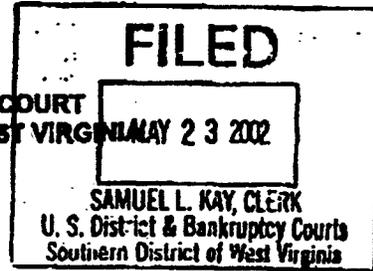


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON



**IN TOWN HOTELS LIMITED PARTNERSHIP,  
f/k/a IN TOWN HOTELS, LTD. and IN TOWN  
HOTELS, INC.,**

**Plaintiffs,**

**v.**

**Civil Action No. 202-0481**

**MARRIOTT INTERNATIONAL, INC.,**

**Defendant.**

**COMPLAINT**

Plaintiffs In Town Hotels Limited Partnership and In Town Hotels, Inc., by their undersigned counsel, bring this action against Defendant Marriott International, Inc. ("Marriott") and allege in support thereof as follows:

**THE PARTIES**

1. Plaintiff In Town Hotels Limited Partnership, formerly known as In Town Hotels, Ltd., is a West Virginia limited partnership whose general partner is plaintiff In Town Hotels, Inc., which is an Ohio corporation qualified to do business in the state of West Virginia. In Town Hotels Limited Partnership and In Town Hotels, Inc. are hereinafter jointly referred to as "In Town Hotels" or "Owner." In Town Hotels owns the Charleston Marriott Town Center Hotel, located at 200 Lee Street East, Charleston, West Virginia 25301 (the "Hotel").
2. Defendant Marriott International, Inc. ("Marriott") is a Delaware corporation with its principal offices in Bethesda, Maryland.

3. On November 18, 1980, Owner entered into a Management Agreement (a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference) with Marriott Corporation. Upon information and belief, all of Marriott Corporation's obligations and responsibilities under the Management Agreement passed to Marriott as a result of a corporate restructuring. Upon information and belief, Marriott is the successor in interest to Marriott Corporation with respect to the management of the Hotel.

#### **JURISDICTION AND VENUE**

4. This Court also has subject matter jurisdiction over this dispute pursuant to federal diversity jurisdiction, 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.

5. Marriott transacts business in this district, and this action arises out of such business. Marriott is subject to personal jurisdiction in this district.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2), as a substantial part of the events giving rise to Plaintiffs' claims occurred in this judicial district and the property that is the subject of the action is situated in this judicial district.

#### **NATURE OF THE CONTROVERSY**

7. This Complaint arises out of the unlawful acts of Marriott in connection with its management of the Hotel. Marriott has breached both its contractual and fiduciary duties to Owner. Completely ignoring its duty to manage the Hotel for the benefit of Owner and to put Owner's interests ahead of its own, Marriott has used its

position as fiduciary to secure improper and unjustified profits for its own account at Owner's expense.

8. The Hotel was developed by Owner, along with the Town Center complex, in Charleston, West Virginia in the early 1980s. Owner has rights to the land pursuant to a ground lease with an initial term of 52 years and four renewal options of ten years each, and has owned the Hotel from its inception.

9. Pursuant to the terms of the Management Agreement, Marriott agreed to act as the agent of the Owner and agreed to manage the Hotel for the account of the Owner.

10. Pursuant to the terms of the Management Agreement, Marriott caused its affiliates and/or related parties to provide goods and services to the Hotel.

11. As set forth more fully herein, Marriott materially breached the Management Agreement and breached its duties as an agent and fiduciary of Owner. Among other acts and omissions, Marriott did the following:

a) engaged in a scheme to defraud Owner by failing to disclose and/or account for and remit to Owner all monies collected by Marriott, its affiliates and/or related parties. Instead, Marriott obtained secret kickbacks for its own account, and not the account of Owner, from undisclosed vendors providing goods and/or services to the Hotel;

b) engaged in undisclosed self-dealing transactions with its affiliates and/or related parties;

c) unlawfully allocated its corporate, affiliate and/or related party overhead to the Hotel;

d) failed to provide a proper accounting of fees, allowances, charges, commissions, bonuses, discounts, rebates, profits and/or kickbacks paid to Marriott, its affiliates and/or related parties;

e) failed to maintain accurate and complete books, records, and financial statements for the Hotel;

f) engaged in, acquiesced in and/or condoned accounting irregularities, nondisclosures and concealment in violation of its duties and obligations to Owner;

g) permitted two Marriott-affiliated hotels to begin operation in direct competition with the Hotel in the Charleston, West Virginia market and made misrepresentations to Owner in connection therewith; and

h) misrepresented to Owner the projected revenues during a time when Marriott was aware that Owner was relying on the projections in refinancing the Hotel.

12. Marriott's improper conduct was committed knowingly, intentionally, recklessly, willfully, and in conscious disregard of the rights of Owner.

13. The working capital loan from Marriott to Owner for the initial operation of the Hotel has been paid off, and Marriott's interest in the Hotel is limited to that set out in the Management Agreement. Marriott's agency is not coupled with an interest. The agency relationship currently is terminable at will.

14. The termination of the agency relationship between the parties is supported by Marriott's willful breaches of its duties and obligations; its non-disclosure, concealment, continued failure to account for its actions and the actions of its affiliates

and/or related parties; and its dissemination of incomplete, inconsistent, false and misleading information to Owner.

## FACTS

### I. MARRIOTT'S DUTIES TO OWNER

#### A. The Principal/Agent Relationship

15. Pursuant to Section 1.01 of the Management Agreement, Marriott agreed to manage the Hotel as the agent of Owner and to operate the Hotel for the account of Owner.

16. Section 22.03 of the Management Agreement further provides that "[t]he relationship of [Owner] and [Marriott] shall be that of principal and agent, and nothing contained in the Agreement shall be construed to create a partnership or joint venture between them or their successors in interest."

17. Under Section 1.02 of the Management Agreement, "[t]he Hotel operations shall be under the exclusive supervision and control of [Marriott] which, except as otherwise specifically provided in the Agreement, shall be responsible for the proper and efficient operation of the Hotel." Accordingly, Owner put its trust in Marriott, which held itself out as having the requisite expertise and trustworthiness to act as Owner's fiduciary in operating the Hotel, and Owner did not and could not have known that Marriott would engage in the malfeasance alleged herein.

18. At all relevant times, Marriott has held itself out to be and has acted as the agent of Owner.

**B. All Funds Derived from the Operation of the Hotel Are the Sole Property of Owner and Are Held in Trust by Marriott.**

19. Pursuant to the Management Agreement, the performance of all activities by Marriott under the Management Agreement is performed for the account of Owner.

20. Marriott was granted the power to manage and maintain the accounts of the Hotel into which all funds from the Hotel operations are to be deposited pursuant to Sections 1.02 and 9.02 of the Management Agreement. All of the Hotel accounts that Marriott maintains and manages, the funds in those accounts, and the funds generated by the Hotel are held in trust by Marriott for the account of Owner.

21. Marriott has been and continues to be in possession and control of the accounting system for the Hotel, and directly controls the generation and transmission of monthly financial statements and the annual certified financial statements for the Hotel.

**C. Marriott's Compensation is Limited to the Fees Specifically Set Forth in the Management Agreement and Marriott is Prohibited from Earning a Profit.**

22. Pursuant to Section 5.01(E) of the Management Agreement, Owner is to pay no fees or charges to Marriott except as specifically provided in the Management Agreement.

23. Section 5.01(A) of the Management Agreement provides that Marriott may retain twenty percent (20%) of Operating Profit as compensation ("Basic Incentive Fee"). "Operating Profit" is defined in Section 2.01(G) of the Management Agreement. The definition of "Operating Profit" itself includes a deduction of three percent (3%) of Gross Revenues in favor of Marriott "as reimbursement to the Management Company for the Hotel's share of costs and expenses incurred by the Management Company or

its affiliated companies for services which benefit all Marriott hotels and which are performed by personnel not normally located at the Hotel and are not Chain Services (as defined in Section 11.03).<sup>6</sup> (Collectively, the Basic Incentive Fee and the three percent (3%) deduction described above are hereinafter referred to as the "Management Fees.")

24. Section 11.03 provides that Marriott shall furnish to the Hotel certain services furnished generally on a central or regional basis to other hotels in the Marriott chain that benefit each hotel as a participant in the Marriott chain. These services are defined as "Chain Services."

25. Chain Services include, by way of illustration, national sales office services, central training services, central advertising and promotion, the Marriott reservations system, payroll and accounting services. In addition, Chain Services include "such additional central or regional services as may from time to time be furnished for the benefit of the hotels in the Marriott chain or in substitution for services now performed at individual hotels which may be more efficiently performed on a group basis."

26. Pursuant to Section 11.03 of the Management Agreement, "Chain Services shall be provided at cost and neither [Marriott] nor any entity controlled by [Marriott] shall make a profit from providing such services." Marriott's sole reimbursement for the provision of Chain Services consists of payments based upon the Hotel's allocable share of the cost of providing Chain Services to the Hotel.

27. Marriott is not entitled to any compensation under the Management Agreement other than the Management Fees and the reimbursements for Marriott's

costs in providing Chain Services, and is entitled to profit only through its Basic Incentive Fee.

**D. Owner is Entitled to Documentation of Marriott's Operation of the Hotel and May Audit the Books and Records of Both Marriott and Its Affiliates**

28. Pursuant to the Management Agreement, specifically including Sections 9.01 and 5.02 therein, and pursuant to Marriott's fiduciary duties to Owner, Owner is entitled to an accounting of Marriott's operation of the Hotel and is entitled to inspect the books and records of Marriott and its affiliates and/or related parties related to the Hotel.

29. Marriott, pursuant to its contractual and fiduciary duties, is required to provide a full and fair accounting of the Hotel's operations, including disclosure of the costs of Chain Services and the Hotel's pro rata share of those costs for which Marriott has been reimbursing itself out of the Hotel's accounts.

**II. MARRIOTT'S ABUSE OF ITS POSITION OF TRUST**

**A. Marriott's Illegal Purchasing Activities and Kickback Scheme**

30. Owner has paid Management Fees to Marriott of approximately \$18.5 million over the life of the Hotel. Marriott unlawfully obtained and retained additional hidden compensation and/or profits from the operation of the Hotel in violation of Marriott's duties and obligations to Owner.

31. Marriott, in its capacity as fiduciary and agent of Owner, entered into contracts with vendors for the purchase of goods and services, which contracts were negotiated by Marriott, its affiliates and/or related parties.

32. In addition to the fees allowed pursuant to the Management Agreement, Marriott and its affiliates and/or related parties obtained undisclosed kickbacks from

vendors to the Hotel. Under the Management Agreement and as Owner's agent, Marriott, Marriott's affiliates and/or related parties had a duty to enter into fair contracts and were prohibited from entering into contracts with vendors to the Hotel that provided kickbacks to Marriott, its affiliates and/or related parties.

33. Marriott intentionally and willfully failed to disclose to Owner the existence and amounts of the kickbacks associated with such vendors, in furtherance of a scheme to defraud Owner.

34. Marriott, acting in concert with its affiliates and/or related parties, intended to retain and did retain these vendor kickbacks for its own account and to profit therefrom to the detriment of the Hotel and in breach of its duties and obligations to Owner.

35. Marriott requires that the Hotel participate in the purchasing programs selected by Marriott, thereby forcing Owner to be a part of the program from which Marriott has obtained secret kickbacks.

36. Marriott verbally has admitted to receiving kickbacks in the form of rebates and other allowances from vendors such as AT&T, USA Today and American Express. Upon information and belief, such kickbacks were obtained from other vendors as well.

37. The kickbacks were allowances, charges, commissions, bonuses, discounts and/or rebates derived from the ownership and operation of the Hotel. Any such items are the sole property of Owner and are to be held in trust for the account of Owner.

38. In furtherance of its scheme to take illegal profits from the operation of the Hotel and to engage in self-dealing, Marriott failed to disclose and actively concealed

X material information and caused to be issued false and misleading reports and audited financial statements which omitted all mention of kickbacks, including but not limited to items such as allowances, commissions, bonuses, discounts, rebates and profits from vendors. The reports and financial statements also omitted all mention of Marriott and Marriott affiliate and/or related party transactions with vendors who had agreed to pay kickbacks.

X 39. Marriott, on information and belief, knowingly misled financial auditors and misrepresented and/or otherwise withheld information pertaining to illegal kickbacks obtained from vendors, including but not limited to profits received by Marriott, Marriott affiliates and/or related parties.

40. In furtherance of its scheme to profit illegally from the operation of the Hotel and to engage in self-dealing, Marriott engaged in an intentional, deliberate practice of disseminating incomplete, inconsistent, false and misleading information to Owner in its periodic and annual reports and in its updates distributed widely to Marriott owners. Marriott provided misleading descriptions of its programs and initiatives, which were in reality schemes to take illegal profits from the operation of the Hotel, and knowingly and willfully concealed the kickbacks, the amount of kickbacks earned from the Hotel, the identity of the vendors, the amount of rebates paid by each local, regional, and/or national vendor, how the kickbacks were used by Marriott, its affiliates and/or related parties, and information related to the competitiveness, or lack thereof, of the prices charged by Marriott's purchasing services.

41. Despite Marriott's obligations under the Management Agreement, it has failed to supply Owner with documentation proving that at all relevant times the services

agreed that they would not profit from the provision of Chain Services. On information and belief, Marriott also continues to seek reimbursement from the Hotel for Chain Service expenses associated with its Avendra affiliate, while at the same time Marriott publicly states that Avendra is allowed to profit from the same Chain Services previously provided through Marketplace in contravention of the express terms of the Management Agreement.

50. Further, the supplier that Avendra uses to supply goods and services to the Hotels (and, upon information and belief, the same supplier used by Marketplace and by Marriott's own centralized purchasing service before the creation of Avendra) is yet another Marriott affiliate and/or related party, Marriott Distribution Services. Upon information and belief, Marriott Distribution Services also has profited and will continue to profit from the provision of Chain Services to the Hotel. Such profit taking is in contravention of the Management Agreement.

51. Owner has requested detailed documentation of the charges to the Hotel related to the provision of these Chain Services as described above, including vendor contracts and terms, but Marriott has refused to produce such documentation.

52. Marriott's receipt of unlawful profits and kickbacks from the provision of these Chain Services through Avendra, Marketplace, and Marriott's own centralized purchasing services resulted in the diversion of Owner's funds to Marriott and a decrease in Owner's profits from the Hotel in violation of Marriott's contractual and fiduciary duties to Owner.

**C. Marriott's Unlawful Allocation of Corporate Overhead and Wrongful Recovery of Prohibited Costs.**

53. Marriott also has unlawfully siphoned funds from the Hotel through its "Hotel Excellencel" program by, among other things, charging the Hotel ten percent (10%) for travel agent commissions, when the actual cost of travel agent commissions is less than 10%. The difference in what Marriott collects from the Hotel and what it distributes to the travel agents is retained by Marriott in what it calls the "Split Fund." Marriott has refused to produce information to substantiate its use of these funds, which it claims to be using for the benefit of Marriott hotels, including the Hotel. Upon information and belief, Marriott has profited from this diversion of funds at the expense of hotel owners, including the Owner, in breach of Marriott's contractual and fiduciary obligations.

54. In addition to the other schemes, Marriott also embarked on a scheme to offload its corporate overhead and the overhead of its affiliates and/or related parties onto the Hotel, upon information and belief, by, among other things, levying additional "corporate" charges for services covered by the fees allowed in the Management Agreement and by including in the Hotel's central service allocation certain corporate expenses not properly charged as part of cost recovery for a Chain Service. The effect of such offloading has and will continue to increase Marriott's profits from the Hotel in violation of the restrictions of the Management Agreement and in violation of Marriott's fiduciary duties to Owner.

55. Moreover, upon information and belief, Marriott has not apportioned the costs for some of its Chain Services in a fair and equitable manner, and has developed

a new scheme to offload corporate accounting functions onto the Hotel, entitled "Project Mercury."

56. Owner has requested detailed documentation of these corporate and Chain Services charges, but Marriott has refused to produce such information. Marriott's refusal deprives Owner of information needed to determine whether or not these charges comply with the Management Agreement, and is yet another violation of Marriott's duties and obligations to Owner.

57. Owner has fully complied with the terms of the Management Agreement, including but not limited to the those terms relating to the Management Fees, and is entitled to a full accounting of all amounts charged, deducted or otherwise appropriated from the operations and accounts of the Hotel by Marriott.

**D. Marriott Breached Its Fiduciary Duties to Owner in Permitting Two Marriott Affiliated Hotels to Enter the Charleston, West Virginia Market to the Detriment of Owner.**

58. When Owner developed the Hotel, it was the first full-service hotel in Charleston, West Virginia and made a favorable impact on the city's ability to attract conventions to Charleston. The Hotel has generated significant goodwill over the years in the Charleston area as the premier full-service hotel in the city.

59. As Owner's fiduciary, Marriott has a duty to put the interests of Owner ahead of its own. As such, Marriott is not allowed to take advantage of the goodwill that Owner and the Hotel have generated by permitting other Marriott-affiliated hotels to enter the Charleston, West Virginia market, when such Marriott-affiliated properties would have a detrimental impact on the Hotel's financial performance and would usurp the goodwill in this marketplace that was developed at Owner's expense.

60. Further, Marriott has a duty not to use the Hotel's confidential commercial information or trade secrets for its own benefit or the benefit of other Marriott-affiliated hotels.

61. Marriott has permitted two Marriott-affiliated hotels, a Marriott Residence Inn and a Fairfield Inn, to enter the Charleston, West Virginia market to the detriment of and in competition with the Hotel. These new Marriott-affiliated properties have adversely affected the financial results and prospects of the Hotel, which already was facing increased competition from an unaffiliated property that also recently entered the Charleston market.

62. Marriott has been dishonest in its dealings with Owner related to the Marriott-affiliated hotels in the Charleston market by, among other things, providing false information regarding the competitive impact of the two Marriott-affiliated hotels and by failing to provide material information regarding the competitive impact of these properties.

63. The two Marriott-affiliated hotels are in competition with the Hotel and have had a detrimental impact on the financial results of the Hotel.

64. At or around the time that the two Marriott-affiliated hotels were being developed, Owner refinanced the Hotel. At the time, Owner relied upon Marriott's revenue projections that were materially misleading in that they did not account for the detrimental impact that the entry of the two Marriott-affiliated hotels into the Charleston market would have on the Hotel. Marriott knew that Owner was relying on the information supplied by Marriott in connection with the refinancing. Owner relied upon the misleading revenue projections to its detriment in refinancing the Hotel.

65. Marriott has unlawfully misappropriated for its own benefit the goodwill that Owner has developed in the Charleston market in breach of its fiduciary duties to Owner.

**E. Marriott's Continuing, Undisclosed Breaches and Owner's Damages.**

66. Upon information and belief, Marriott has violated and continues to violate its duties and obligations to Owner by virtue of its mismanagement, breaches, and dissemination of false and misleading information not presently known by Owner. The mismanagement, breaches, and false and misleading information set forth herein are illustrative of Marriott's wrongful conduct, and Owner reasonably expects that additional instances of misconduct by Marriott will come to light during discovery.

67. Marriott has failed and continues to fail to maintain accurate and complete books, records, and financial statements for the Hotel, making it impossible for Owner to determine what Marriott is actually earning by virtue of its management of the Hotel.

68. As a result of Marriott's unlawful activities alleged above, Owner has lost confidence in Marriott's ability to act as its agent in connection with the management of the Hotel.

69. As Owner's fiduciary, Marriott had and continues to have a duty to act fairly, honestly, candidly, and openly with Owner and owes the highest duty of good faith, fair dealing and disclosure to Owner, particularly since Marriott controlled and continues to control the operating funds of the Hotel and Owner had bestowed its trust and confidence in Marriott. Owner has no expertise in the management of hotels and has relied exclusively upon Marriott to manage the Hotel in the best interests of Owner.

70. Owner placed its trust and confidence in Marriott and entrusted Marriott with its property, under a Management Agreement requiring that Marriott would act solely for the benefit of Owner in managing and operating the Hotel. Owner justifiably relied upon the representations of Marriott, including its representations regarding its expertise and honesty, and paid Marriott millions of dollars in fees and reimbursements in reliance on these representations.

71. Owner avers that it is entitled to the disgorgement of the Management Fees paid to Marriott; that it has no obligation to pay Marriott any additional Management Fees in any amount; and that it is entitled to the disgorgement of additional monies unlawfully extracted by Marriott from the Hotel. Further, Owner is entitled to the relief set forth herein in the Prayer for Relief.

**COUNT I  
BREACH OF CONTRACT**

72. Owner realleges and incorporates by this reference, as if fully set forth in this count, paragraphs 1 through 71 of this Complaint, as well as the allegations in subsequent counts.

73. The Management Agreement constitutes a lawful, binding, and enforceable contract between Owner and Marriott.

74. The acts and omissions of Marriott alleged herein constitute material breaches of Marriott's obligations under the terms of the Management Agreement.

75. Owner has performed all of its obligations under the Management Agreement, and all conditions precedent have been satisfied.

76. Marriott's breach of its contractual duties and obligations is particularly egregious because it acted with supposed expertise in hotel management on behalf of

Owner, who had no expertise in hotel management and who relied upon Marriott to perform its agreed upon contractual duties and obligations.

77. Owner has suffered and will continue to suffer damages as a direct and consequential result of Marriott's breaches of the Management Agreement, the amount of which will be determined at trial.

**COUNT II  
BREACH OF FIDUCIARY DUTY**

78. Owner realleges and incorporates by this reference, as if fully set forth in this count, paragraphs 1 through 77 of this Complaint, as well as the allegations in subsequent counts.

79. Marriott agreed to serve as agent of Owner pursuant to the Management Agreement. Under the agency relationship between Owner and Marriott, Owner turned the day-to-day operation and management of the Hotel over to Marriott, and Marriott has custody of the revenues, operating funds and proceeds related thereto. A relationship of trust was created and continues to exist between Marriott and Owner.

80. Marriott owes Owner the fiduciary duties of utmost good faith, fair dealing, loyalty, honesty and full disclosure by virtue of the agency relationship between the parties. Marriott also was obligated and continues to be obligated as a fiduciary not to engage in self-dealing or otherwise to promote its interests at the expense of and to the detriment of Owner.

81. Marriott has breached its fiduciary duties and obligations to Owner, including, by way of illustration, through the acts and omissions described in this Complaint.

82. Marriott's breach of its fiduciary duties and obligations is particularly egregious because it acted with supposed expertise in hotel management on behalf of Owner who had no expertise in hotel management and relied upon Marriott to discharge its fiduciary duties with the utmost loyalty and consistent with the highest standards of care.

83. Owner placed its trust and confidence in Marriott and believed that Marriott would act solely for the benefit of Owner.

84. Owner has suffered and will continue to suffer damages as a direct and consequential result of Marriott's breaches of its fiduciary duties and obligations, in a monetary amount to be determined at trial.

85. Marriott's breaches of its fiduciary duties and obligations were committed knowingly, intentionally, recklessly and with a conscious disregard of the rights of Owner. Accordingly, Owner is entitled to recover punitive damages in addition to compensatory and consequential damages in an amount to be determined at trial.

**COUNT III  
BREACH OF IMPLIED DUTIES OF  
GOOD FAITH AND FAIR DEALING**

86. Owner realleges and incorporates by this reference, as if fully set forth in this Count, paragraphs 1 through 85 of this Complaint, as well as the allegations in subsequent counts.

87. By virtue of the Management Agreement, there exist implied duties of good faith and fair dealing. Marriott has materially breached its implied duties of good faith and fair dealing to Owner through the acts and omissions described above.

88. In committing such breaches, Marriott has directly and proximately deprived Owner of the contractual benefits to which it is entitled as the Owner of the Hotel. Owner has suffered and will continue to suffer damages for which it seeks monetary damages in an amount to be determined at trial.

89. In addition, because Marriott's breaches of the implied duties of good faith and fair dealing were committed knowingly, intentionally, recklessly, in bad faith and with a conscious disregard to the rights of Owner, Owner is entitled to recover punitive damages in addition to the monetary damages sought herein in an amount to be determined at trial.

#### COUNT IV FRAUD

90. Owner realleges and incorporates by this reference, as if fully set forth in this count, paragraphs 1 through 89 of this Complaint, as well as the allegations in subsequent counts.

91. Marriott intentionally made the false and misleading material statements and omissions described in this Complaint, knowing that the statements were untrue, misleading and/or concealed material facts, with the deceitful intent that Owner would rely thereon.

92. Owner relied upon Marriott's representations, warranties, and omissions in entrusting and continuing to entrust the operation and possession of the Hotel and its accounts to Marriott, in making Marriott its agent and fiduciary for the purpose of operating the Hotel and handling the Hotel accounts, and in refinancing the Hotel.

93. Marriott committed fraud by obtaining and retaining undisclosed kickbacks through its illegal purchasing activities, by offloading overhead, by recovering non-

**COUNT IX  
PERMANENT INJUNCTIVE RELIEF**

129. Owner realleges and incorporates by this reference, as if fully set forth in this count, paragraphs 1 through 128 of this Complaint, as well as the allegations in subsequent counts.

130. Owner possesses the right to revoke or terminate Marriott's agency and, further, to limit or modify the scope of that agency.

131. Based upon Marriott's conduct in the management of the Hotel, Owner avers that there is a substantial likelihood that Marriott will attempt to interfere with Owner's exercise of its rights by, among other actions, engaging in one or more of the following:

- a) attempting to seize control and exercise exclusive possession over the Hotel premises, to the exclusion of Owner and its representatives;
- b) failing to respond to, obey, abide by, and comply with Owner's directives with respect to the operation of the Hotel and the handling and management of the Hotel funds and related accounts;
- c) attempting to remove, disconnect, delete, destroy, or otherwise disable various computerized accounting and reservations systems, and/or to deny Owner usable access to the data contained thereon, in an effort to cripple the operation of the Hotel;
- d) attempting to remove, disconnect, delete, destroy, disable or render unusable or inaccessible any computer hardware or software;
- e) attempting to interfere with future reservations or group bookings or interfere with current or prospective group contracts relating to the Hotel;

- f) seeking to prevent Owner from exercising its lawful powers and rights relating to the Hotel;
- g) exercising control over accounts or investments comprised of Hotel revenues or funds belonging to Owner;
- h) destroying, misappropriating, transferring, secreting, or altering books, records and other documents relating to the Hotel, Marriott's management and operation thereof, Marriott affiliates and/or Marriott related parties' transactions, and/or Owner;
- i) destroying, misappropriating, transferring, secreting, or altering books, records and other documents relating to any and all corporate and chain wide charges assessed to the Hotel by Marriott, its affiliates and/or related parties from 1980 to the present;
- j) increasing the Hotel's operating budget without Owner's express consent;
- k) demanding unnecessary maintenance, renovations and/or capital improvements to the Hotel; and
- l) otherwise interfering with and delaying the exercise of Owner's rights as the legal Owner of the Hotel.

132. Owner will be irreparably harmed in the absence of a permanent injunction restraining the above-mentioned activities.

133. Owner is without an adequate remedy at law.

**COUNT X  
DECLARATORY JUDGMENT TERMINATING  
MANAGEMENT CONTRACT**

134. Owner realleges and incorporates by this reference, as if fully set forth in this count, paragraphs 1 through 133 of this Complaint, as well as the allegations in subsequent counts.

135. Marriott has no right to remain on the premises of the Hotel or to continue to participate in the management of the Hotel.

136. There exists a genuine case and controversy between the parties as to (a) whether Marriott's breaches of the Management Agreement and other misconduct as alleged herein deprive Marriott of any right or interest with respect to the management of the Hotel, and (b) whether Owner has the right to terminate Marriott's Management Agreement for cause. A declaratory judgment as to the rights and other legal relations of the parties is necessary to the resolution of this dispute.

137. Owner accordingly seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 that: (1) it has the right to terminate for cause any principal-agent management relationship with Marriott; (2) it is entitled to possession of the Hotel; (3) Marriott must vacate the premises upon notice from Owner, and (4) Marriott must cooperate with the transition to new management in order to minimize disruption to the operation and financial performance of the Hotel by, *inter alia*: (a) transferring the books and records of the Hotel, (b) transferring all Hotel bank accounts and the balances therein; (c) transferring all licenses, permits, warranties and/or vendor agreements; (d) cooperating with Owner's efforts to communicate with Hotel employees; and (e) by

assisting with the smooth transfer of all Hotel sales and marketing functions, including the timely registration of the Hotel on any applicable global distribution systems.

#### JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Owner hereby demands a trial by jury of all issues set forth herein and of all issues that may arise in this action hereafter which are triable by right to a jury.

#### PRAYER FOR RELIEF

WHEREFORE, Owner prays for judgment in favor of Plaintiffs In Town Hotels Limited Partnership, f/k/a In Town Hotels, Ltd., and In Town Hotels, Inc. against Defendant Marriott International, Inc. as follows:

1. The award to Plaintiffs of damages, including compensatory, consequential and punitive damages, in an amount or amounts to be determined at trial;
2. Payment to Plaintiffs of all management fees paid to Marriott and to Marriott's predecessor in interest in the Management Agreement in the approximate amount of \$18.5 million;
3. Restitution in an amount to be determined at trial, including but not limited to, all profits made by Marriott, its affiliates and/or related parties, from 1980 to the present;
4. A permanent injunction restraining Marriott and its affiliates and/or related parties from the unlawful acts complained of herein;
5. A declaratory judgment that Owner (1) has the right to terminate for cause any principal-agent management relationship with Marriott; (2) is entitled to possession

of the Hotel; (3) Marriott must vacate the premises upon notice from Owner; and (4) Marriott must cooperate with the transition to new management in order to minimize disruption to the operation and financial performance of the Hotel;

6. An accounting of the affairs of Marriott and its affiliates and/or related parties in connection with its management of the Hotel;

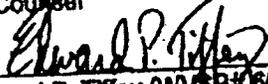
7. Prejudgment interest and post judgment interest from the date of entry until the date of satisfaction at the highest rates allowed by law;

8. Reasonable attorneys fees and costs incurred by Owner in this action; and

9. Such other and further relief as the Court may deem just and proper.

Dated: May 23, 2002

IN TOWN HOTELS LIMITED PARTNERSHIP  
and IN TOWN HOTELS, INC., Plaintiffs  
By Counsel

  
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