IN MONTGOMERY COUNTY CIRCUIT COURT, MARYLAND

HOST HOTELS & RESORTS, L.P.,
6903 Rockledge Drive,
Bethesda, Maryland 20817-1862,
Telephone: 240-744-5100,

and

HHR HOLDINGS COÖPERATIEF U.A.,
1 Prins Bernhardplein 200,
097 JB Amsterdam, the Netherlands,
Telephone: +31 (0)20 521 4777,

Plaintiffs,

v.

ROBERT T. KOGER,
3170 Ariana Drive,
Oakton, Virginia 22124,

and

MOLINARO KOGER, INC.,
8000 Towers Crescent Drive, Suite 1200,
Vienna, Virginia 22182,

and

SCIOTO PARTNERS, LLC,
160 Greentree Drive, Suite 101,
Dover, Delaware 19904,

and

DEARBORN HOTEL LLC,
2711 Centerville Road, Suite 400,
Wilmington, Delaware 19808,

and

Civil Action No. V348208

JURY TRIAL DEMANDED

BERKELEY INVESTMENTS LLC, 1209 Orange Street, Wilmington, Delaware 19801, **and** **B2B3 PUPPET LLC,** 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, **Defendants.**	))))))))))

PLAINTIFFS HOST HOTELS & RESORTS, L.P.'S AND HHR HOLDINGS COÖPERATIEF U.A.'S COMPLAINT

Plaintiffs Host Hotels & Resorts, L.P. ("Host") and HHR Holdings Coöperatief U.A. ("HHR"), by and through their undersigned counsel, respectfully submit this Complaint against Defendants Robert T. Koger ("Koger"), Molinaro Koger, Inc. ("Molinaro Koger"), Scioto Partners, LLC ("Scioto"), Dearborn Hotel LLC ("Dearborn LLC"), Berkeley Investments LLC ("Berkeley"), and B2B3 Puppet LLC ("B2B3 Puppet").

NATURE OF THE ACTION

1. In the highly competitive hotel real estate market, hotel owners utilize trusted brokers to navigate the industry. For years, Host, one of the nation's largest hotel owners, retained Molinaro Koger and its president, Robert T. Koger, to broker the sale of its hotels, trusting them to act in Host's best interests as fiduciaries. Koger and Molinaro Koger, however, have repeatedly abused this trust, causing untold damage to Host and HHR, one of Host's affiliates.

2. While serving as Host's broker, Koger never disclosed to Host that he had a fundamental conflict of interest in each of the three transactions at issue in this Complaint – the principals of the companies purchasing from or selling to Host were either a Molinaro Koger employee, a business partner of Robert Koger, or Robert Koger himself. In the first transaction, Scioto bought two hotels from Host in July 2009, the Sheraton Stamford in Stamford, Connecticut (the "Stamford Sheraton") and the Washington Dulles Suites Marriott in Herndon, Virginia (the "Dulles Marriott"). The principals of Scioto were Terence Lloyd ("Lloyd"), who was employed in the IT department at Molinaro Koger, and Todd Lawyer ("Lawyer"), who was Koger's partner in a separate business venture. In the second transaction, Dearborn LLC purchased one hotel from Host, The Ritz-Carlton in Dearborn, Michigan ("The Ritz-Carlton, Dearborn") in June 2010. As represented in numerous documents to Host, the president of Dearborn LLC was Lloyd, who, as noted previously, was an employee of Molinaro Koger. Despite the fact that Lloyd died in February 2010, his signature, notarized by Koger's secretary, appeared on documents dated four months after his death. Finally, in the third transaction, the president of Berkeley, which sold €39.65 million in subordinated debt to Host in April 2010, was Molinaro Koger's former Chief Operating Officer – Jonathan Propp ("Propp").

3. Koger also violated his fiduciary duty to Host when he failed to disclose that other parties were willing to pay more for Host's hotels than Scioto and Dearborn LLC. Koger was aware – but failed to tell Host – that on March 17, 2010, *the same day* his then deceased employee, Lloyd, "signed" an agreement to purchase The Ritz-Carlton,

Dearborn from Host for $3.8 million, Lloyd also signed an agreement to resell the hotel to a third party for $5.75 million. Koger was also aware – but failed to tell Host – that on June 3, 2010, his deceased employee’s company, Dearborn LLC, simultaneously closed on the purchase of The Ritz-Carlton, Dearborn from Host and resold it to a third party for a $1.95 million profit. Koger was aware of the simultaneous closing because Molinaro Koger served as the escrow agent for the resale of The Ritz-Carlton, Dearborn by Dearborn LLC to the third party, a fact he never disclosed to Host. Similarly, Koger failed to tell Host that Lawyer and/or Lloyd executed an agreement to sell Scioto’s interests in the Stamford Sheraton for $12 million on April 6, 2009, *nearly a month before* Host agreed to sell its interests in the hotel to Scioto for $6 million. In fact, after Host agreed to sell its interests to Scioto, Koger assured Host that Scioto had no plans to immediately resell the Sheraton Stamford. Koger was well aware of the resale; in fact, Molinaro Koger served as the escrow agent for Scioto's resale of its membership interests in the purchasing entity by Scioto to a third party, a fact he never disclosed to Host. Koger also knew – but failed to disclose to Host – that a buyer was willing to pay Scioto $7 million more for the Dulles Marriott than Host would receive from Scioto.

4. Koger further misrepresented to Host that Berkeley, his former COO’s company, owned debt securities, when it did not. Koger then used his position of trust to convince Host, acting through its affiliate, HHR, to purchase the debt securities from Berkeley. Koger, acting on behalf of Molinaro Koger as a paid advisor to Host, was privy to Host's and HHR’s confidential negotiating strategy. Using that confidential information, Koger arranged for Berkeley to offer to sell the debt securities to Host and

HHR at a price that Koger knew Host and HHR would be willing to pay. Once Host and HHR accepted that price, the front company, Berkeley, purchased the debt securities from a third party at a lower price and immediately resold them to Host and HHR at a profit.

5. The companies that conspired with Koger and Molinaro Koger to perpetrate the fraud against Host and HHR are, *inter alia*, Scioto, Dearborn LLC, Berkeley, and B2B3 Puppet.

6. Host and HHR bring this action to recover the millions of dollars lost because of Defendants' wrongful actions.

PARTIES

7. Plaintiff Host is a limited partnership organized under the laws of the State of Delaware, with its principal place of business at 6903 Rockledge Drive, Bethesda, Maryland 20817-1862. Host has approximately 200 employees working at the Bethesda office.

8. Plaintiff HHR is a cooperative organized under Dutch law, with an address of Prins Bernhardplein 200, 1097 JB Amsterdam, the Netherlands. Host and one of its wholly owned subsidiaries, HHR Assets LLC, are the sole members of HHR, with Host holding a 99.9% membership interest.

9. Defendant Koger is the president of Molinaro Koger and domiciled in Virginia. Koger is a real estate broker licensed by the Maryland Real Estate Commission.

10. Defendant Molinaro Koger is a privately held corporation incorporated under the laws of the Commonwealth of Virginia, with its principal place of business at 8000 Towers Crescent Drive, Vienna, Virginia 22812-6210. Molinaro Koger is registered to do business in Maryland as an out-of-state corporation and is a licensed real estate broker under Maryland law. Molinaro Koger regularly transacts with and solicits business from clients in Maryland.

11. Defendant Scioto is a limited liability company organized under the laws of the State of Delaware, with a registered agent at NRAI Agents LLC, 160 Greentree Drive, Suite 101, Dover, Delaware 19904 and a purported principal place of business at 800 Gallia Street, Portsmouth, Ohio 45662.

12. Defendant Dearborn LLC is a limited liability company organized under the laws of the State of Delaware, with a registered agent at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and no known principal place of business.

13. Defendant Berkeley is a limited liability company organized under the laws of the State of Delaware, with a registered agent at The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801 and no known principal place of business.

14. Defendant B2B3 Puppet is a limited liability company organized under the laws of the State of Delaware, with a registered agent at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 and no known principal place of business.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to MD. CODE ANN., CTS. & JUD. PROC. §§ 1-501 and 4-401(1) because the Maryland circuit courts have full common-law and equity powers and jurisdiction over civil cases and the amount in controversy for each of Host's and HHR's counts exceeds $30,000.

16. Venue is proper in the Circuit Court for Montgomery County pursuant to MD. CODE ANN., CTS. & JUD. PROC. §§ 6-202(3), (8) and (11) because Host's principal place of business is in Montgomery County, the causes of action alleged herein occurred in Montgomery County, and none of the Defendants reside or have a principal place of business in Maryland.

17. This Court has jurisdiction over Defendants pursuant to MD. CODE ANN., CTS. & JUD. PROC. §§ 6-103(1)-(4).

FACTUAL ALLEGATIONS

Host's Brokerage Relationship with Robert Koger and Molinaro Koger

18. Host, together with its general partner, Host Hotels & Resorts, Inc., is the nation's largest lodging real estate investment trust and one of the largest owners of luxury and upper-upscale hotels. At all times during the events described herein, Host's Acquisitions and Dispositions Group purchased and sold properties for strategic purposes.

19. Molinaro Koger is a worldwide hospitality brokerage and real estate advisory firm, with its headquarters located in Vienna, Virginia. Molinaro Koger

structures hotel real estate transactions and provides real estate brokerage services. Molinaro Koger has brokered the sale of over 1,500 hotels.

20. Koger is the president of Molinaro Koger and brokers hotel sales. According to Molinaro Koger's website, Koger's sales volume over the last two years has exceeded $1.1 billion.

21. At all times during the events described herein, Koger acted on behalf of Molinaro Koger and had the power and authority to bind the company.

22. Host was introduced to Koger and Molinaro Koger in 2001. Sometime thereafter, Host began engaging Koger through Molinaro Koger to broker property purchases and sales. Between 2004 and 2010, Host paid Molinaro Koger upwards of $4.4 million in commissions for approximately 11 transactions.

23. When Host engaged Molinaro Koger to broker property sales, the parties typically entered into written brokerage agreements that appointed Molinaro Koger as Host's exclusive broker. Under the agreements, and under applicable Maryland brokerage regulations, Molinaro Koger was required to act in accordance with the standards customarily employed by brokerage firms in the hospitality industry, including among other things: (1) disclosing to Host all material information relating to the transaction, including all offers to purchase; (2) confirming prospective purchasers as reliable bidders; and (3) helping Host identify and obtain the best possible deal for the sale of the properties.

24. Molinaro Koger was also required under the agreements to perform a number of specific duties, including among other things: (1) providing an opinion

regarding the value of the properties; (2) managing the due diligence process by organizing information and preparing confidentiality agreements; (3) arranging physical inspections of the hotel(s); (4) facilitating the negotiation for the properties by acting as an intermediary; (5) assisting Host in the contract negotiation process; and (6) facilitating the closing and transition process.

25. In Molinaro Koger's previous engagements with Host, Koger, a licensed real estate broker, primarily was responsible for performing the brokerage duties on behalf of Molinaro Koger.

26. Molinaro Koger was also obligated under the brokerage agreements to indemnify Host from any loss, claim, damage, liability, or expense arising from Molinaro Koger's negligence, breach of any representation or covenant, or violations of law in carrying out its duties in the agreements.

SALE OF THE DULLES MARRIOTT AND STAMFORD SHERATON PROPERTIES

Creation of the Dulles/Stamford Implied Brokerage Agreement Between Host and Molinaro Koger

27. In summer or fall 2008, Host approached Koger and Molinaro Koger to broker the sale of a portfolio of 11 properties (later reduced to nine), including the Dulles Marriott and the Stamford Sheraton.

28. Host and Molinaro Koger entered into an implied-in-fact contract whereby Molinaro Koger agreed to provide real estate brokerage services in connection with the sale of the Dulles Marriott and Stamford Sheraton in return for a commission (the "Dulles/Stamford Implied Brokerage Agreement").

29. The terms of the Dulles/Stamford Implied Brokerage Agreement required Molinaro Koger to use its best efforts to sell the properties in the portfolio and to perform all of the duties described in paragraphs 23 and 24. At a minimum, Molinaro Koger was required to forward all offers to Host, disclose material information, advise Host on its options in selling the properties, and facilitate the closing process. Molinaro Koger was only entitled to payment of a commission if Host selected a purchaser and conveyed ownership in the properties at closing. These terms were consistent with Host's prior brokerage agreements with Molinaro Koger and were manifested in the conduct of the parties throughout the marketing, sale, and closing of the Dulles Marriott and Stamford Sheraton, including Host's payment of a $495,000 brokerage commission to Molinaro Koger.

Robert Koger and Molinaro Koger Introduce Host to Scioto

30. Pursuant to Molinaro Koger's duties as Host's broker, Koger prepared financial information and provided an opinion on the value of the properties in the portfolio in summer and fall 2008. Koger also marketed the properties in the portfolio to bidders whom, upon consultation with Host, were believed to be capable of purchasing the properties.

31. Between November 2008 and February 2009, Koger forwarded a number of bids to Host from The Inland Real Estate Group of Companies, Inc.; Apple Real Estate Investment Trust Companies; HEI Hospitality, LLC; Noble House Hotels and Resorts; Richard Vilardo; The Procaccianti Group; and Gestin LLC. These bidders sought to purchase various combinations of the properties in the portfolio.

32. On February 2, 2009, Koger informed Host that an unidentified “new buyer” was prepared to purchase the Dulles Marriott and Stamford Sheraton for $44 million. Koger initially told Host that the "new buyer" was Capital Hospitality Group (“Capital Hospitality”), a Netherlands investor affiliated with Hibernia Worldwide Hotels.

33. In or about late February 2009, Koger informed Host that the “new buyer” was actually a partnership comprised of Capital Hospitality and Scioto. Koger advised Host that Scioto was an investment group based in Ohio and New York and was the lead partner in the deal. Host was told that the principal of Scioto was a person named Todd Lawyer ("Lawyer"). Scioto and Lawyer are the same parties that, months later, would profit from The Ritz-Carlton, Dearborn transaction, despite having no apparent connection to that deal.

34. Host was interested in selling the Dulles Marriott and Stamford Sheraton together since the Dulles Marriott was perceived to be a property that would be relatively easy to sell, while the Stamford Sheraton presented challenges that would make its sale more difficult. Host thus began to negotiate terms of an agreement with Scioto to sell both properties.

35. All negotiations with Scioto went through Koger and also through Scioto’s counsel, Mark Morris and Michael Kornacki, from the Philadelphia law firm of Fox Rothschild LLP (“Fox Rothschild”).

36. In late February 2009, Fox Rothschild requested that two entities affiliated with Scioto be named in the purchase and sale agreement as assignees of the properties at

closing: Dulles Suites LLC for the Dulles Marriott and Stamford Hospitality Management, LLC ("SHM") for the Stamford Sheraton. Host agreed to allow this assignment as long as Scioto remained primarily liable and the assignees were creditworthy entities.

37. Host learned intermittently from February 2009 through April 2009 that other bidders were interested in the Stamford Sheraton. Koger was aware of these bidders but did not disclose them to Host. When confronted by Host about these undisclosed bidders, Koger assured Host that the bidders were not serious purchasers, causing Host not to pursue the bids further.

Robert Koger and Molinaro Koger Broker Host's Sale of the Dulles Marriott and Stamford Sheraton to Scioto

38. On March 3, 2009, Host entered into a purchase and sale agreement with Scioto to sell the Dulles Marriott and Stamford Sheraton for $44 million, with $36 million allocated to the Dulles Marriott and $8 million allocated to the Stamford Sheraton (the "First Dulles/Stamford PSA," attached hereto as Exhibit A). The First Dulles/Stamford PSA permitted Scioto to assign the right to receive the properties at closing to Dulles Suites LLC and SHM. Lawyer was Scioto's signatory, and the notice address for Scioto was listed as 800 Gallia Street, Portsmouth, Ohio 45662.

39. Scioto had a contractual right under the First Dulles/Stamford PSA to terminate the Agreement prior to the expiration of the due diligence period without any penalty. In or around late March 2009, prior to the expiration of the due diligence period, Scioto informed Host that it would terminate the First Dulles/Stamford PSA. Scioto

officially terminated the First Dulles/Stamford PSA on March 31, 2009 without explanation.

40. On March 29, 2009, Scioto again approached Host through Koger to purchase the Dulles Marriott and Stamford Sheraton, but this time at the reduced price of $36 million for both properties.

41. Because Koger had not advised Host of any higher bidders for Dulles Marriott and Stamford Sheraton, Host agreed with Koger's view that $36 million was an appropriate price for the two properties in light of worsening market conditions and a new supply of hotels in the Dulles region.

42. Host resumed negotiations with Scioto. All of Host's communications with Scioto concerning the terms of the agreement again went through Koger or Fox Rothschild.

43. Koger led Host to believe that Scioto would own the Dulles Marriott and Stamford Sheraton after closing, but would take title to the properties through Scioto's assignees, Dulles Suites LLC and SHM. Koger led Host to believe that Capital Hospitality would be the primary investor along with Scioto in Dulles Suites LLC and that Pinnacle Hotel Management Company, LLC would manage the Dulles Marriott for Dulles Suites LLC. Koger further led Host to believe that a New York investor named Aaron Friedman ("Friedman") would partner with Scioto in SHM and that Rosdev Hotel Management Services, Inc. would manage the Stamford Sheraton for SHM.

44. On May 4, 2009, Host entered into the Amended and Restated Agreement of Purchase and Sale to sell the Dulles Marriott and Stamford Sheraton to Scioto for $36

million, with $30 million allocated to the Dulles Marriott and $6 million allocated to the Stamford Sheraton (the "Second Dulles/Stamford PSA," attached hereto as Exhibit B).

45. Like the First Dulles/Stamford PSA, the Second Dulles/Stamford PSA permitted Scioto to assign the right to purchase the Dulles Marriott and Stamford Sheraton at closing to Dulles Suites LLC and SHM, respectively. This time, the Scioto signatory was Lloyd, who was identified as the president of Scioto. Lloyd's signature, months later, would be found on documents connected with the Dearborn Transaction that were prepared four months after Lloyd's death. The notice address for Scioto in the Second Dulles/Stamford PSA was 800 Gallia Street, Portsmouth, Ohio 45662, to the attention of Lawyer or Friedman.

46. Pursuant to the Second Dulles/Stamford PSA, Scioto elected to have Dulles Suites LLC and SHM receive an assignment of the right to purchase the Dulles Marriott and Stamford Sheraton at closing.

47. On July 9, 2009, Host sold the Dulles Marriott to Dulles Suites LLC and the Stamford Sheraton to SHM pursuant to the Second Dulles/Stamford PSA and separate assignment and assumption agreements. Lloyd, the Scioto signatory on the Second Dulles/Stamford PSA, signed each assignment and assumption agreement as president of Dulles Suites LLC and SHM, respectively.

48. Host was led to believe that Scioto had funded in escrow the purchase money for the Dulles Marriott and Stamford Sheraton. The title company, Land Services USA, Inc. ("Land Services") disbursed the amounts due to Host on July 9, 2009, thereby closing the transaction.

49. During the marketing, sale, and closing of the Dulles Marriott and Stamford Sheraton (the "Dulles/Stamford Transaction"), Koger and Molinaro Koger provided a number of real estate brokerage services in accordance with the Dulles/Stamford Implied Brokerage Agreement, including, *inter alia*, providing commercial advice, valuing the properties, marketing the properties, soliciting bids, preparing and entering into confidentiality agreements on behalf of Host, managing the due diligence process and access to due diligence materials on Molinaro Koger's website, arranging physical inspections of the properties for bidders, forwarding letters of intent or offers to Host, advising Host to reject certain bids, qualifying bidders, assisting Host in negotiating purchase and sale agreements with Fox Rothschild, acting as an intermediary between Host and Scioto, and facilitating the closing between Host and Scioto. For these services, Host paid Molinaro Koger a $495,000 brokerage commission. *See* Exhibit C.

50. Articles 1.1.7 and 11.5 of the Second Dulles/Stamford PSAs confirmed that Molinaro Koger acted on behalf of Host as its broker in connection with the Dulles/Stamford Transaction.

51. Koger and Molinaro Koger acted as Host's limited or special agents in the Dulles/Stamford Transaction. Koger and Molinaro Koger understood that they were acting as brokers on behalf of Host with respect to the Dulles/Stamford Transaction. Moreover, Koger repeatedly responded to Host's instructions, manifesting his agreement that he was acting on Host's behalf. Finally, Koger showed the properties to bidders, acted as the go-between between Host and the bidders, negotiated key terms for the

agreements, such as purchase price, and introduced the eventual purchaser, Scioto, to Host, all of which altered Host's legal relations.

In Violation of Their Fiduciary Duties, Robert Koger and Molinaro Koger Fail to Disclose Their Relationship to Lloyd and Lawyer and Deceive Host about Scioto

52. At no point during the Dulles/Stamford Transaction did Koger or anyone else at Molinaro Koger disclose to Host their significant connections to the buyer, which included:

a. Lloyd, who was identified as the president of Scioto in the Second Dulles/Stamford PSA, was the IT Manager at Molinaro Koger throughout the Dulles/Stamford Transaction;

b. Lawyer, the member of Scioto who signed the First Dulles/Stamford PSA, is a partner with Koger in a separate corporate entity called USIL Spectrum Holdings, LLC;

c. The domain name "Sciotopartners.com," which matches the email address that Scioto used for communications with Host employees, was registered by Molinaro Koger in December 2006; and

d. On May 19, 2009, Lloyd submitted an application with the Commonwealth of Virginia State Corporation Commission to register Dulles Suites LLC as a foreign limited liability company. The telephone number provided for Lloyd on this application – 703-288-5212 – is Koger's direct line at Molinaro Koger.

53. In fact, Koger repeatedly made affirmative statements to Host that deceived Host into believing that Scioto was a legitimate third-party entity without any relationship with Koger or Molinaro Koger:

a. On February 2, 2009, Koger informed Host that a new potential buyer was willing to pay $44 million for the Dulles Marriott and Stamford Sheraton. Koger wrote, "[The new potential buyer] will assume Host's current contract on Dulles and convert Stamford to a franchise with partner.";

b. On March 2, 2009, the day before Scioto entered into the First Dulles/Stamford PSA, Koger notified Host by email that he was giving a walk-through of the Dulles Marriott to another potential buyer. Koger reassured Host that "It is not because I have any concern (other than the typical ones) that there are issues with the current buyer.";

c. On March 29, 2009, after Koger advised Host that Scioto was considering exercising its right to terminate the First Dulles/Stamford PSA, Koger told Host that "the buyer is prepared to go hard on the following basis[:] Dulles 30m…. Stamford 6m….";

d. On April 12, 2009, Koger told Host "I spoke to the buyer on Saturday and they indicated that they are ready to sign. They and their attorneys were out on Friday so I suspect once they touch base with their counsel we should be ready to sign a final draft."; and

e. On July 8, 2009, the day before closing, Koger emailed Host and Host's outside counsel about an issue with the Stamford Sheraton's hotel sign. According to Koger, "The buyer called saying that Starwood is taking the entire sign, not just the part that say Sheraton on this. The buyer has a sign coming tomorrow to fit into the sign box."

See Exhibit D.

In Violation of Their Fiduciary Duties, Robert Koger and Molinaro Koger Fail to Disclose Higher Offers and Arrange Immediate Resale of the Dulles Marriott and Stamford Sheraton

54. Upon information and belief, Koger and Molinaro Koger, while serving as Host's brokers and negotiating Host's sale of the Dulles Marriott and Stamford Sheraton to Scioto, solicited offers for the resale of the properties from Scioto to third parties at a higher price.

55. By the time that Scioto entered into the Second Dulles/Stamford PSA with Host, Scioto had already arranged, with the help of Koger and Molinaro Koger, to resell the Dulles Marriott and Stamford Sheraton by agreeing to sell the membership interests in Dulles Suites LLC and SHM to independent purchasers for millions of dollars more than the amount Scioto agreed to pay in the Second Dulles/Stamford PSA.

56. On April 6, 2009 – nearly a month before Host agreed to sell the Stamford Sheraton to Scioto – Scioto agreed to sell 100% of its membership interests in SHM to

Stamford Hospitality, L.P. ("SHLP"), a separate partnership unrelated to Scioto or SHM. The sale price was $12 million, double the $6 million that Scioto offered and paid Host for the Stamford Sheraton. The sale was contingent upon SHM's acquisition of the Stamford Sheraton from Host. Upon information and belief, Lawyer and/or Lloyd signed the sale document on behalf of Scioto. At the time, the partners in SHLP and their membership interests were Rosdev Hotel Management Services, Inc. (89% interest), Stamford Hotel Holdings, LLC (9% interest), RDCP Holdings Inc. (1% interest), and Friedman (1% interest).

57. Upon information and belief, on or before May 4, 2009, Scioto also arranged to sell 100% of its membership interests in Dulles Suites LLC to an independent venture comprised of Artery Dulles Marriott, LLC ("Artery") and Pinnacle Dulles Marriott, LLC ("Pinnacle") (collectively, the "Artery/Pinnacle Venture"). The sale price was $37 million, a profit of $7 million over the $30 million that Scioto paid Host for the Dulles Marriott. Artery is controlled by The Artery Group, LLC, while Pinnacle is controlled by Pinnacle Hotel Management Company, LLC, the company that Koger led Host to believe would only manage the Dulles Marriott.

58. Upon information and belief, during the course of the Dulles/Stamford Transaction, Koger and Molinaro Koger helped facilitate or at least knew of Scioto's plans to resell the Dulles Marriott to the Artery/Pinnacle Venture for $37 million and the Stamford Sheraton to SHLP for $12 million.

59. Yet, during negotiations between Host and Scioto regarding the Dulles Marriott and Stamford Sheraton, Koger led Host to believe that Scioto and Capital

Hospitality, through the assignees Dulles Suites LLC and SHM, would be the ultimate owners of the properties. Koger and Molinaro Koger did not disclose to Host that SHLP or the Artery/Pinnacle Venture were being formed or were interested in acquiring the Dulles Marriott or Stamford Sheraton for higher prices than Host was receiving from Scioto.

60. Host did not know of Scioto's arrangements to resell the Dulles Marriott and Stamford Sheraton to SHLP and the Artery/Pinnacle Venture. Although Host heard rumors that the Stamford Sheraton might be immediately resold to a third-party purchaser, Koger assured Host that the third-party purchaser was actually a company created by Scioto that was merely being used to take title to the Stamford Sheraton. *See* Exhibit E.

61. On July 9, 2009 – *the same day Host completed the sale of the Dulles Marriott and Stamford Sheraton to Scioto* – Scioto simultaneously transferred its membership interests in Dulles Suites LLC to the Artery/Pinnacle Venture for $37 million, which was $7 million more than Scioto paid Host; and transferred its membership interests in SHM to SHLP for $12 million, which was $6 million more than Scioto paid Host. Molinaro Koger was the escrow agent for Scioto in the sale to SHLP.

62. Unbeknownst to Host, the money that Host received on July 9, 2009 as Scioto's payment for the Dulles Suites and Stamford Sheraton did not come from Scioto but from the Artery/Pinnacle Venture and SHLP. Before July 9, 2009, the Artery/Pinnacle Venture and SHLP placed in escrow with Land Services at least $37 million and $12 million, respectively, as payment to Scioto for the resale of the Dulles

Marriott and Stamford Sheraton. The money that Land Services paid Host at closing came from these funds, not from an escrow account maintained by Scioto, Capital Hospitality, Friedman, or any other purported Scioto investor.

63. In fact, Koger deceived Host as to the roles of Scioto, Friedman, Capital Hospitality, and Pinnacle Hotel Management Company, LLC in the Dulles/Stamford Transaction:

a. The owner of the Dulles Marriott and Stamford Sheraton after the Dulles/Stamford Transaction was not Scioto, as Koger led Host to believe, but the Artery/Pinnacle Venture and SHLP;

b. Upon information and belief, Friedman did not partner with Scioto in SHM to own the Stamford Sheraton, as Koger led Host to believe, but only held a 1% interest in SHLP, and thus only acquired an ownership stake in SHM by virtue of SHLP's acquisition of SHM's membership interests on July 9, 2009;

c. The Stamford Sheraton is not owned by Friedman or SHM, as Koger led Host to believe, but by the Rosdev Group in Montreal, which controlled 89% of SHLP through Rosdev Hotel Management Services, Inc;

d. Capital Hospitality was not involved in the ownership group that agreed to purchase the Dulles Marriott and Stamford Sheraton on May 4, 2009; and

e. Pinnacle Hotel Management Company, LLC, far more than just managing the Dulles Marriott, purchased and became the part owner of the property.

64. Even after the simultaneous sale and resale of the Dulles Marriott and Stamford Sheraton, Koger continued to deceive Host into believing that the Stamford Sheraton had not been flipped.

65. After the Dulles/Stamford Transaction, Host's outside counsel raised his concern with Koger about the possibility that the Stamford Sheraton had been resold by SHM to a third party. In response, Koger told Host's counsel that "the buyer did bring in

some partners immediately upon closing, but the entity is still managed or controlled by Scioto." Exhibit F. Based on the facts, that was a blatant lie.

SALE OF THE RITZ-CARLTON, DEARBORN PROPERTY

Creation of the Dearborn Implied Brokerage Agreement Between Host and Molinaro Koger

66. In or about July 2009, Host approached Koger and Molinaro Koger to broker the sale of The Ritz-Carlton, Dearborn.

67. Host and Molinaro Koger entered into an implied-in-fact contract whereby Molinaro Koger agreed to provide real estate brokerage services in connection with the sale of The Ritz-Carlton, Dearborn in return for a commission (the "Dearborn Implied Brokerage Agreement").

68. While acting as Host's broker, Koger prepared an offering memorandum for bidders interested in purchasing The Ritz-Carlton, Dearborn. That document unequivocally disclosed that Molinaro Koger represented Host on the transaction and acted as its agent:

> THE FIRM OF MOLINARO KOGER HAS BEEN RETAINED TO MARKET THE PROPERTY. ALL PROSPECTIVE PURCHASERS RECOGNIZE THAT MOLINARO KOGER REPRESENTS THE SELLER IN THIS TRANSACTION. . . . DO NOT CONTACT THE MANAGEMENT STAFF OF THE PROPERTY. MOLINARO KOGER IS THE OWNER'S EXCLUSIVE ADVISOR FOR THIS CONFIDENTIAL ASSIGNMENT AND ALL REQUESTS SHOULD BE DIRECTED TO **DAVID ALTOBELLO OR ROB KOGER AT (703) 760-9600.**
>
> *** * * ***
>
> Molinaro Koger, as sole and exclusive agent to Owner, has been retained to offer for sale The Ritz-Carlton Dearborn ("Hotel").

Exhibit G.

69. The terms of the Dearborn Implied Brokerage Agreement required Molinaro Koger to use its best efforts to sell The Ritz-Carlton, Dearborn and to perform all of the duties described in paragraphs 23 and 24. At a minimum, Molinaro Koger was required to forward all offers to Host, disclose material information, advise Host on its options in selling the properties, and facilitate the closing process. Molinaro Koger was only entitled to payment of a commission if Host selected a purchaser and transferred ownership in the properties at closing. These terms were consistent with Host's prior brokerage agreements with Molinaro Koger and were manifested in the conduct of the parties throughout the marketing, sale, and closing of The Ritz-Carlton, Dearborn, including Host's payment of a $200,000 brokerage commission to Molinaro Koger.

Robert Koger and Molinaro Koger Broker Host's Sale of The Ritz-Carlton, Dearborn

70. In fall 2009 and winter 2010, Koger presented potential purchasers for The Ritz-Carlton, Dearborn to Host, including Park Investments LLC, a Michigan limited liability company owned by Remo Polselli; Three Wall Capital, LLC, a New York LLC owned by Alan Kanders; U.S. Hospitality, Inc., a Michigan corporation affiliated with Akram Namou and A&M Hospitality; and Dearborn LLC.

71. In connection with its bid, Dearborn LLC was represented by Mark Morris and Michael Kornacki from Fox Rothschild.

72. Koger qualified the potential purchasers of The Ritz-Carlton, Dearborn. Not only did he confirm that these companies had the capital to purchase the property, but he also gave Host his opinion on the quality of the bids. Koger led Host to believe

that Dearborn LLC was a legitimate bidder with cash on hand to purchase The Ritz-Carlton, Dearborn.

73. With Koger's encouragement, Host then simultaneously negotiated terms of an agreement with Dearborn LLC, Park Investments LLC, and Three Wall Capital LLC, with the goal of selecting the best offer from among the three bidders. Almost all of Host's negotiations with the bidders went through Koger.

74. Through Koger, Host believed that the final offers for The Ritz-Carlton, Dearborn were \$3.8 million from Dearborn LLC, \$3 million from Park Investments LLC, and \$3 million from Three Wall Capital LLC.

75. Based on this information, Host believed that the \$3.8 million offer from Dearborn LLC was the best offer, and thus selected Dearborn LLC as the winning bidder.

76. On March 17, 2010, Host entered into an Agreement of Purchase and Sale with Dearborn LLC to sell The Ritz-Carlton, Dearborn for \$3.8 million (the "Dearborn PSA," attached hereto as Exhibit H).

77. The Dearborn PSA identified Lloyd as Dearborn LLC's president and Lloyd's signature appeared on the document. Lloyd, however, had died in early February 2010, weeks before the Dearborn PSA was executed. Exhibit I.

78. Dearborn LLC was obligated under the Dearborn PSA to deposit \$1 million non-refundable into escrow with Land Services.

79. Land Services received the \$1 million deposit on March 17, 2010. The deposit came from a company called Gestin LLC.

80. Gestin LLC is controlled by or related to Koger or Molinaro Koger. The address for Gestin LLC in an April 2009 Virginia tax lien is Molinaro Koger's current business address: 8000 Towers Crescent Drive, Suite 1200, Vienna, VA 22182. Moreover, in a June 2003 UCC filing, Gestin LLC lists its business address as that of another Molinaro Koger office: 1676 International Drive, Suite 57, McLean, VA 22102.

81. On June 3, 2010, Host sold and assigned its interest in The Ritz-Carlton, Dearborn to Dearborn LLC pursuant to the Dearborn PSA. Despite his death in February 2010, Lloyd's signature appeared on a number of June closing documents as president of Dearborn LLC, including the settlement statement, an escrow agreement, Purchaser's Certificate Updating Representations and Warranties, and an interim management agreement with The Ritz-Carlton Hotel Company, L.L.C. A number of these documents were notarized by Koger's secretary, Rhonda Hart.

82. Host was led to believe that Dearborn LLC had placed in escrow with Land Services the remainder of the purchase price for The Ritz-Carlton, Dearborn. Land Services disbursed the amounts due to Host on June 3, 2010, thereby closing the transaction.

83. During the marketing, sale, and closing of The Ritz-Carlton, Dearborn (the "Dearborn Transaction"), Koger and Molinaro Koger provided a number of real estate brokerage services in accordance with the Dearborn Implied Brokerage Agreement, including, *inter alia*, providing commercial advice, valuing The Ritz-Carlton, Dearborn, marketing the property and soliciting bids, managing the due diligence process, arranging physical inspections of the hotel for bidders, forwarding letters of intent or offers to Host,

advising Host to reject certain bids, qualifying bidders, assisting Host in negotiating the draft purchase and sale agreements with Dearborn and the other bidders, acting as an intermediary between Host and Dearborn, and facilitating the closing between Host and Dearborn. For these services, Host paid Molinaro Koger a $200,000 brokerage commission. Exhibit J.

84. Article 11.5 of the Dearborn PSA confirmed that Molinaro Koger acted on behalf of Host as its broker in connection with the sale of The Ritz-Carlton, Dearborn.

85. Koger and Molinaro Koger acted as Host's limited or special agents in brokering the sale of The Ritz-Carlton, Dearborn and providing real estate brokerage services. Both parties understood that they were acting as brokers on behalf of Host with respect to the Dearborn Transaction. Moreover, Koger repeatedly responded to Host's instructions, manifesting his agreement that he was acting on Host's behalf. Finally, Koger showed the properties to bidders, qualified bidders, acted as the go-between between Host and the bidders, negotiated key terms for the agreement, such as purchase price, and introduced the eventual purchaser, Dearborn LLC, to Host, all of which altered Host's legal relations.

In Violation of Their Fiduciary Duties, Robert Koger and Molinaro Koger Fail to Disclose Their Relationship with Lloyd and Deceive Host about Dearborn LLC

86. At no point during the Dearborn Transaction did Koger or anyone else at Molinaro Koger disclose to Host that the principal, Lloyd, of the bidder they qualified, Dearborn LLC, had been their employee until the time of his death in February 2010.

87. In connection with the Dearborn PSA, Host was required by law to submit a commercial re-occupancy application with the City of Dearborn noting the new owner's contact information.

88. On or about March 29, 2010, Dearborn LLC provided Host with the commercial re-occupancy application. Lloyd's name appeared on this application, which was notarized by Rhonda Hart, Koger's secretary at Molinaro Koger.

89. The original email address for Lloyd as listed in the commercial re-occupancy application was "tlloyd@sciotopartners.com." This email address was crossed out and changed to "tlloyd@purcellinv.com." Purcell Investments LLC is a Virginia limited liability company. Koger is a member of Purcell Investments LLC.

90. In connection with the commercial re-occupancy application, Michael Kornacki at Fox Rothschild, on behalf of Dearborn LLC, sent Host's counsel a copy of Lloyd's driver's license. When Host's counsel noted that the driver's license had expired and requested a current license, Michael Kornacki responded on April 5, 2010 that "He [Lloyd] must have pulled out an old license – he just sent me the attached (current) license." The driver's license identified Lloyd's home address as "25485 Military Road, Cascade, Maryland 21719."

91. The Terence J. Lloyd who lived at 25485 Military Road, Cascade, Maryland was dead by this time. Officers from the Sheriff's Office in Washington County, Maryland (the "Sheriff's Office") found Lloyd dead at this address on February 3, 2010. *See* Washington County Sheriff's Office Investigative Report, attached hereto as Exhibit I (the "Police Report").

92. According to the Police Report, officers searched Lloyd's body, his home, and his car for his wallet or identification, but could not find them. Yet weeks later, Dearborn LLC produced this missing driver's license in connection with the commercial re-occupancy application.

93. The Terence J. Lloyd who lived in Cascade, Maryland, was an employee of Molinaro Koger up until his death on February 3, 2010. The Sheriff's Office was dispatched to Lloyd's home on February 3, 2010 in response to a telephone call from Jonathan Propp, the Chief Operating Officer of Molinaro Koger at the time. In his call to the Sheriff's Office, Propp expressed concern about the welfare of Lloyd, his co-worker.

94. In addition, at no point during the Dearborn Transaction did Koger or anyone else at Molinaro Koger disclose to Host their significant connections to the buyer, which included:

a. Berkeley Investments LLC, a purported member of Dearborn LLC, filed an application for Dearborn LLC to transact business in Michigan as an out-of-state limited liability company. Lloyd signed as a member of Berkeley Investments LLC, and listed Berkeley's address as 2081 Hunters Creek, Vienna, Virginia 22181. This is the home address of Koger's ex-wife, Carol Koger;

b. Rhonda Hart, the secretary for Koger, notarized Lloyd's forged signature on the commercial re-occupancy application and the deed conveying The Ritz-Carlton, Dearborn from Dearborn LLC to 2010 Dearborn Investment, LLC;

c. Molinaro Koger is the listed registrant for the domain name "Sciotopartners.com," the email address originally listed for Lloyd on the commercial re-occupancy application;

d. The $1 million deposit that Land Services received on March 17, 2010 came from Gestin LLC, which is controlled by or related to Koger or Molinaro Koger. The address for Gestin LLC in an April 2009 Virginia tax lien is Molinaro Koger's current business address: 8000 Towers

Crescent Drive, Suite 1200, Vienna, VA 22182. Moreover, in a June 2003 UCC filing, Gestin LLC lists its business address as that of another Molinaro Koger office: 1676 International Drive, Suite 57, McLean, Virginia 22102; and

e. Scioto and Lawyer – both of who are connected to Koger or Molinaro Koger – received proceeds of Dearborn LLC's eventual sale of The Ritz-Carlton, Dearborn.

95. In fact, Koger repeatedly made affirmative statements to Host that deceived Host into believing that Dearborn LLC was a legitimate third-party entity without any relationship with Koger or Molinaro Koger:

a. On November 24, 2009, Koger emailed Host about the status of Dearborn LLC's offer. According to Koger, "I spoke to buyer number 1. They will not go hard until they get PIP from Hilton.";

b. On February 23, 2010, in reference to a draft purchase and sale agreement from Dearborn LLC, Koger said in an email to Host that "I spoke to the buyer. They are working through liquor license issue. We should have it today.";

c. Similarly, on February 26, 2010, when asked where things stood with Dearborn LLC, Koger responded, "I spoke to the buyer. He is going to have his attorney call or email. They are close according to him."; and

d. On March 15, 2010, Koger informed Host that "they [Dearborn LLC] are ready to sign."

See Exhibit K.

In Violation of Their Fiduciary Duties, Robert Koger and Molinaro Koger Fail to Disclose Higher Offers and Arrange Dearborn LLC's Immediate Resale of The Ritz-Carlton, Dearborn

96. Upon information and belief, Koger and Molinaro Koger, while serving as Host's brokers and negotiating Host's sale of The Ritz-Carlton, Dearborn, solicited offers for the resale of the property from Dearborn LLC to third parties at a higher price.

97. By the time that Dearborn LLC entered into the Dearborn PSA with Host, Dearborn LLC had arranged with the help of Koger and Molinaro Koger to resell The Ritz-Carlton, Dearborn to an independent purchaser for $1.95 million more than the amount Dearborn LLC agreed to pay in the Dearborn PSA.

98. On March 17, 2010, *the same day that Host entered into the Dearborn PSA*, Dearborn LLC entered into a separate purchase and sale agreement to sell The Ritz-Carlton, Dearborn to a third-party entity named 2010 Dearborn Investment, LLC, which had been organized only weeks earlier by Tae W. Park as a Texas limited liability company. The sale price was $5.75 million, $1.95 million more than the $3.8 million that Dearborn LLC paid Host for the property.

99. Upon information and belief, during the course of the Dearborn Transaction, Koger and Molinaro Koger helped facilitate or at least knew of Dearborn LLC's plan to resell The Ritz-Carlton, Dearborn to 2010 Dearborn Investment, LLC for $5.75 million.

100. In fact, Koger served as the escrow agent for Dearborn LLC and 2010 Dearborn Investment, LLC in connection with the resale.

101. Yet, during negotiations between Host and Dearborn LLC regarding The Ritz-Carlton, Dearborn, Koger led Host to believe that Dearborn LLC would be the eventual owner of The Ritz-Carlton, Dearborn. Koger and Molinaro Koger did not disclose to Host that 2010 Dearborn Investment, LLC was being formed or was interested in acquiring the property for a higher price.

102. On June 3, 2010, *the same day that Host sold The Ritz-Carlton, Dearborn to Dearborn LLC*, Dearborn LLC simultaneously resold the property to 2010 Dearborn Investment, LLC for $5.75 million. Lloyd's name was forged on the deed and the real estate transfer tax valuation affidavit effectuating the sale. Both documents were notarized by Rhonda Hart, the secretary for Koger at Molinaro Koger.

103. Unbeknownst to Host, the money that Host received on June 3, 2010 as Dearborn LLC's payment for The Ritz-Carlton, Dearborn did not come from Dearborn LLC but from 2010 Dearborn Investment, LLC. On June 3, 2010, the same day as the sale, 2010 Dearborn Investment, LLC caused approximately $4.2 million to be placed into escrow with Land Services as partial payment to Dearborn LLC for the resale of The Ritz-Carlton, Dearborn. The money that Land Services paid Host at closing came from these funds, not from an escrow account connected with Dearborn LLC.

104. In addition to Dearborn LLC, Lawyer and Scioto – both of whom have no apparent connection with the Dearborn Transaction – made money off of the flip ($1.16 million and $145,000, respectively).

<u>PURCHASE OF THE B2/B3 NOTES SECURED BY THE PUPPET PORTFOLIO</u>

Host's Attempt to Acquire the Puppet Portfolio in 2008

105. In 2008, Host participated in a joint venture (the "European JV") to acquire six properties in Europe from an entity controlled by Whitehall Street International and Gengate Europe, Ltd. (the "Whitehall/Gengate Venture"): the Renaissance Paris Hotel La Defense, Renaissance Paris Vendôme Hotel, Courtyard

Columbes, Marriott Paris Rive Gauche, Renaissance Amsterdam Hotel, and Courtyard Düsseldorf Seestern (the "Puppet Portfolio").

106. Sometime in 2008, the European JV entered into a purchase and sale agreement to buy the Puppet Portfolio from the Whitehall/Gengate Venture for €565 million. Koger and Molinaro Koger acted as the broker for the Whitehall/Gengate Venture, and thus stood to make a considerable broker's fee upon consummation of the transaction.

107. The transaction never closed; as a result, Molinaro Koger did not receive a broker's fee.

Robert Koger and Molinaro Koger Introduce Host to Berkeley and an Opportunity to Purchase the B2/B3 Notes

108. The Puppet Portfolio serves as collateral for a €426 million loan that originally was made on August 29, 2007 from Credit Suisse International ("Credit Suisse") to an entity known as W2005/Thirty-Four B.V. (the "Credit Suisse Loan").

109. There are several debt tranches that comprise the Credit Suisse Loan – A1 and A2 tranches and three tranches of subordinate debt called the B1, B2, and B3 tranches. All of the tranches of debt are secured by the Puppet Portfolio.

110. Sometime in March 2009, Koger contacted Host, marketing the notes for the B2 and B3 debt tranches (the "B2/B3 Notes"). Koger told Host that a company called Berkeley Investments LLC ("Berkeley") was going to acquire a portfolio of notes from Credit Suisse that included the B2/B3 Notes. Koger said that Berkeley was not in the business of owning hotel debt and thus was interested in selling the B2/B3 Notes. Host

was made to understand that Berkeley was being forced to take the B2/B3 Notes as part of its acquisition.

111. Host requested from Koger more information about Berkeley. In response, Koger represented that Berkeley was a private family office that managed money for high net worth individuals in New York. Koger said John Lovell was Berkeley's president.

112. On March 21, 2009, Lovell emailed Host representing that Berkeley had purchased a pool of mortgage investments, including a portfolio with the B2/B3 Notes. According to Lovell, the seller required Berkeley to acquire the B2/B3 Notes "as part of our larger transaction." As Koger had predicted, Lovell inquired if Host was interested in purchasing the portfolio once Berkeley had closed on the transaction, saying that Berkeley's specialty was in "office and retail, not hospitality." Therefore, Berkeley was looking "to move these [the B2/B3 Notes] quickly."

113. Lovell and Host continued to exchange emails throughout March and April regarding the sale of the B2/B3 Notes. At one point, Host had a telephone conversation with a man who represented that he was Lovell.

114. After weeks of negotiation, Berkeley asked for a minimum of €21 million for the B2/B3 Notes. Host was not prepared to meet this purchase price and thus passed on the offer.

Robert Koger and Molinaro Koger Advise Host on the Purchase of the B2/B3 Notes

115. Sometime in March or April 2010, as market conditions strengthened, Koger contacted Host again to market the B2/B3 Notes. According to Koger, Berkeley

had acquired the B2/B3 Notes, but then sold them with a repurchase right to Algonquin, S.A. (“Algonquin”), a Paris and Brussels-based hotel management company. Koger represented that Berkeley had a buyback option that it could exercise, but that the option would soon expire.

116. Host negotiated with Berkeley concerning the purchase price for the B2/B3 Notes through Koger. Berkeley demanded €45 million, while Host countered with €35 million. The parties eventually settled on a purchase price of €39.65 million.

117. On March 20, 2010, Lovell of Berkeley sent Host a draft purchase and sale agreement with the compromise purchase price of €39.65 million. According to the draft agreement, Berkeley assigned its right to purchase the B2/B3 Notes to a separate entity, but was acquiring the Notes pursuant to a buyback option.

118. The parties negotiated the terms of the purchase and sale agreement. Berkeley’s U.S. counsel on the deal was Fox Rothschild, the same law firm that represented the purchasers in the Dulles/Stamford and Dearborn Transactions.

119. On March 28, 2010, Host asked Koger for details concerning the debt on the Puppet Portfolio and Berkeley’s involvement with the B2/B3 Notes. In response, Koger represented that Berkeley had an assignment right and exercised a buyback option. Specifically, Koger wrote:

> I believe that Berkeley assigned their right to purchase to Arcadia in May of 2009. Arcadia acquired them through three of their funds which are named Fir Tree Partners. They also brought in an operating partner which owns a minority share in the notes. The name of this company is Algonquin SA. . . . Berkeley has exercised its buyback option. I believe they have to complete this by the 9th of April.

See Exhibit L.

120. In reliance on Koger's representation that Berkeley's buyback option would soon expire, Host quickly drafted and negotiated terms to purchase the B2/B3 Notes.

121. At some point, Berkeley created B2B3 Puppet to sell the B2/B3 Notes. Berkeley was the sole member of B2B3 Puppet. Similarly, Host created HHR to purchase and hold the B2/B3 Notes.

122. On April 13, 2010, HHR entered into an Agreement of Sale to purchase the B2/B3 Notes from B2B3 Puppet for €39.65 million (the "Puppet PSA," attached hereto as Exhibit M). The B2B3 Puppet signatory was Jonathan Propp, the purported president of B2B3 Puppet. Propp also signed the transfer certificates. Host and HHR believed that B2B3 Puppet would sell the B2/B3 Notes to HHR immediately after Berkeley acquired the B2/B3 Notes from Algonquin by exercising its buyback option.

123. As part of the sale, B2B3 Puppet was required to execute two accession deeds to the intercreditor deeds certifying that the B2/B3 Notes were being transferred from B2B3 Puppet to HHR. These accession deeds were signed by Propp and witnessed by Lovell. On the accession deeds, Lovell's address was listed as 500 West End, Suite 2A, New York, New York 10019. This address, in fact, was the home address of Alan Kanders, one of the bidders in the Dearborn Transaction.

124. B2B3 Puppet and HHR entered into an agreement appointing Squire, Sanders & Dempsey as the escrow agent on the transaction. Similar to the accession deeds, the escrow agreement was signed by Propp and witnessed by Lovell, whose

address was listed as 500 West End, Suite 2A, New York, New York 10019 – again, Kanders' home address.

Creation of the B2/B3 Transaction Implied Brokerage Agreement Between Host and Molinaro Koger

125. During the negotiation and sale of the B2/B3 Notes (the "B2/B3 Transaction"), Host and Molinaro Koger had an implied-in-fact contractual arrangement whereby Molinaro Koger, acting principally through Koger, advised Host and provided brokerage services in return for a broker's fee (the "B2/B3 Implied Brokerage Agreement"). As in all contracts with Host prior to the B2/B3 Transaction, Molinaro Koger was obligated to disclose material information and help Host identify and obtain the best deal possible, in this case the lowest price available for purchase of the B2/B3 Notes. The agreement also called for Molinaro Koger to consult with Host concerning the value of the B2/B3 Notes, negotiate the purchase price of the B2/B3 Notes, and advise Host on the structure of the transaction. In return, Host agreed to pay Molinaro Koger a €594,750 advisory fee (approximately $808,000). These terms were consistent with Host's prior brokerage agreements with Molinaro Koger and were manifested in the conduct of the parties throughout the B2/B3 Transaction, including Host's payment of the €594,750 advisory fee. *See* Exhibit N.

126. Koger and Molinaro Koger acted as Host's limited or special agents in advising Host during the B2/B3 Transaction. Koger and Molinaro Koger understood that they were acting as Host's advisors with respect to the B2/B3 Transaction. Moreover, Koger repeatedly responded to Host's instructions, manifesting his agreement that he was acting on Host's behalf. Finally, Host entrusted Koger with its confidential marketing

strategy, approached Koger for advice on the valuation of the Puppet Portfolio and the B2/B3 Notes, and negotiated the purchase price with Berkeley through Koger, all of which altered Host's legal relations.

127. As the advisor for Host throughout the B2/B3 Transaction, Koger and Molinaro Koger learned of Host's and HHR's approach to valuing the B2/B3 Notes and understood Host's confidential acquisition strategy. They thus knew the price that Host and HHR were willing to pay for the B2/B3 Notes.

In Violation of Their Fiduciary Duties, Robert Koger and Molinaro Koger Fail to Disclose Their Relationship to Propp and Berkeley, Deceive Host about Berkeley's Ownership Interest in the B2/B3 Notes, and Use Host's Confidential Marketing Strategy to Induce Host and HHR to Buy the B2/B3 Notes

128. At no point during the B2/B3 Transaction did Koger or anyone else at Molinaro Koger disclose to Host their significant connections to Berkeley, which included:

a. Propp, the purported president of Berkeley, is the former Chief Operating Officer of Molinaro Koger and currently works in Molinaro Koger's office in Vienna, Virginia;

b. Propp is the co-worker of Lloyd who called the Washington County, Maryland, police department and reported Lloyd's absence from work the day that Lloyd was found dead;

c. Berkeley represented that it was a member of Dearborn LLC in the Dearborn Transaction and filed an application for Dearborn LLC to transact business in Michigan. Berkeley's business address in that document is 2081 Hunters Creek, Vienna, VA 22181, which is the home address of Koger's ex-wife, Carol Koger;

d. On May 5, 2010, Koger signed and submitted with the State of Virginia a change in address form for "Berkeley Investments, LLC." Koger represented in the submission that he was a member of Berkeley Investments, LLC;

e. No publicly available information has been located to verify the existence of "John Lovell;" and

f. The business address for Lovell on the accession deeds is not that of Berkeley, but rather the home address for Alan Kanders, a former Lehman Brothers Managing Director who bid on The Ritz-Carlton, Dearborn.

129. In fact, Koger made affirmative statements to Host and HHR that misled them into believing that Berkeley was a third-party entity without any relationship with Koger or Molinaro Koger. For example:

a. In March 2009, Koger told Host that Berkeley was going to acquire the B2/B3 Notes from Credit Suisse, that it was not in the business of purchasing hotels, and was interested in selling the B2/B3 Notes;

b. Koger represented to Host that Berkeley was a private family office that managed money for high net worth individuals in New York;

c. Koger told Host and HHR that Berkeley assigned its right to purchase to Arcadia/Algonquin and that Berkeley had exercised its buyback option; and

d. Koger informed Host and HHR in March 2010 that Berkeley was under time pressure to exercise its buyback option.

130. Contrary to Koger's and Berkeley's representations, Berkeley never purchased the B2/B3 Notes in 2009 and at no point had a buyback option to reacquire the B2/B3 Notes. Instead, on the same day that Berkeley resold the B2/B3 Notes to HHR, Berkeley purchased them directly from a group of holding companies connected to a partnership comprised of Algonquin and Fir Tree Partners, a private investment firm controlled by Jeffrey Tanenbaum. The Algonquin/Fir Tree partnership had acquired the B2/B3 Notes directly from Credit Suisse in September 2009 with the intention of keeping the notes. At no point in 2009 did Berkeley own the B2/B3 Notes or assign an interest in the notes to Algonquin or a company related to Algonquin.

131. Berkeley acquired the B2/B3 Notes through Lawyer, who approached Algonquin in March or April of 2010 about the B2/B3 Notes and negotiated the purchase of the notes. Algonquin was under the belief that Lawyer was a "front man" for Host.

132. Koger, acting on behalf of Molinaro Koger as a paid advisor to Host, was privy to Host's and HHR's confidential negotiating strategy. Koger had a duty to assist Host to negotiate the best price for the securities. Instead, using Host's confidential information, Koger arranged for Berkeley to offer to sell the debt securities to Host and HHR at a price that Koger knew Host and HHR would be willing to pay. Once Host and HHR accepted that price, Berkeley purchased the debt securities from Algonquin at a lower price and immediately resold them to Host and HHR at a profit.

133. At no point during the B2/B3 Transaction did Koger or anyone else at Molinaro Koger disclose to Host or HHR that Algonquin was prepared to sell the B2/B3 Notes at a price less than €39.65 million.

134. Koger and Molinaro Koger were thus able to use Berkeley to simultaneously purchase the B2/B3 Notes from a third-party and resell them to Host and HHR at a mark-up.

COUNT I

Negligence – Breach of the Fiduciary Duty of Loyalty and Good Faith

(Against Robert Koger and Molinaro Koger)

135. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 134.

136. In the transactions described herein, Koger acted on behalf of Molinaro Koger and had the power to bind Molinaro Koger.

137. Host had a fiduciary relationship with Koger and Molinaro Koger during the Dulles/Stamford, Dearborn, and B2/B3 Transactions under the common law for real estate brokers and implied agency relationships, as well as MD. CODE. ANN., BUS. OCC. & PROF. §§ 17-101–702 (2011) and MD. CODE REGS. 9.11.01-09 (2011).

138. As licensed real estate brokers and agents, Koger and Molinaro Koger owed Host fiduciary duties of loyalty and good faith, under which they were obligated to disclose material information and avoid any self-interest or self-dealing.

139. As described herein, Koger and Molinaro Koger negligently breached their fiduciary duties of loyalty and good faith to Host during the Dulles/Stamford, Dearborn, and B2/B3 Transactions by engaging in self-dealing, making misrepresentations, and failing to disclose to Host material information and conflicts of interest, including but not limited to:

a. Failing to disclose Koger's or Molinaro Koger's significant connections with the contracting parties in the Dulles/Stamford, Dearborn, and B2/B3 Transactions: Scioto, Dearborn LLC, Berkeley, and B2B3 Puppet (hereinafter the "front companies");

b. Failing to disclose Koger's or Molinaro Koger's relationship with or control over Gestin LLC;

c. Failing to disclose Koger's or Molinaro Koger's relationship with Lawyer, Lloyd, and Propp;

d. Failing to disclose the existence of third parties who were prepared to pay more for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn than the price Host ultimately received, including, *inter alia*, SHLP, the Artery/Pinnacle Venture, and 2010 Dearborn Investment, LLC;

e. Failing to disclose the resale of the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn to third parties who were prepared to pay more for the properties than what Host received;

f. Failing to disclose the existence of other bidders who were interested in purchasing or who made offers on the Dulles Marriott, Stamford Sheraton or The Ritz-Carlton, Dearborn;

g. Failing to disclose Molinaro Koger's role as escrow agent in connection with the resale of The Ritz-Carlton, Dearborn from Dearborn LLC to 2010 Dearborn Investment, LLC;

h. Failing to disclose Molinaro Koger's role as escrow agent in connection with Scioto's resale of its membership interests in SHM to a third party;

i. Failing to disclose Berkeley's plan to purchase the B2/B3 Notes from Algonquin without any buyback right and then immediately resell them to Host and HHR;

j. Failing to disclose that the B2/B3 Notes were available from Algonquin or entities connected to Algonquin, thereby depriving Host and HHR of the opportunity to acquire the B2/B3 Notes at a potentially lower price; and

k. Failing to disclose that Lawyer and entities with significant connections to Koger or Molinaro Koger stood to profit from the flips of the properties and the B2/B3 Notes.

140. Koger and Molinaro Koger also negligently breached their fiduciary duties of loyalty and good faith to Host during the Dulles/Stamford, Dearborn, and B2/B3 Transactions by misleading Host into believing that, among other things:

a. Scioto, Dearborn LLC and Berkeley were third-party entities with no connection or relationship to Koger or Molinaro Koger;

b. An affiliate of Scioto would manage the Stamford Sheraton;

c. Capital Hospitality had an ownership or managerial role with regard to the Dulles Marriott at the time Host entered into the Second Dulles/Stamford PSA; and

d. Berkeley had once owned the B2/B3 Notes and that it retained a right to buy back those Notes from Algonquin.

141. Had Koger and Molinaro Koger disclosed the material information and conflicts of interest described herein, and not made misleading statements, Host would have re-evaluated its options, pursued the higher offers from the Artery/Pinnacle Venture, SHLP, and 2010 Dearborn Investment, LLC, or at least sought to sell the properties at or above the higher offers. Moreover, Host would not have purchased the B2/B3 Notes from Berkeley at a mark-up but instead would have gone directly to Algonquin to purchase the Notes.

142. As a result of Koger's and Molinaro Koger's negligence in failing to meet their fiduciary duties of loyalty and good faith, Host has been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

143. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT II

Negligence – Breach of Statutory Duties of Care

(Against Robert Koger and Molinaro Koger)

144. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 143.

145. In the transactions described herein, Koger acted on behalf of Molinaro Koger and had the power to bind Molinaro Koger.

146. As licensed real estate brokers, Koger and Molinaro Koger owed Host duties of care to, among other things, protect and promote Host's interests; act with absolute fidelity toward Host; disclose material information to Host concerning the Dulles/Stamford, Dearborn, and B2/B3 Transactions; avoid willful misrepresentations to Host; avoid any dishonest, fraudulent, or improper dealings; and disclose to Host any interests that Koger, Molinaro Koger, an employee of Molinaro Koger, or an entity in which Koger or Molinaro Koger had an ownership interest, had with Scioto, Dulles Suites LLC, SHM, Dearborn LLC, Berkeley, or B2B3 Puppet. MD. CODE. ANN., BUS. OCC. & PROF. §§ 17-101–702 (2011); MD. CODE REGS. 09.11.01-09 (2011).

147. As described herein, Koger and Molinaro Koger negligently breached these statutory duties of care to Host by engaging in self-dealing, making misrepresentations, and failing to disclose to Host material information and conflicts of interest.

148. Had Koger and Molinaro Koger complied with their statutory duties of care, Host would have re-evaluated its options, pursued the higher offers from the Artery/Pinnacle Venture, SHLP, and 2010 Dearborn Investment, LLC, or at least sought to sell the properties at or above the higher offers. Moreover, Host would not have purchased the B2/B3 Notes from Berkeley at a mark-up but instead would have gone directly to Algonquin to purchase the Notes.

149. As a result of Koger's and Molinaro Koger's negligence in failing to meet their statutory duties, Host has been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

150. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT III

Breach of the Fiduciary Duty of Loyalty and Good Faith

(Against Robert Koger and Molinaro Koger)

151. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 150.

152. As licensed real estate brokers and agents – and thus fiduciaries – Koger and Molinaro Koger owed Host duties of loyalty and good faith, under which they were obligated to disclose material information and avoid any self-interest or self-dealing.

153. As described herein and in detail in Count I, Koger and Molinaro Koger breached their fiduciary duties of loyalty and good faith to Host during the Dulles/Stamford, Dearborn, and B2/B3 Transactions by engaging in self-dealing, making misrepresentations, and failing to disclose to Host material information and conflicts of interest.

154. Koger and Molinaro Koger also breached their fiduciary duties of loyalty and good faith to Host during the Dulles/Stamford, Dearborn, and B2/B3 Transactions by making the misleading statements described in Count I. Most egregiously, Koger and Molinaro Koger misled Host into believing that Scioto, Dearborn LLC and Berkeley were third-party entities with no connection or relationship to Koger or Molinaro Koger.

155. Had Koger and Molinaro Koger disclosed the material information and conflicts of interest described herein, and not made misleading statements, Host would have re-evaluated its options, pursued the higher offers from the Artery/Pinnacle Venture, SHLP, and 2010 Dearborn Investment, LLC, or at least sought to sell the properties at or above the higher offers. Moreover, Host would not have purchased the B2/B3 Notes from Berkeley at a mark-up but instead would have gone directly to Algonquin to purchase the Notes.

156. As a result of Koger's and Molinaro Koger's failure to meet their fiduciary duties of loyalty and good faith, Host has been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

157. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT IV

Fraud – Intentional Misrepresentation

(Against Robert Koger and Molinaro Koger)

158. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 157.

159. Koger and Molinaro Koger have engaged in an ongoing course of conduct that constitutes fraud, to wit, making false representations of material facts to Host and HHR in the course of the Dulles/Stamford, Dearborn, and B2/B3 Transactions, including but not limited to:

a. False statements and other half-truths that made the front companies appear as third parties unrelated to Koger or Molinaro Koger, including, *inter alia*, those statements described in paragraphs 53, 95, and 129;

b. False statements and other half-truths that the Stamford Sheraton was not going to be flipped, and that Scioto would still manage or control the property; and

c. False statements and other half-truths about Berkeley and its acquisition of the B2/B3 Notes, including but not limited to: (1) that Berkeley was a private family office that managed money for high net worth individuals in New York; (2) that in 2009, Berkeley either acquired the B2/B3 Notes and sold them to Algonquin or assigned its right to purchase the Notes to Algonquin; (3) that in 2010, Berkeley had a buyback option or a repurchase right to acquire the B2/B3 Notes; and (4) that Berkeley's right to exercise its buyback option expired in April 2010.

160. Koger and Molinaro Koger knew that these statements were false when they made them, or at the very least, made the statements with reckless disregard for their truth. They also made the false representations intending to deceive and defraud Host and HHR.

161. Host and HHR relied on Koger's and Molinaro Koger's false representations in carrying out the Transactions. This reliance was justifiable due to Koger's and Molinaro Koger's role as real estate brokers, Host's fiduciary relationship with Koger and Molinaro Koger, the understanding in the hospitality industry that a broker has a duty to act in good faith in his client's interest, and the long-standing broker-client relationship between Host and Koger and Molinaro Koger.

162. As a direct and proximate result of Koger's and Molinaro Koger's fraudulent acts, Host and HHR have been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

163. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host and HHR, so as to justify an award of exemplary or punitive damages.

COUNT V

Fraud – Concealment

(Against Robert Koger and Molinaro Koger)

164. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 163.

165. As fiduciaries, Koger and Molinaro Koger owed Host duties of loyalty and good faith, under which they were obligated to disclose material information and avoid

any self-interest or self-dealing. Koger and Molinaro Koger also owed Host various disclosure obligations under Maryland common and statutory law.

166. Koger and Molinaro Koger have defrauded Host by intentionally concealing from it material information relating to the Dulles/Stamford, Dearborn, and B2/B3 Transactions, including but not limited to the information described in Count I.

167. Koger and Molinaro Koger intended to defraud or deceive Host. They knew that Host, had it known of the undisclosed information, would have acted differently and would not have carried out the Transactions under the terms of the Second Dulles/Stamford, Dearborn, and Puppet PSAs.

168. Host relied on Koger's and Molinaro Koger's concealment of material information in carrying out the Transactions. This reliance was justifiable due to Koger's and Molinaro Koger's role as real estate brokers, their fiduciary relationship with Host, the understanding in the hospitality industry that a broker has a duty to act in good faith, and the long-standing broker-client relationship between Host and Koger and Molinaro Koger.

169. As a direct and proximate result of Koger's and Molinaro Koger's concealment of material information, Host has been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

170. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT VI

Negligent Misrepresentation

(Against Robert Koger and Molinaro Koger)

171. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 170.

172. As fiduciaries and Maryland real estate brokers, and under Maryland statutory law, Koger and Molinaro Koger owed duties of care to Host to make accurate and truthful statements in providing real estate brokerage services and disclose all material information.

173. As described herein, Koger and Molinaro Koger negligently asserted false statements and half-truths to Host and negligently failed to disclose material information in connection with the Dulles/Stamford, Dearborn, and B2/B3 Transactions, despite a duty to disclose. Most egregiously, Koger and Molinaro Koger negligently misrepresented that Host was receiving maximum value for the properties and the B2/B3 Notes when Koger and Molinaro Koger knew that the front companies that they had significant connections with could immediately sell the properties and the B2/B3 Notes to third parties at a higher price.

174. As broker and advisor providing real estate brokerage services, Koger and Molinaro Koger intended for Host to rely on their negligent misrepresentations and omissions of material information.

175. Koger and Molinaro Koger knew that Host would probably rely on their negligent misrepresentations and omissions of material information in deciding when to sell the hotels or purchase the B2/B3 Notes, and the price at which to sell or buy these assets.

176. Host justifiably relied on Koger's and Molinaro Koger's negligent misrepresentations and omissions of material information in carrying out the Transactions.

177. As a direct and proximate result of Koger's and Molinaro Koger's negligent misrepresentations and omissions, Host has been damaged by, *inter alia*, paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

178. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT VII

Constructive Fraud

(Against Robert Koger and Molinaro Koger)

179. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 178.

180. As described herein, Koger and Molinaro Koger, as fiduciaries to Host, owed Host legal duties of loyalty and good faith, including the duty to disclose material information and avoid self-dealing.

181. Koger and Molinaro Koger took advantage of this relationship of trust and confidence and violated their fiduciary duties to Host.

182. Koger's and Molinaro Koger's conduct is fraudulent, irrespective of their purpose in committing the acts, because it has a tendency to deceive Host and others, violate the trust inherent in the broker-client relationship, violate public and private confidence, and injure the public interest.

183. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages, in an amount to be proven at trial, but in excess of $30,000.

COUNT VIII

Tortious Interference with Prospective Economic Advantage

(Against Robert Koger and Molinaro Koger)

184. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 183.

185. In selling properties, Host had a valid business expectancy to sell its properties for their true value or to purchasers who made the best offers for the properties at the highest purchase prices.

186. As real estate brokers, Koger and Molinaro Koger knew that Host had a business expectancy to sell Host's properties for their true value and/or to the bidders with the best offers.

187. With regard to the B2/B2 Notes, Host and HHR had extensive knowledge of the Puppet Portfolio, and had valid business expectancies that Host's broker, after bringing the opportunity to Host, would direct Host and HHR to the actual owners of the Notes. Koger and Molinaro Koger also knew that Host and HHR had business expectancies to purchase the B2/B3 Notes from the actual owner of the Notes.

188. Despite knowing of Host's and HHR's prospective economic advantage, Koger and Molinaro Koger intentionally interfered with this advantage by making false representations and actively concealing material information. Most egregiously, Koger and Molinaro Koger withheld from Host and HHR (1) other, more lucrative offers for purchase of the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and

(2) the opportunity to purchase the B2/B3 Notes directly from Algonquin, all for a desire to realize profit for companies with significant connections to Koger or Molinaro Koger.

189. Absent Koger's and Molinaro Koger's false representations and concealment of material information, Host and HHR would have found those companies that were willing to purchase the Dulles Marriott, Stamford Sheraton, and Dearborn properties at a higher price and would have purchased the B2/B3 Notes directly from Algonquin at a lower price.

190. As a result of Koger's and Molinaro Koger's interference with prospective economic advantage, Host and HHR have been damaged by, *inter alia*, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties and paying a mark-up on the B2/B3 Notes as a result of not purchasing the Notes directly from Algonquin. The amount of damages will be proven at trial but exceeds $30,000.

191. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, recklessness, and in conscious disregard of the rights of Host and HHR, so as to justify an award of exemplary or punitive damages.

COUNT IX

Breach of the Implied Brokerage Agreements

(Against Molinaro Koger)

192. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 191.

193. As explained in detail in paragraphs 28-29, 49, 67-69, 83, and 125, Host and Molinaro Koger entered into the Dulles/Stamford, Dearborn, and B2/B3 Implied Brokerage Agreements. Molinaro Koger performed many of the duties that it customarily provided in the written brokerage contracts that it had entered into with Host, while Host paid Molinaro Koger for the services it rendered. The mutual intent to contract and the terms of the contract are thus implied by the parties' conduct.

194. Host has in good faith performed its contractual obligations by paying Molinaro Koger the agreed upon commissions.

195. One of the terms of the Implied Brokerage Agreements required Molinaro Koger to perform its services consistent with the standards customarily employed by brokerage firms in the real estate brokerage industry. Thus, Molinaro Koger was obligated to forward all offers, disclose to Host all material information relating to the Transactions, and help Host identify and obtain the best possible deal for the sale of the hotels and purchase of the B2/B3 Notes.

196. Under the Implied Brokerage Agreements, Molinaro Koger also acted as Host's exclusive real estate broker. Under Maryland common and statutory law, Molinaro Koger thus owed Host fiduciary duties of loyalty and good faith, under which it was obligated to disclose material information and avoid any self-interest or self-dealing.

197. In material breach of the Dulles/Stamford and Dearborn Implied Brokerage Agreements, Molinaro Koger made misleading statements to Host, failed to forward all offers to Host, failed to disclose all material information to Host, and failed to disclose Molinaro Koger's or Koger's relationship with the front companies.

198. In material breach of the B2/B3 Implied Brokerage Agreement, Molinaro Koger failed to disclose to Host Molinaro Koger's or Koger's relationship with Berkeley and the opportunity to purchase the B2/B3 Notes directly from Algonquin or entities connected with Algonquin at a lower price.

199. Molinaro Koger's actions described herein also constitute a breach of the implied covenant of good faith and fair dealing present by law in the Implied Brokerage Agreements. Molinaro Koger engaged in wrongful and fraudulent conduct to realize profit for individuals or entities related to itself at the expense of Host.

200. As a result of Molinaro Koger's material breaches of the Implied Brokerage Agreements, Host has been damaged by, *inter alia,* paying broker's fees to Molinaro Koger, not receiving the price paid to the front companies for the Dulles Marriott, Stamford Sheraton, and The Ritz-Carlton, Dearborn and/or the true value of the properties, and paying a mark-up to Berkeley as a result of the flip of the B2/B3 Notes. The amount of damages will be proven at trial but exceeds $30,000.

COUNT X

Torts Arising From Breach of Implied Brokerage Agreements

(Against Molinaro Koger)

201. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 200.

202. As explained herein, Host and Molinaro Koger entered into the Dulles/Stamford, Dearborn, and B2/B3 Implied Brokerage Agreements, the terms of

which were implied by the conduct of the parties during the Dulles/Stamford, Dearborn, and B2/B3 Transactions.

203. Molinaro Koger materially breached its duties to Host under the Implied Brokerage Agreements by making misleading statements to Host, failing to forward all offers to Host, and failing to disclose to Host: (1) all material information relating to the Transactions; (2) Molinaro Koger's or Koger's control over or relationship with the front companies and Berkeley; and (3) the opportunity to purchase the B2/B3 Notes directly from Algonquin or entities connected with Algonquin at a lower price.

204. Molinaro Koger's breach of its contractual duties also constitutes tortious conduct, including negligent breach of fiduciary duties, negligent breach of statutory duties of care, fraud, concealment, negligent misrepresentation, and constructive fraud.

205. In doing the acts alleged herein, Koger and Molinaro Koger acted with fraud, malice, and recklessness, in conscious disregard of the rights of Host, so as to justify an award of exemplary or punitive damages.

COUNT XI

Unjust Enrichment

(Against Robert Koger and Molinaro Koger)

206. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 205.

207. To the extent that Host did not have a contractual relationship with Molinaro Koger during one or all of the transactions described herein, Koger and Molinaro Koger are liable to Host and HHR for unjust enrichment.

208. As a result of Koger's and Molinaro Koger's wrongful and fraudulent conduct in connection with the Dulles/Stamford, Dearborn, and B2/B3 Transactions, Host and HHR conferred a benefit upon Koger and Molinaro Koger in the form of broker's fees and profits that they earned from the Transactions through the front companies.

209. At all times, Koger and Molinaro Koger knew of and appreciated the benefit conferred on them by Host and HHR.

210. Given Koger's and Molinaro Koger's wrongdoing and fraud in connection with the Transactions, it would be inequitable for them to retain any benefit from them. Accordingly, Host and HHR are entitled to restitution from Koger and Molinaro Koger in the manner and amount necessary to prevent unjust enrichment, including all broker's fees paid on the Transactions and any proceeds that Koger and Molinaro Koger received from the flips of the hotels and the B2/B3 Notes through the front companies, in an amount to be determined at trial, but in excess of $30,000.

COUNT XII

Unjust Enrichment

(Against Scioto, Berkeley, and B2B3 Puppet)

211. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 210.

212. Separate and apart from the Second Dulles/Stamford PSA and the Puppet PSA, Scioto, Berkeley, and B2B3 Puppet were unjustly enriched as a result of Koger's

and Molinaro Koger's use of their contractual and business relationship with Host to defraud and harm Host and HHR.

213. As a result of Koger's and Molinaro Koger's wrongful and fraudulent conduct, Host conferred a benefit upon Scioto in the form of properties that were worth more on the market than their purchase prices. Scioto immediately flipped the properties to the Artery/Dulles Venture and SHLP for a substantial profit, a profit margin that Host should have received.

214. As a result of Koger's and Molinaro Koger's wrongful and fraudulent conduct, Host and HHR conferred a benefit upon Berkeley and B2B3 Puppet in the form of a substantial mark-up on the B2/B3 Notes that Berkeley and B2B3 Puppet otherwise would not have received. The entities further profited from Berkeley's own wrongful and fraudulent conduct in misleading Host and HHR into believing that Berkeley had a buyback option and/or repurchase right, when in fact Berkeley had no legal right to purchase the B2/B3 Notes from the Algonquin/Fir Tree partnership.

215. At all times, Scioto, Berkeley, and B2B3 Puppet knew of and appreciated the benefit conferred upon them by Host and HHR.

216. Given Koger's and Molinaro Koger's wrongdoing and fraud in connection with the Dulles/Stamford and B2/B3 Transactions, and Berkeley's and B2B3 Puppet's significant connections with Koger or Molinaro Koger, it would be inequitable for Scioto, Berkeley, or B2/B3 Puppet to retain any benefit from the Transactions. Accordingly, Host and HHR are entitled to restitution from Scioto, Berkeley, and B2B3 Puppet in the manner and amount necessary to prevent unjust enrichment, including the proceeds

generated from the flips of the Dulles Marriott and Stamford Sheraton (as applied to Scioto) and the flip of the B2/B3 Notes (as applied to Berkeley and B2B3 Puppet), in an amount to be determined at trial, but in excess of $30,000.

COUNT XIII

Unjust Enrichment

(Against Dearborn LLC)

217. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 216.

218. Separate and apart from the Dearborn PSA, Dearborn LLC was unjustly enriched as a result of Koger's and Molinaro Koger's use of their contractual and/or business relationship with Host to defraud and harm Host.

219. As a result of Koger's and Molinaro Koger's wrongful and fraudulent conduct, Host conferred a benefit upon Dearborn LLC in the form of a property that was worth more on the market than its purchase price. Dearborn LLC immediately flipped the property to 2010 Dearborn Investment, LLC for a substantial profit, a profit margin that Host should have received.

220. Dearborn LLC was also unjustly enriched by virtue of the business relationship between itself and Host. The Dearborn PSA and other agreements signed by Lloyd on behalf of Dearborn LLC were *void ab initio* because they were signed by Lloyd after his death and are thus forgeries. As a result, Host conferred a benefit upon Dearborn LLC by selling it The Ritz-Carlton, Dearborn for a lower price than the true

value of the property or what Host could have gotten from 2010 Dearborn Investment, LLC.

221. At all times, Dearborn LLC knew of and appreciated the benefit conferred upon it by Host.

222. Given Koger's and Molinaro Koger's wrongdoing and fraud in connection with the Dearborn Transaction, Dearborn LLC's significant connections with Koger or Molinaro Koger, and the fact that the Dearborn PSA is *void ab initio*, it would be inequitable for Dearborn LLC to retain any benefit from the Transaction. Accordingly, Host is entitled to restitution in the manner and amount necessary to prevent unjust enrichment, including the proceeds generated from the flip of The Ritz-Carlton, Dearborn to 2010 Dearborn Investment, LLC and/or rescissional damages measured by the difference between the fair market value of The Ritz-Carlton, Dearborn exchanged as a result of the fraud minus the amount that Dearborn LLC paid to Host for the property, in an amount to be determined at trial, but in excess of $30,000.

COUNT XIV

Civil Conspiracy

(Against Robert Koger, Molinaro Koger, Scioto, Dearborn LLC, Berkeley, and B2B3 Puppet)

223. Host and HHR incorporate by reference the allegations contained in paragraphs 1 through 222.

224. In violation of the common law, Koger, Molinaro Koger, and Scioto agreed to and acted together in a conspiracy to defraud Host, tortiously interfere with Host's prospective economic advantage to sell the Dulles Marriott and Stamford Sheraton

for their true value and/or to the bidders with the best offers, and unjustly enrich Scioto at Host's expense.

225. In violation of the common law, Koger, Molinaro Koger, and Dearborn LLC agreed to and acted together in a conspiracy to defraud Host, tortiously interfere with Host's prospective economic advantage to sell The Ritz-Carlton, Dearborn for its true value and/or to the bidder with the best offer, and unjustly enrich Dearborn LLC at Host's expense.

226. In violation of the common law, Koger, Molinaro Koger, Berkeley, and B2B3 Puppet agreed to and acted together in a conspiracy to defraud Host and HHR and unjustly enrich Berkeley at the expense of Host and HHR by manipulating the bidding process so that Host would purchase the B2/B3 Notes at a marked-up value.

227. As alleged herein, Defendants have committed intentional and overt acts in furtherance of the conspiracy.

228. As a direct and proximate result of these overt acts, Host and HHR have been damaged, in an amount to be determined at trial, but in excess of $30,000.

229. In doing the acts alleged herein, Defendants acted with fraud, malice, recklessness, and in conscious disregard for Host's and HHR's rights so as to justify an award of exemplary and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Host Hotels & Resorts, L.P. and HHR Holdings Coöperatief U.A. pray for the following relief:

1. Award monetary compensatory damages in an amount to be proven at trial;

2. Award exemplary or punitive damages in an amount to be proven at trial;

3. Award restitution and rescissional damages in an amount to be proven at trial;

4. Award Plaintiffs costs and reasonable attorneys' fees;

5. Award Plaintiffs pre- and post-judgment interest; and

6. Any such other and further relief as the Court may deem just and proper.

JURY DEMAND

Host and HHR hereby demand a trial by jury of all issues so triable.

3. Award restitution and rescissional damages in an amount to be proven at trial;

4. Award Plaintiffs costs and reasonable attorneys' fees;

5. Award Plaintiffs pre- and post-judgment interest; and

6. Any such other and further relief as the Court may deem just and proper.

JURY DEMAND

Host and HHR hereby demand a trial by jury of all issues so triable.

Dated: June 3, 2011

Respectfully submitted,

Michael S. Bailey
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 371-7000
Facsimile: (202) 661-2391
E-mail: michael.bailey@skadden.com

Michele A. Roberts (pro hac vice to be submitted)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 371-7000
Facsimile: (202) 661-2391
E-mail: michele.roberts@skadden.com

Attorneys for Plaintiffs Host Hotels & Resorts, L.P. and HHR Holdings Coöperatief U.A.