitration, the Marriott

Defendants:

- a. dispute CTF's position vis-a-vis the A/V Fee and seeks declaratory and other relief in support of its own position;
- b. dispute whether CTF is entitled to an audit in the manner CTF has sought (and as further described above).

290. In the AAA Arbitration, Marriott further alleges that CTF is bound by an arbitration agreement between HPI and RHG (the "HPI/RHG Agreement"), to which CTF is not a party, governing a separate set of hotels owned by HPI. Marriott maintains that the 1999 Agreement requires that CTF submit to arbitration pursuant to the terms of the HPI/RHG Agreement, despite the direction in section IX.K of the 1999 Agreement that disputes arising under the Management Agreement "shall be subject to the dispute resolution provisions in the [Management] Agreement" (which contains no arbitration provision) and the express disclaimer in the 1999 Agreement stating that "[n]othing [t]herein is intended to require arbitration of any dispute under the [Management] Agreement or to limit any right any party may have to proceed in federal or state court on any dispute under the [Management] Agreement."

291. Marriott's inclusion of CTF as a co-respondent in the AAA Arbitration is therefore an improper attempt to circumvent the 1999 Agreement's express reservation of CTF's right to litigate disputes in federal or state court, and represents a breach of the Agreements. Unless Marriott is enjoined from improperly attempting to force arbitration of its disputes with CTF in the AAA Arbitration, CTF will be irreparably damaged by the loss of its right to a judicial forum. CTF has no adequate remedy at law.



292. CTF therefore seeks a declaration that it is not required to submit to the AAA Arbitration and an order enjoining the Marriott Defendants from pursuing claims against it in the AAA Arbitration and/or staying the AAA Arbitration as regards any claim by Marriott against CTF.

WHEREFORE,

Plaintiff CTF respectfully requests that this Court grant relief:

(a) ordering the Marriott Defendants to make available for examination, audit, inspection, copying and transcription:

- i. all documents and other information requested to in CTF's February 6, 2002 audit request; and/or
- ii. all such other books of account and other records as CTF and its designated auditors may request reflecting: (A) the results of the Hotels; and (B) all Unrestricted Allowances (as defined in the Agreements) as have been received by Marriott;

(b) declaring that the Marriott Defendants have committed material breaches of the Management Agreement and have failed to cure said breaches;

(c) declaring that CTF may rightfully exercise its right to terminate the Agreements, without cost or penalty, and that upon exercise of such right, CTF is entitled to possession of the Hotels (including its books and records) and the Marriott Defendants must leave the premises immediately;

(d) ordering a full and complete accounting of all financial matters relating to the Hotels;

(e) awarding CTF compensatory damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law;

(f) imposing punitive damages against Defendants for their bad faith breaches of fiduciary duty and fraudulent conduct;

(f) entering judgment under Counts XVI, XVII and XVIII against all Defendants for RICO damages and awarding Plaintiff treble damages, together with all reasonable attorney's fees incurred in pursuing this claim;

(g) imposing a constructive trust on any and all profits, remuneration and other consideration obtained by Defendants and their affiliates in violation of their fiduciary duties to CTF;

(h) ordering Defendants to disgorge any profits or other consideration received through improper self-dealing;

(i) preliminarily and permanently enjoining the Marriott Defendants from pursuing claims against it in the AAA Arbitration;

(j) preliminarily and permanently staying the AAA Arbitration as regards any claim by Marriott against CTF, under section 10 Del. C. § 5703(b) and/or this Court's inherent jurisdiction;

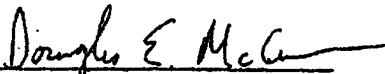
(k) declaring that CTF is not required to submit to the AAA Arbitration and that no arbitration clause exists between Marriott and CTF;

(l) awarding CTF its costs and expenses in this action, including reasonable attorneys' and experts' fees; and

(m) granting such other relief as the Court deems just and proper.

**JURY TRIAL DEMANDED**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a jury trial of all issues so triable.

  
Edward P. Welch (I.D. #0671)  
Douglas E. McCann (I.D. # 3852)  
SKADDEN ARPS SLATE  
MEAGHER & FLOM LLP  
One Rodney Square  
P.O. Box 636  
Wilmington, Delaware 19899  
(302) 651-3000  
Attorneys for Plaintiff

Of Counsel:

Jonathan J. Lerner  
Maura B. Grinalds  
Timothy G. Nelson  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
4 Times Square  
New York, New York 10022

DATED: April 12, 2002