UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ITHACA CAPITAL INVESTMENTS I, S.A., ITHACA CAPITAL INVESTMENTS II, S.A., and ORESTES FINTIKLIS,

Civil Action No. 1:18-cv-390

Plaintiffs,

COMPLAINT

- against -

TRUMP PANAMA HOTEL MANAGEMENT LLC, and TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC,

Defendants.

----------x

Plaintiffs Ithaca Capital Investments I, S.A. ("Ithaca I"), Ithaca Capital Investments II, S.A. ("Ithaca II," and collectively with Ithaca I, "Ithaca"), and Orestes Fintiklis ("Fintiklis") (collectively with Ithaca, "Plaintiffs"), by and through their counsel Akerman LLP, hereby file their Complaint (the "Complaint") against defendants Trump Panama Hotel Management LLC and Trump International Hotels Management, LLC (collectively, "Defendants" or "Trump"), and allege as follows:

INTRODUCTION

1. This dispute concerns Trump's wrongful attempt to bully, intimidate and harass third-parties by attempting to join them to an arbitration pending before the International Chamber of Commerce (the "ICC") concerning Trump's mismanagement of the Trump International Hotel & Tower Panama ("Trump Panama Hotel" or "Hotel").

2. In doing so, Trump hopes that it can force the claimant in the arbitration proceeding – Hotel TOC, Inc. ("Hotel TOC") – to abandon its claims for more than $15 million in damages, avoid termination of the management agreement for the Hotel, and distract the arbitrators from its utterly incompetent management of the Hotel.

3. Rather than address the claims made against it in the arbitration, Trump responded by asserting absurd third-party RICO claims against Hotel TOC's beneficiaries – the Hotel's owners – as well as the other owners of condominium hotel units in the Hotel, and lawyers for Hotel TOC, among others. Aside from the fact that Trump's claims are entirely fictitious and frivolous, Trump has no arbitration agreement with these third-party respondents, much less an agreement that would permit the joinder of such claims in the existing arbitration.

4. As background, the Trump Panama Hotel is part of a 70-story, luxury mixed-use, multi-component tower located on the waterfront overlooking Panama Bay in the Punta Pacifica area of Panama City, Panama, which includes a hotel, residences, event space, restaurants, and casino. Trump manages the Hotel, which is governed by a hotel management agreement ("HMA"), dated April 11, 2008, as amended.[1]

5. In early 2017, Ithaca I acquired 202 of the 369 hotel units in the Trump Panama Hotel, and Ithaca II acquired the hotel amenities units, which includes the pool and restaurant spaces, among others. In connection with their acquisition of the majority of the units in the Trump Panama Hotel, Trump, Ithaca I, and Ithaca II entered into an Agreement in Connection with Bulk Sale (the "Bulk Sale Agreement"). A copy of the February 15, 2017 Bulk Sale Agreement is attached as **Exhibit B**.

6. The Bulk Sale Agreement includes an unequivocal, mandatory forum selection clause, which states that "[Trump, Ithaca I, and Ithaca II] … irrevocably submit and consent to the ***exclusive*** jurisdiction of the federal and state courts of the State of New York and agree that

[1] A true and correct copy of the relevant provisions of the Amended and Restated Hotel Management Agreement for Trump Ocean Club International Hotel & Tower among Trump Panama Hotel Management LLC, Newland International Properties Corp., Hotel TOC Inc. and Owners Meeting of the P.H. TOC is attached hereto as **Exhibit A** (without schedules).

all suits, actions or legal proceedings with respect to [the Bulk Sale Agreement] shall be brought only in the State of New York…." *See* Exhibit B at ¶ 9 (emphasis added).

7. Yet, despite this clear and unambiguous language making the ***courts of New York the exclusive jurisdiction*** for such disputes, Trump is attempting (through the assertion of third-party claims) to sue Plaintiffs for claims relating to the Bulk Sale Agreement by joining them to the pending ICC arbitration relating to Trump's gross mismanagement of the Trump Panama Hotel and its breach of the HMA (the "Arbitration"). A copy of the October 14, 2017 Request for Arbitration (without exhibits) is attached as **Exhibit C**.

8. Trump's allegations against the third-parties in the Arbitration are a conspicuous effort to bully the Hotel's owners into dropping their well-supported claims of mismanagement against Trump and to divert attention from Trump's failures as a hotel operator. To that end, Trump filed a ***73-page*** complaint in the Arbitration alleging an outlandish conspiracy theory that threatens these third-parties with damages of up to $150 million for conduct that amounts to a supermajority of the beneficiaries attending a meeting and voting (unanimously) to remove Trump as operator of the Trump Panama Hotel. A copy of Trump's December 4, 2017 Request for Joinder and Third-Party Claims (without exhibits) is attached as **Exhibit D**.

9. However, if Trump, ***as required by the Bulk Sale Agreement***, filed these claims in this Court, they would be dismissed at the outset and subject to Rule 11 of the Federal Rules of Civil Procedure. Indeed, as demonstrated by its December 4, 2017 filing, Trump is unable to defend against the claims of mismanagement, and, thus, Trump's only apparent defense is to deflect focus from the actual issues – Trump's mismanagement of the Trump Panama Hotel and the termination of its management agreement – and to create a circus by threatening Plaintiffs

(and others) with baseless fraud and conspiracy claims that entirely lack merit and have already been rejected by the Panamanian courts. In other words, Trump is being Trump.

10. Regardless of Trump's failed attempts at maintaining its flagging hotel brand, the simple fact remains: Trump cannot bring its claims against Plaintiffs in the Arbitration because there is no agreement to arbitrate in the Bulk Sale Agreement. *See* Ex. D at pp. 43-69 (each of the claims Trump is attempting to assert against Plaintiffs arises out of or relates to the Bulk Sale Agreement).

11. Plaintiffs, therefore, bring this action seeking a declaration that the Bulk Sale Agreement requires Trump to assert its claims against Plaintiffs – and any other claim arising from the Bulk Sale Agreement – in the state or federal courts of the State of New York and to enjoin Trump from asserting these claims in the ongoing Arbitration.

THE PARTIES

12. Plaintiff Ithaca Capital Investments I, S.A. is a Panamanian corporation, with its principal place of business at 2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama City, Republic of Panama. Ithaca I owns 202 units in the Trump Panama Hotel.

13. Plaintiff Ithaca Capital Investments II, S.A. is a Panamanian corporation, with its principal place of business at 2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama City, Republic of Panama. Ithaca II owns the Hotel Amenities Unit in the Trump Panama Hotel.

14. Plaintiff Orestes Fintiklis is a Cypriot citizen residing in Miami, Florida.

15. Defendant Trump Panama Hotel Management LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, New York 10022.

16. Defendant Trump International Hotels Management, LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, New York 10022. Upon information and belief, Trump International Hotels Management, LLC assigned certain of its interests in the HMA to Trump Panama Hotel Management LLC.

JURISDICTION AND VENUE

17. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 *et seq.* and Federal Rule of Civil Procedure 57, and for injunctive relief pursuant to Federal Rule of Civil Procedure 65(a).

18. Pursuant to 28 U.S.C. § 1332(a)(2), this Court has subject matter jurisdiction over this dispute because it is between citizens of a state, and citizens or subjects of a foreign state, and the amount in controversy exceeds $75,000, exclusive of interest and costs. Specifically, Trump seeks in the Arbitration the astronomical figure of "not less than $150,000,000 [One Hundred and Fifty Million U.S. Dollars]." *See* Ex. D at ¶¶ 187, 219, *in passim*.

19. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiffs' Complaint for declaratory judgment and injunctive relief necessarily presents questions of federal law because Trump's claims in the Arbitration against Plaintiffs include claims under the federal civil RICO statute, 18 U.S.C. § 1962(d). *See* Ex. D at pp. 43-52.

20. This Court has personal jurisdiction over Trump because Trump contractually consented to this Court's jurisdiction in the Bulk Sale Agreement. *See* Ex. C at ¶ 9. In addition, upon information and belief, Trump is domiciled in and/or conducts business in this District.

21. Pursuant to 28 U.S.C. § 1391(b)(1), venue is proper in this District because Trump resides in this District, and because Trump contractually consented to the venue of this judicial district in the Bulk Sale Agreement. *See* Ex. C at ¶ 9.

FACTUAL ALLEGATIONS

22. The Trump Panama Hotel consists of 369 Hotel Units and the Hotel Amenities Unit, each of which are owned by individual unit owners. To ensure effective management of the Hotel, these individual unit owners are beneficiaries in an entity known as the Hotel TOC Foundation (the "Foundation"), which in turn controls Hotel TOC – the claimant in the pending Arbitration. The beneficiaries exercise their ownership rights with respect to the Hotel through these entities, whose representatives are then charged with effectuating their decisions and directives.

23. On or about August 11, 2008, Hotel TOC and Trump entered into the HMA.

24. Pursuant to the HMA, among other things, Trump was obligated to run Trump Panama Hotel as a profitable, top-rated luxury hotel.

25. In exchange for properly managing the Trump Panama Hotel, Trump receives a management fee based on a percentage of the gross operating revenue from the Hotel and is entitled to receive an incentive fee if certain contractually prescribed benchmarks are met, as motivation for Trump to fully perform under the HMA.

26. Trump has materially breached its contractual and fiduciary obligations arising from the HMA by, among numerous other things, failing to develop an effective sales and marketing strategy to target the proper market, encourage group and contract business to engage in the Hotel, and to drive occupancy. The Hotel has steadily been losing market share and stands in last place among its peer luxury hotels in all the relevant metrics for success in the hotel industry. This decline in occupancy has had and continues to have a direct impact on the Hotel's bottom line. The resulting decline in revenues has been particularly precipitous in the past two years, which has left Hotel TOC to shoulder the financial burden of the Hotel on its own and to

the detriment of the owner beneficiaries, while Trump has lined its pockets with ill-gotten management fees.

A. Hotel TOC Commences an Arbitration Against Trump

27. On July 13, 2017 and August 27, 2017, among other instances, the beneficiaries, raised their concerns with Trump and implored it to cure its ongoing mismanagement of the Hotel. Notwithstanding these pleas, Trump's mismanagement continued to the detriment of Hotel TOC's beneficiaries.

28. Consequently, on October 3, 2017, Ithaca – the majority member of the beneficiaries – called a meeting of all the beneficiaries of the Foundation to discuss their investment in the Hotel.

29. The meeting of the Beneficiaries of the Foundation took place on October 14, 2017, at which seventy-eight (78) percent of the beneficiaries were present in person or by proxy (the "October Meeting"). At the October Meeting, the beneficiaries discussed the continued financial decline of the Hotel and Trump's material violations of the terms and conditions of the HMA, as well as breaches of Trump's fiduciary duties to Hotel TOC and the beneficiaries. Based on the beneficiaries' consideration and discussion of those breaches, the beneficiaries unanimously decided to terminate Trump's management of the Hotel and to take all actions necessary in connection with such termination.

30. Based on that decision, the beneficiaries also passed a resolution that authorized the Foundation to take all steps necessary to terminate Trump's management of the Trump Panama Hotel, and appointed Fintiklis to serve as the representative of the Foundation for that purpose, which included, among other things, commencing an arbitration before the ICC as provided under the HMA.

31. Specifically, Section 9.1 of the HMA provides:

> Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claims or disagreements arising out of or relating to the Agreement (singularly, a "Dispute", and collectively, "Disputes") shall be resolved in the following manner.
>
> 9.1.1 Either Party may submit the Dispute to the International Chamber of Commerce for binding arbitration under then existing ICC Commercial Arbitration Rules. …

See Ex. A.

32. That same day, pursuant to the beneficiaries' directives and binding resolution, Hotel TOC commenced the Arbitration against Trump for, among other things, Trump's numerous breaches of its contractual and fiduciary duties arising under the HMA. *See* Ex. C.

33. The Request for Arbitration asserts twelve (12) claims against Trump, each of which arises directly out of the HMA and Trump's failure to satisfy its obligations under that agreement. Hotel TOC seeks not less than $15 million in damages from Trump, and a declaration that Hotel TOC has the right to terminate Trump as Trump Panama Hotel's manager due to its gross mismanagement of the Hotel and breaches of its obligations under the HMA, among other things.

34. Unlike Hotel TOC, Plaintiffs are not parties to the HMA, nor are they signatories to the HMA. Consequently, Plaintiffs and Trump never agreed to arbitrate disputes between them arising from the HMA.

B. Trump Asserts Baseless Claims Relating to the Bulk Sale Agreement

35. On December 4, 2017, and as amended on December 5, 2017, Trump served Hotel TOC with its Answer and Counterclaims to the Request for Arbitration. *See* Ex. D.

Trump's submission included lengthy third-party claims against various non-party respondents, including the Plaintiffs. *Id.*[2]

36. What is immediately obvious from the first few pages of Trump's 73-page diatribe is that Trump's claims are focused on the Bulk Sale Agreement and the October Meeting – not the HMA, not Trump's mismanagement of the Hotel, and not Trump's (non-existent) efforts to remedy the harm that Trump has and is causing to the Hotel's owners.

37. Instead, Trump asserts fanciful and conspiratorial claims about whether the Hotel's unit owners – the actual owners of the Hotel itself – had the right to meet on October 14, 2017 and decide to terminate and remove Trump for its objectively horrific mismanagement of the Panama Trump Hotel.

38. However, Trump's decision to attack Plaintiffs and these third-parties for claims arising from the Bulk Sale Agreement, rather than addressing its mismanagement of the Hotel, is an act of self-sabotage that proves fatal to Trump's claims. Indeed, Trump recognizes that Plaintiffs are not parties to the HMA, *see* Ex. D at ¶ 46, but nevertheless contends that Plaintiffs are subject to the Arbitration because:

> [Plaintiffs] Ithaca I and Ithaca II are parties [to the Bulk Sale Agreement]…. [Plaintiff] Fintiklis signed on behalf of Ithaca I and Ithaca II, as he dominates and controls such entities which are alleged to be his alter egos. Exhibit A to the [Bulk Sale Agreement] enumerates and incorporates by reference all the Hotel-related agreements to which Ithaca I's purchase of the Hotel Units and Ithaca II's purchase of the Hotel Amenities Units were and remain subject, including the HMA.
>
> Ithaca I and Ithaca II upon signing the [Bulk Sale Agreement] expressly incorporated by reference the Hotel Agreements and the HMA, as well as the arbitration agreement set forth therein, and promised to not interfere with [Trump's] rights under the HMA.

Id. at ¶¶ 46-47.

[2] The ICC served Plaintiffs with the third-party claims on or after December 26, 2017.

39. As this makes clear, Trump's basis for joining Plaintiffs to the Arbitration flows from the Bulk Sale Agreement. Indeed, ***all*** of Trump's claims against Plaintiffs arise from or relate to the Bulk Sale Agreement, whether there has been a breach of that agreement, the interpretation of that agreement, the parties' respective rights under this agreement, and whether Plaintiffs had the right to vote their units to terminate Trump and the HMA based on the terms of that agreement. *See* Ex. D at pp. 43-69.

C. <u>The Bulk Sale Agreement Includes a Mandatory Forum Selection Clause</u>

40. Yet, the Bulk Sale Agreement, which Trump made central to its claims against Plaintiffs, contains a mandatory forum selection clause. In relevant part, the Bulk Sale Agreement states:

> Each of the Parties … irrevocably submit and consent to the exclusive jurisdiction of the federal and state courts of the State of New York and agree that all suits, actions or other legal proceedings with respect to this Agreement shall be brought only in the State of New York.

See Ex. D at ¶ 9.

41. The Bulk Sale Agreement also provides:

> Each of the Parties … waive and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceedings any claim that it is not personally subject to the jurisdiction of the federal and state courts of the State of New York, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that [the Bulk Sale Agreement] or the subject matter hereof may not be enforced in such courts[.]

Id.

42. In addition, the Bulk Sale Agreement contains a merger clause, which provides:

> [The Bulk Sale Agreement] (including the recitals to this Agreement which are incorporated herein) sets forth the entire understanding and agreement of the Parties hereto any other agreements and understandings (written or oral) among the Parties

> on or prior to the date of this Agreement with respect to the matters set forth herein."

Id. at ¶ 12.

43. The Bulk Sale Agreement is the full and final understanding between Trump and Plaintiffs, and it mandates that any dispute with respect to the Bulk Sale Agreement must be adjudicated in the federal or state courts of New York. Because the Bulk Sale Agreement includes an exclusive, mandatory forum selection clause, it ***trumps*** Trump's decision to assert claims against the Plaintiffs in the Arbitration, regardless of the incorporation by reference of the HMA. Consequently, Trump is precluded from pursuing its claims against Plaintiffs in the Arbitration.

D. Plaintiff Fintiklis Is Not the Alter Ego of Ithaca I and Ithaca II

44. In addition to Trump's incorporation by reference theory, Trump alleges jurisdiction to join Fintiklis individually in the Arbitration on the grounds that, as the authorized representative of Hotel TOC and his alleged "dominat[ion] and control" over Hotel TOC, Hotel TOC is his alter ego. *See* Ex. D at ¶ 50(i).

45. Trump also contends that Ithaca I and Ithaca II are Fintiklis' alter egos, that he "derives substantial benefit" from those entities, that he "exploit[s] and benefit[s] from the agreement to which Ithaca I and Ithaca II are bound," and that he is, therefore, allegedly estopped from denying the ICC's jurisdiction over him. *Id.* at ¶ 50(ii). Due to the foregoing conclusory allegations, and because Fintiklis is allegedly "directly responsible for [the] damages" set forth in Trump's claims, Trump claims that it "may pierce the veil of Ithaca I and Ithaca II … to reach Fintiklis personally." *Id.* at ¶ 50 (iii).

46. Implicit in Trump's conclusory allegations is its recognition that Fintiklis is not a party to any agreement with Trump, much less any arbitration agreement. To get around this

preclusive fact, Trump asserts ICC jurisdiction over Fintiklis through an alter ego theory, claiming without any facts that he is dominating and controlling Ithaca I and Ithaca II, and non-parties Hotel TOC and Foundation.

47. This is not true, and Trump has not (and cannot) plead otherwise. Fintiklis is an officer and director of Ithaca I and Ithaca II and is the authorized representative of Hotel TOC and Foundation, in essence an agent installed by the beneficiaries to carry out their directives. Fintiklis answers to the shareholders and investors of these entities, and they have been fully apprised of, and are in support of, all actions that he has taken to protect their investment relating to the Hotel.

48. However, merely because Fintiklis volunteered to assume a role within Hotel TOC and the Foundation, and merely because he has some degree of control regarding those entities and Ithaca, this is insufficient standing alone to subject Fintiklis to the ICC's jurisdiction (or personal liability). Fintiklis has never manifested an intention to be personally bound by the HMA or the Bulk Sale Agreement, which is further demonstrated by the filing of this Complaint, and Fintiklis has not derived a direct benefit from the HMA or the Bulk Sale Agreement.

49. Unsurprisingly, Trump failed to allege any facts demonstrating that Fintiklis dominates and controls Ithaca, Hotel TOC, or the Foundation, much less the types of allegations required to establish an absence of corporate structure or formalities, and an intermingling of corporate finances.

50. In other words, Fintiklis denies Trump's allegations that he is the alter ego of those entities, or is otherwise subject to the ICC's jurisdiction. Because Fintiklis is not party to any arbitration agreement with Trump, and because Trump cannot satisfy any other basis to

impute the HMA's arbitration clause to Fintiklis, Trump is precluded from asserting its claims against Fintiklis in the Arbitration.

E. Trump Should Be Permanently Enjoined From Bring Claims Against Plaintiffs in Arbitration

51. Trump's claims against Plaintiffs in the Arbitration should be stayed and Trump should be permanently enjoined from asserting them in any forum other than the federal or state courts of New York because there is no agreement to arbitrate these claims.

52. Trump's claims and theories against Plaintiffs are specious, particularly in light of the fact that Trump does nothing more than assert a perfunctory denial of its gross mismanagement of the Hotel and relies, instead, on fanciful allegations of fraud and RICO violations that are premised on Plaintiffs' purported lack of authority stemming from the Bulk Sale Agreement. However, because these claims all involve or relate to the Bulk Sale Agreement and its interpretation, these claims are subject to the Bulk Sale Agreement's exclusive, mandatory forum selection clause, which requires that any dispute with respect to that agreement be resolved in the federal or state courts of New York. Even if Plaintiffs – who are neither parties nor signatories to the HMA – were somehow deemed to be bound by the HMA's arbitration clause, the Bulk Sale Agreement's forum selection clause trumps that arbitration provision.

53. Additionally, Plaintiffs have not expressly or constructively agreed to arbitrate any of these claims, and Plaintiffs refuse to appear in the Arbitration, except to object to the ICC's jurisdiction. Plaintiffs have not now or ever before manifested an intent to be bound by any provision of HMA's arbitration clause.

54. With respect to Fintiklis, neither Ithaca I, nor Ithaca II (nor Hotel TOC or the Foundation) are his alter egos, and Trump has failed to – and cannot – plead any facts

demonstrating that those entities are his alter egos. Therefore, Trump cannot establish ICC jurisdiction over Fintiklis.

55. Consequently, Trump's claims against Plaintiffs are not arbitrable, and Trump should be enjoined from asserting these claims against them in the pending Arbitration.

FIRST CAUSE OF ACTON
For Declaratory Judgment that Ithaca I is not subject to ICC Jurisdiction
(Ithaca I Against Defendants)

56. Ithaca I repeats and realleges each and every allegation contained in Paragraphs 1 through 55 of this Complaint with the same force and effect as if set forth here in full.

57. Ithaca I and Trump contractually agreed to bring any dispute with respect to the Bulk Sale Agreement exclusively in this Court or the state courts of the State of New York. Ithaca I's valid and binding agreement with Trump supersedes any right that Trump may have had to arbitrate these claims in the ICC pursuant to the HMA's arbitration clause.

58. Ithaca I is compelled to seek relief in this Court because arbitration is a creature of contract, and an arbitration panel has no authority to decide whether the parties have submitted to it under the terms of their contract. It is well-settled law that only a court can determine whether parties agreed to arbitrate and, under the terms of the Bulk Sale Agreement, the federal and state courts of the State of New York are the exclusive, mandatory fora.

59. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Ithaca I will suffer irreparable harm because it will (i) be deprived of its right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending itself in the arbitration proceeding, or risk an adverse

outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

60. Declaratory relief from this Court will resolve this controversy.

61. As alleged herein, a real, substantial and immediate controversy is presented regarding the rights, duties and liabilities of the parties. Ithaca I therefore requests a declaratory judgment from this Court pursuant to 28 U.S.C. § 2201 et seq. and Rule 57 of the Federal Rules of Civil Procedure that Trump's claims are not arbitrable and that Trump must bring its claims, if at all, in the federal or state courts of the State of New York.

SECOND CAUSE OF ACTION
For Preliminary and Permanent Injunctive Relief
(Ithaca I Against Defendants)

62. Ithaca I repeats and realleges each and every allegation contained in Paragraphs 1 through 61 of this Complaint with the same force and effect as if set forth here in full.

63. Trump has asserted claims for compensatory and punitive damages against Ithaca I in the Arbitration and, on information and belief, unless enjoined, will continue to pursue such claims.

64. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Ithaca I will suffer irreparable harm because it will (i) be deprived of its right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending itself in the arbitration proceeding, or risk an adverse outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

65. The balance of the equities weighs heavily in favor of an injunction.

66. The public interest would be served by enjoining Trump from pursuing its meritless claims against Ithaca I in the Arbitration because, among other reasons, the Bulk Sale Agreement precludes arbitration of this dispute.

THIRD CAUSE OF ACTON
For Declaratory Judgment that Ithaca II is not subject to ICC Jurisdiction
(Ithaca II against Defendants)

67. Ithaca II repeats and realleges each and every allegation contained in Paragraphs 1 through 66 of this Complaint with the same force and effect as if set forth here in full.

68. Ithaca II and Trump contractually agreed to bring any dispute with respect to the Bulk Sale Agreement exclusively in this Court or the state courts of the State of New York. Ithaca II's valid and binding agreement with Trump supersedes any right that Trump may have had to arbitrate these claims in the ICC pursuant to the HMA's arbitration clause.

69. Ithaca II is compelled to seek relief in this Court because arbitration is a creature of contract, and an arbitration panel has no authority to decide whether the parties have submitted to it under the terms of their contract. It is well-settled law that only a court can determine whether parties agreed to arbitrate and, under the terms of the Bulk Sale Agreement, the federal and state courts of the State of New York are the exclusive, mandatory fora.

70. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Ithaca II will suffer irreparable harm because it will (i) be deprived of its right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending itself in the arbitration proceeding, or risk an adverse outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

71. Declaratory relief from this Court will resolve this controversy.

72. As alleged herein, a real, substantial and immediate controversy is presented regarding the rights, duties and liabilities of the parties. Ithaca II therefore requests a declaratory judgment from this Court pursuant to 28 U.S.C. § 2201 et seq. and Rule 57 of the Federal Rules of Civil Procedure that Trump's claims are not arbitrable and that Trump must bring its claims, if at all, in the federal or state courts of the State of New York.

FOURTH CAUSE OF ACTION
For Preliminary and Permanent Injunctive Relief
(Ithaca II Against Defendants)

73. Ithaca II repeats and realleges each and every allegation contained in Paragraphs 1 through 72 of this Complaint with the same force and effect as if set forth here in full.

74. Trump has asserted claims for compensatory and punitive damages against Ithaca II in the Arbitration and, on information and belief, unless enjoined, will continue to pursue such claims.

75. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Ithaca II will suffer irreparable harm because it will (i) be deprived of its right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute it has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending itself in the arbitration proceeding, or risk an adverse outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

76. The balance of the equities weighs heavily in favor of an injunction.

77. The public interest would be served by enjoining Trump from pursuing its meritless claims against Ithaca II in the Arbitration because, among other reasons, the Bulk Sale Agreement precludes arbitration of this dispute.

FIFTH CAUSE OF ACTON
For Declaratory Judgment that Fintiklis is not subject to ICC Jurisdiction
(Fintiklis Against Defendants)

78. Fintiklis repeats and realleges each and every allegation contained in Paragraphs 1 through 77 of this Complaint with the same force and effect as if set forth here in full.

79. Fintiklis is not bound by the HMA because he is not a party to that agreement, did not sign that agreement, and did not otherwise undertake any conduct to subject him to the HMA's arbitration clause.

80. Fintiklis is not bound by the Bulk Sale Agreement because he is not a party to that agreement, but only executed the agreement as a representative of Ithaca, and did not evidence any intent to or otherwise undertake any conduct that could subject him to the HMA's arbitration clause.

81. Trump's claims against Fintiklis relate entirely to the Bulk Sale Agreement, which provides for the exclusive jurisdiction of the state or federal courts of the State of New York.

82. Fintiklis is not the alter ego of Ithaca I, Ithaca II, Hotel TOC, and/or the Foundation.

83. Fintiklis is compelled to seek relief in this Court because arbitration is a creature of contract, and an arbitration panel has no authority to decide whether the parties have submitted to it under the terms of their contract. It is well-settled law that only a court can determine whether parties agreed to arbitrate.

84. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Fintiklis will suffer irreparable harm because he will (i) be deprived of his right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute he has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending himself in the arbitration proceeding, or risk an adverse outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

85. Declaratory relief from this Court will resolve this controversy.

86. As alleged herein, a real, substantial and immediate controversy is presented regarding the rights, duties and liabilities of the parties. Fintiklis therefore requests a declaratory judgment from this Court pursuant to 28 U.S.C. § 2201 et seq. and Rule 57 of the Federal Rules of Civil Procedure that Trump's claims are not arbitrable and that Trump must bring its claims, if at all, in the federal or state courts of the State of New York.

SIXTH CAUSE OF ACTION
For Preliminary and Permanent Injunctive Relief
(Fintiklis Against Defendants)

87. Fintiklis repeats and realleges each and every allegation contained in Paragraphs 1 through 86 of this Complaint with the same force and effect as if set forth here in full.

88. Fintiklis should not be required to arbitrate Trump's claims against him because he never executed the HMA in his individual or representative capacity, and he never obligated himself to arbitrate claims against Trump by signing the HMA, or by any other conduct or action. Also, Fintiklis is not the alter ego of Ithaca I, Ithaca II, Hotel TOC, and/or the Foundation.

89. Nevertheless, Trump has asserted claims for compensatory and punitive damages against Fintiklis in the Arbitration and, on information and belief, unless enjoined, will continue to pursue such claims.

90. As a matter of law, unless Trump is enjoined from pursuing its claims in the Arbitration, Fintiklis will suffer irreparable harm because he will (i) be deprived of his right to litigate this dispute in the forum in which the parties expressly agreed to resolve disputes, (ii) be forced to arbitrate a dispute he has not agreed to arbitrate, and (iii) be forced to incur the substantial time and expense in defending himself in the arbitration proceeding, or risk an adverse outcome in those proceedings. Being compelled to arbitrate a dispute where the parties have not agreed to arbitrate constitutes irreparable harm as a matter of law.

91. The balance of the equities weighs heavily in favor of an injunction.

92. The public interest would be served by enjoining Trump from pursuing its meritless claims against Fintiklis in the Arbitration because the Bulk Sale Agreement precludes arbitration of this dispute.

WHEREFORE, plaintiffs Ithaca Capital Investments I, S.A., Ithaca Capital Investments II, S.A., and Orestes Fintiklis respectfully demand that judgment be entered as follows:

a. On the First Cause of Action, for a declaratory judgment, awarding Ithaca I a declaration that it is not required to arbitrate Trump's claims in the International Chamber of Commerce;

b. On the Second Cause of Action, for preliminary and permanent injunctive relief, enjoining, barring and prohibiting Trump or its agents from prosecuting further proceedings against Ithaca I in the International Chamber of Commerce;

c. On the Third Cause of Action, for a declaratory judgment, awarding Ithaca II a declaration that it is not required to arbitrate Trump's claims in the International Chamber of Commerce;

d. On the Fourth Cause of Action, for preliminary and permanent injunctive relief, enjoining, barring and prohibiting Trump or its agents from prosecuting further proceedings against Ithaca II in the International Chamber of Commerce;

e. On the Fifth Cause of Action, for a declaratory judgment, awarding Fintiklis a declaration that he is not required to arbitrate Trump's claims in the International Chamber of Commerce;

f. On the Sixth Cause of Action, for preliminary and permanent injunctive relief, enjoining, barring and prohibiting Trump or its agents from prosecuting further proceedings against Fintiklis in the International Chamber of Commerce;

g. On each cause of action, awarding Plaintiffs the costs and fees associated with the prosecution of this action, including reasonable attorney's fees, together with such other, further or different relief as this Court deems just and proper in the circumstances.

Dated: New York, New York
January 16, 2018

AKERMAN LLP

By: */s Joshua D. Bernstein*

Joshua D. Bernstein, Esq.
Darryl R. Graham, Esq.
Kathleen M. Prystowsky, Esq.
Vanessa I. Garcia, Esq.
666 Fifth Avenue, 20th Floor
New York, New York 10103
Tel: (212) 880-3800

Counsel to Plaintiffs Ithaca Capital Investments I, S.A., Ithaca Capital Investments II, S.A., and Orestes Fintiklis

EXHIBIT A

EXECUTION VERSION

AMENDED AND RESTATED
HOTEL MANAGEMENT AGREEMENT

FOR

TRUMP OCEAN CLUB® INTERNATIONAL HOTEL & TOWER

AMONG

TRUMP PANAMA HOTEL MANAGEMENT LLC,

NEWLAND INTERNATIONAL PROPERTIES CORP.,

HOTEL TOC INC.

And

OWNERS MEETING OF THE P.H. TOC

TABLE OF CONTENTS

Page

1. APPROVAL OF CO-OWNERSHIP REGULATIONS; APPROVAL OF ASSIGNMENTS; HOSPITALITY SERVICES; RENTAL PROGRAM 21
   - 1.1 Approval of Co-Ownership Regulations. 21
   - 1.2 Approval of Assignment by Promoter/Developer to Owner 21
   - 1.3 Approval by Owners Meeting 22
   - 1.4 Operator Hotel Services and Other Operator Services 22
   - 1.5 Rental Program 22
   - 1.6 Management of P.H. TOC and Hotel Common Areas 24
   - 1.7 Third Party Operated Areas 24
   - 1.8 Trump Brand Standards 25

2. GENERAL MANAGEMENT AND OPERATIONS 25
   - 2.1 General Management Services 25
   - 2.2 Authority and Duty of Operator 26
   - 2.3 Annual Plan 30
   - 2.4 Maintenance and Repair of Hotel 37
   - 2.5 Books and Records; Financial Statements 39
   - 2.6 Personnel 40
   - 2.7 Centralized Services 45
   - 2.8 Complimentary Rooms 46
   - 2.9 Limitations on Operator's Authority 46
   - 2.10 Limitation on Operator's Duty 48
   - 2.11 Head Office Support 49
   - 2.12 Food and Beverage 49

3. MANAGEMENT FEE AND REIMBURSABLE EXPENSES 50
   - 3.1 Management Fee 50
   - 3.2 Reimbursement of Expenses 52
   - 3.3 Interest 53
   - 3.4 Taxes 53
   - 3.5 Payment of Fees and Expenses 53

4. HOTEL ACCOUNTS 54
   - 4.1 Operating Account 54
   - 4.2 Capital Reserve Funds 56
   - 4.3 Hotel Asset Management Fee Account 57
   - 4.4 Working Capital Reserve Account 57
   - 4.5 Requests for Additional Funds from Hotel Unit Owners and Withdrawals from Hotel Asset Management Fee Account 59
   - 4.6 Disbursement of Funds to Hotel Unit Owners and Hotel Amenities Units Owner 60
   - 4.7 Place and Means of Payment 61

5. TERM AND TERMINATION 62

TABLE OF CONTENTS
(CONTINUED)

Page

5.1 Term of Agreement 62
5.2 Default 62
5.3 Performance Test and Performance Termination 64
5.4 Wrongful Termination 66
5.5 Survival of Obligations After Termination 66
5.6 Actions To Be Taken on Termination 66
5.7 Deferral of Termination 71

6. INSURANCE 71
6.1 Maintenance of Insurance Coverage 71
6.2 Parties Insured and Amounts of Coverage 71
6.3 Evidence of Insurance 71
6.4 Review of Insurance 72
6.5 Maintenance of Insurance Records 72

7. ASSIGNMENTS; MORTGAGES 72
7.1 Assignment by Operator 72
7.2 Assignment by Promoter/Developer, Owner, Hotel Amenities Units Owner or Owners Meeting 73
7.3 Effect of Permitted Assignments 75
7.4 Mortgages. 75

8. DESTRUCTION; TAKING 77
8.1 Partial Destruction 77
8.2 Total Destruction 78
8.3 Taking 78
8.4 Taking for Temporary Use 79
8.5 Reinstatement 79

9. DISPUTES 80
9.1 Arbitration 80
9.2 Dispute Subject to Resolution by Expert 82
9.3 Survival and Severance 83

10. NAME OF HOTEL; LICENSE AGREEMENT AND TRUMP MARK 83
10.1 Name of Hotel 83
10.2 License Agreement and Trump Mark 83
10.3 Proprietary Materials 83
10.4 Use of Trump Mark by Hotel Unit Owners and Hotel Amenities Units Owner 85

11. INDEMNIFICATION 85
11.1 Owner's, Hotel Amenities Units Owner's, Owners Meeting and Promoter/Developer's Indemnification of Operator 85

TABLE OF CONTENTS
(CONTINUED)

Page

11.2 Operator's Indemnification of Owner, Owners Meeting, Hotel Amenities Units owner, Asset Manager and Promoter/Developer 86
11.3 Survival; Claims Covered by Insurance 86

12. MISCELLANEOUS 86
12.1 Consents 86
12.2 Use of Affiliates by Operator 86
12.3 Governing Law 87
12.4 Jurisdiction 87
12.5 Waivers, Modifications, Remedies 88
12.6 Interpretation/Severability 88
12.7 Notices 88
12.8 Successors and Assigns 91
12.9 Purchasing 91
12.10 Freedom of Action 92
12.11 Entire Agreement 92
12.12 Counterparts 92
12.13 Relationship of the Parties; Nature of Agreement 92
12.14 Confidentiality 92
12.15 No Third Party Beneficiaries 93
12.16 Time of the Essence 93
12.17 Representations and Warranties of Parties 93
12.18 Survival of Miscellaneous Provisions 93
12.19 Taxes 93

13. EXCLUSIVITY. 94

EXHIBIT A – Hotel Unit Maintenance Agreement
EXHIBIT B – Hotel Amenities Units Maintenance Agreement
EXHIBIT C – Hotel Unit Rental Agreement
EXHIBIT D – Condominium Management Agreement
EXHIBIT E – Description of Punta Pacifica and Outer Region
EXHIBIT F – Current Centralized Services

AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT (this "**Agreement**") is made and entered into as of April 13, 2011 (the "**Effective Date**"), by and among **NEWLAND INTERNATIONAL PROPERTIES CORP.,** a Panamanian corporation, in its capacity as promoter and developer of the P.H. TOC (as defined in Recital A) ("**Promoter/Developer**") and in its capacity as owner of the Hotel Amenities Units (as defined in Recital A) ("**Hotel Amenities Units Owner**"), **OCEAN POINT DEVELOPMENT CORP.**, a Panamanian corporation ("**Hotel Asset Manager**"), **TRUMP PANAMA HOTEL MANAGEMENT LLC,** a Delaware limited liability company, as assignee of **TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC**, a Delaware limited liability company (together with its permitted successors and assigns, "**Operator**"), **HOTEL TOC INC.**, a Panamanian corporation ("**Owner**"), and Owners Meeting of the P.H. TOC, as defined in Recital B below (the "**Owners Meeting**"). Promoter/Developer, Hotel Asset Manager, Operator, Owner and Owners Meeting are sometimes referred to collectively in this Agreement as the "**Parties**" and individually as a "**Party.**"

RECITALS

A. Promoter/Developer has registered with the Property Section, Panama Province, of the Public Registry, the Co-Ownership Regulations (the "**Co-Ownership Regulations**") of that certain Horizontal Property Regime known as the P.H. TOC (the "**P.H. TOC**"), established over that certain real property two hundred and thirty four thousand two hundred and forty (234240), registered in Document six hundred and seven thousand eight hundred and seventy (607870), location Code eight seven zero eight (8708) of the Property Section, Panama Province, of the Public Registry, in accordance with the Legal Provisions of Law thirty one (31) of June eighteenth (18), two thousand and ten (2010) and other pertinent legal provisions, (hereinafter the "**P.H. Law**"), improved and consisting of a 70 story building (the "**Building**") subdivided into casino units ("**Casino Units**"), commercial units ("**Commercial Units**"), hotel units ("**Hotel Units**"), a hotel administrative unit ("**Hotel Administrative Unit**"), hotel amenities units ("**Hotel Amenities Units**"), office units ("**Office Units**") and residential units ("**Residential Units**" and, collectively with the Casino Units, Commercial Units, Hotel Units, Hotel Administrative Unit, Hotel Amenities Units and Office Units, the "**Units**")), all as more particularly described in the Co-Ownership Regulations;

B. Pursuant to the Co-Ownership Regulations, an Owners Meeting, consisting of all owners of Units in the P.H. TOC, has been established as the supreme body of the P.H. TOC;

C. Owner has been established as an entity owned by the HOTEL TOC FOUNDATION, a private interest foundation formed under the laws of Panama (the "**Foundation**"), the beneficiaries of which are all of the owners of the Hotel Units ("**Hotel Unit Owners**"), for the purpose of collectively exercising the rights and performing the obligations of the Hotel Unit Owners in connection with the operation of the Hotel, and performing the operating, management and maintenance services required for the Hotel, subject to the supervision and direction of the Operator;

D. Hotel Asset Manager has entered into a hotel asset management agreement with Owner, dated of even date herewith (the "**Hotel Asset Management Agreement**"), pursuant to which Hotel Asset Manager has agreed to provide certain services to Owner as described therein, and Owner has agreed, on behalf of the Hotel Unit Owners, to pay a hotel asset management fee (the "**Hotel Asset Management Fee**") to Hotel Asset Manager, which shall be deposited into a hotel asset management fee account (the "**Hotel Asset Management Fee Account**") subject to the terms of this Agreement;

E. Promoter/Developer, as owner of the Hotel Amenities Units, has entered into a lease agreement, dated of even date herewith (the "**Hotel Amenities Units Lease**"), with Owner, pursuant to which Promoter/Developer has leased all of the Hotel Amenities Units to Owner, and Owner has agreed to be responsible for all costs and expenses of operation of the Hotel Amenities Units;

F. Pursuant to the terms of the License Agreement, dated as of March 16, 2006 between Trump Marks Panama, LLC, a Delaware limited liability company, successor by assignment to Donald J. Trump, as licensor ("**Licensor**"), and Promoter/Developer's predecessor, as licensee, as amended from time to time thereafter (the "**Promoter/Developer License Agreement**"), Promoter/Developer has received a license to use the Trump Mark in connection with the sale of Units in the Building;

G. Pursuant to the terms of the License Agreement, dated of even date herewith, among Trump Marks Panama LLC, a Delaware limited liability company ("**Licensor**"), Owners Meeting and Owner (the "**Owner License Agreement**"), Licensor has granted a license to Owner and Owners Meeting to identify the Building as the Trump Ocean Club® International Hotel & Tower, subject to the terms and conditions of the Owner License Agreement;

H. Pursuant to the terms of the P.H. TOC Management Agreement, dated of even date herewith, (the "**Condominium Management Agreement**") between Owners Meeting and Trump Panama Condominium Management LLC, a Delaware limited liability company ("**Condominium Manager**"), Owners Meeting has engaged the Condominium Manager to manage the Common Areas of the Building and the Components and to administer the affairs of Owners Meeting, the Board of Directors, the Committees and the Boards of Coordinators of each Component (as such terms are defined in the Co-Ownership Regulations);

I. Pursuant to the terms of the Pre-Opening Services Agreement, dated as of even date herewith (the "**Pre-Opening Agreement**") between Promoter/Developer, Hotel Asset Manager and Operator, Operator has been engaged by Promoter/Developer to perform certain pre-opening services as more specifically set forth therein;

J. Pursuant to the terms of the Hotel Management Agreement ("**Hotel Management Agreement**"), dated as of August 11, 2008, by and between Promoter/Developer and Operator, Operator agreed to operate the Hotel Units and Hotel Amenities Units as a first class, luxury hotel ("**Hotel**") and to provide additional services, including management of the Building and administration of the condominium association for the Building in accordance with the terms and conditions set forth in the Hotel Management Agreement, and the Promoter/Developer and Operator agreed to prepare and agree upon the additional condominium documents and

agreements necessary to establish the rights and obligations of the entities and parties that would own and operate the Hotel and the Building; and

K. Operator and Promoter/Developer have now agreed upon the Co-Ownership Regulations and the other forms of condominium documents and agreements that will be entered into with respect to the ownership and operation of the Hotel and the Building, and they now desire to amend and restate this Agreement to be consistent with the terms of the Co-Ownership Regulations and the other condominium documents and agreements. In addition, Promoter/Developer now desires to assign certain of its rights and obligations under the Hotel Management Agreement with respect to the operation of the Hotel to Owner, and Operator desires to assign certain of its rights and obligations under the Hotel Management Agreement with respect to the management and administration of the P.H. TOC to Condominium Manager. In addition, the Parties desire to amend and restate the Hotel Management Agreement in its entirety as set forth herein to establish the rights and obligations of each of the Parties hereunder with respect to the operation and management of the Hotel and the provision of services by Operator to other Units, in a manner consistent with the Co-Ownership Regulations.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENTS

DEFINITIONS

Key Definitions

The following terms shall have the meanings set forth below:

Affiliate – any entity which controls, is controlled by or is under common control with Operator or Owner, as the context may require. For such purposes, "**control**" shall refer to the direct or indirect (i) ownership of a majority of voting shares or interests in an entity or (ii) in the absence of such majority ownership, other effective control over the decision-making process of an entity. In addition, no entity shall be deemed an Affiliate of Promoter/Developer unless both one or more of (i) Roger Khafif (having an address at c/o P.O. Box 2017, Colon Free Zone, Colon, Republic of Panama), (ii) Carlos Alberto Serna Londoño (having an address at Gerente General, Espacios Urbanos, Consultores Inmobiliarios, Carrera 13 No. 82-74, Piso 3, Oficina - Espacios Urbanos, Bogotá, Republic of Colombia, South America), and (iii) Eduardo Saravia Calderón (having an address at Avenida Calle 82 # 7-80, Bogotá, Colombia, South America) (collectively, the "**Principals**"), or an entity controlled by any of the Principals, controls the day to day operations of such entity and participates in all major decisions of such entity, and such individuals have ultimate ownership of at least 51% of the beneficial interests in such entity. Notwithstanding the foregoing, an Affiliate of Operator shall be deemed to include any entity of which Donald J. Trump (and/or an entity or entities) established by Donald J. Trump for estate planning purposes of which Donald J. Trump and/or his spouse and/or the lineal descendants of his parents (including adopted descendants) own a majority of voting shares or interests therein)

owns a majority of voting shares or interests or, in the absence of majority ownership, has effective control over the decision-making process.

Annual Plan – as defined in **Section 2.3.1**.

Annual Report – as defined in **Section 2.5.5**.

Approval – as defined in **Section 12.1**.

arbitrator – as defined in **Section 9.1.1**.

Assessments – amounts charged to owners of Units for expenses of the Common Areas in accordance with the terms of the Co-Ownership Regulations.

Available Participating Unit – Participating Units that are, at the time in question, available for rent.

Base Fee – shall mean the Base Fee/Hotel together with the Base Fee/Hotel Amenities Units.

Base Fee/Hotel – as defined in **Section 3.1.1(a)**.

Base Fee/Hotel Amenities Units – as defined in **Section 3.1.1(c)**.

Base Fee Percentage – as defined in **Section 3.1.1**.

Beach Club – shall mean that certain beach club constructed by Beach Club Owner on Isla Viveros, Panama.

Beach Club Opening Date – as defined in **Section 4.6.2**.

Beach Club Owner – shall mean Ocean Club Pearl Island Corp., a Panamanian corporation.

Beach Club Standards – shall mean a first class, luxury standard consistent with the nature of the Building and the standards applicable thereto under the Owner License Agreement and this Agreement and such other standards that Hotel Operator (or its Affiliates) and Beach Club Owner shall mutually agree to in writing.

Benefit Programs – as defined in **Section 2.6.8(b)**.

Bidders – as defined in **Section 2.4.2**.

Branded Operator – as defined in **Section 5.3.6**.

Breach – as defined in **Section 1.5.3**.

Capital Budget – as defined in **Section 2.3.1(b)**.

PAGES 5-79 NOT INCLUDED

Operator of the notice given by Owner, Owners Meeting and/or Hotel Amenities Units Owner or, if no such notice is given by Owner, Operator's actual knowledge of such commencement), this Agreement shall be reinstated (with only such amendments as are required due to changes in the type, scope or design of the Hotel and/or other portions of the Building). The provisions of this **Section 8.5** shall survive Termination of this Agreement.

9. DISPUTES

9.1 Arbitration.Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a "**Dispute**", and collectively, "**Disputes**") shall be resolved in the following manner.

9.1.1 Either Party may submit the Dispute to the International Chamber of Commerce for binding arbitration under the then existing ICC Commercial Arbitration Rules. The initiating Party shall file and serve its request for arbitration including its statement of claims, with the Secretariat of the ICC International Court of Arbitration, which shall notify both claimant and respondent of the receipt of the request. Within 20 days from receipt of the request and statement of claims from the Secretariat, the other Party shall file and serve its answering statement. Each Party shall submit all Disputes then known to that party within the same arbitration proceeding and any such claim that is not so submitted shall be barred. The arbitration shall be conducted by a panel of three arbitrators, (collectively, the "**arbitrator**") selected in accordance with this Agreement. Each arbitrator shall have not fewer than 10 years of experience (at the time the request for arbitration is filed) in the luxury hotel business as construed under U.S. market standards (and no fewer than five years of experience in the luxury condominium business), shall be independent of the parties as provided by the ICC Commercial Arbitration Rules, and shall not be an Affiliate of or a Person who has any past (within the prior three years from the date the arbitration is filed), present, or currently contemplated future business or personal relationship with Owner, Promoter/Developer, any owner of 10% or more of the Hotel Units or any other category of Units, or Operator. Each of Operator, on the one hand, and any one or more of the other Parties, on the other hand, shall propose one arbitrator by written notice incorporated into the request for arbitration and the answering statement, to the other Party, and the two arbitrators selected shall, within twenty (20) days after their appointment, select the third arbitrator. If either Party does not select an arbitrator within twenty (20) days after the date the Dispute is submitted, then an arbitrator shall be selected for that party under the ICC Commercial Arbitration Rules. In the event that the parties are unable to obtain the services of arbitrators which meet the qualifications set forth in this **Section 9.1.1**, the parties shall use diligent efforts to obtain the services of arbitrators whose qualifications are substantially similar to those set forth above.

9.1.2 The arbitration, including all documents filed, hearings and rulings in connection with the arbitration, shall be conducted in the English language. The arbitrator shall conduct the arbitration at law, and shall be instructed to apply the internal laws of the State of New York (without regard to conflict of laws principles), except to the extent that the subject of the dispute arises out of or concerns the enforcement of rights where only local law is applicable such as Panama real estate or Panama real estate interests, employment, gaming and permitting from governmental entities or municipalities (such as liquor permits).

9.1.3 The decision of the arbitrator (which shall be deemed to be agreement by at least two of the three arbitrators) shall be made within 30 days of the close of the hearing in respect of the arbitration (or such longer time as may be agreed to, if necessary, which agreement shall not be unreasonably withheld) and the decision of such arbitrator when reduced to writing and signed by it shall be final, conclusive and binding upon the parties hereto, and may be enforced in any court having jurisdiction.

9.1.4 The award of the arbitrator shall state the arbitrator's decision with respect to each of the individual claims presented by each Party, and shall contain a detailed statement of the reasons supporting each such decision of the arbitrator, including all necessary findings of fact and conclusions of law.

9.1.5 The arbitration hearing shall be held in Panama City, Panama and, except for those procedures specifically set forth in this **Section 9.1**, including, without limitation, the application of the internal laws of the Republic of Panama or the State of New York (without regard to conflict of laws principles), shall be conducted in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce as in effect on the date thereof. The seat of the arbitration shall be in the State of New York, County of New York, and any action by any party challenging the validity of the arbitration award shall be filed in the appropriate federal or state court located in the State of New York, County of New York.

9.1.6 The arbitrator shall be directed to establish (i) a schedule for the conduct of the arbitration which shall yield a conclusion within 120 days following the appointment of the arbitrator and (ii) economic or procedural sanctions (which may include default judgment) for any party the arbitrator determines has intentionally delayed the conduct of the proceedings.

9.1.7 The arbitrator shall not allow any Party to act in a representative capacity for any other third parties or class of third parties.

9.1.8 The arbitrator shall determine the proportion of the expenses of such arbitration which each party shall bear; provided, however, that (subject to **Section 9.2**) each party shall be responsible for its own legal fees.

9.1.9 At the request of either Party, but only if contained in the initial written demand for arbitration or in the initial response to the demand, the arbitration proceedings shall be confidential. In such case, (a) the fact of the pending arbitration shall not be disclosed or confirmed by the Parties or the arbitrator to any person who is not a party to, or called to testify at, the proceedings until the arbitration award has been made; (b) the proceedings shall not be recorded or transcribed in any manner; and (c) all documents, testimony and records (other than the contract documents out of which the Dispute arises) shall be received, heard and maintained confidential by the arbitrator, and shall be available for inspection only by the parties, their attorneys and by experts who shall agree, in advance and in writing, to maintain the confidentiality of such information in accordance with this **Section 9.1**. Also in such case, the confidential information shall not be described in the arbitration award in such a manner as to be commercially useful.

9.1.10 Notwithstanding anything contained in this **Section 9.1**, any Party shall be entitled to (A) commence legal proceedings (in which case the provisions of **Article 12** governing jurisdiction and service of process shall govern) seeking such mandatory, declaratory or injunctive relief as may be necessary to define or protect the rights and enforce the obligations contained herein pending the settlement of a Dispute in accordance with the arbitration procedures set forth in this **Section 9.1**, (B) commence legal proceedings (in which case the provisions of **Article 12** governing jurisdiction and service of process shall govern) involving the enforcement of an arbitration decision or award arising out of this Agreement, or (C) join any arbitration proceeding arising out of this Agreement with any other arbitration proceeding arising out of either this Agreement or any other agreements between the Parties relating to the Hotel.

9.2 Dispute Subject to Resolution by Expert. Notwithstanding anything to the contrary in **Section 9.1**, any dispute, claim or issue arising under this Agreement respecting (a) the proper inclusion or exclusion of items in Gross Operating Revenue, Operating Expenses or Gross Operating Profit, (b) the proper computation of Management Fees, Centralized Charges or Reimbursable Expenses, (c) the approval of the Annual Plan and modifications thereof, or (d) other matter as to which this Agreement expressly provides for dispute resolution by the Expert, shall be resolved in accordance with this **Section 9.2**; provided, however, either party shall have the right to pursue arbitration (rather than resolution by the Expert) if the dispute involves more than $250,000.

9.2.2 Either Owner or Operator may commence the Expert resolution process by delivering notice to the other Party, in which case Operator shall select three qualified candidates to be the Expert within thirty (30) days after receipt of such notice, and Owner shall select one of such candidates as the Expert to resolve the dispute within fifteen (15) days after notification by Operator. If Owner does not select one of the candidates proposed by Operator within such time period, Operator shall select one of the candidates as the Expert. Each Expert candidate shall (i) have at least ten (10) years experience in the area of expertise on which the dispute is based (e.g., for operational matters, expertise in the management of hotels in the same class as the Hotel, for accounting matters, expertise in hotel accounting for hotels in the same class as the Hotel), and (ii) not have any conflict of interest with either party. The person selected as the Expert pursuant to this **Section 9.2.2** is the "**Expert**".

9.2.3 Each party may make written statements and provide documents and materials to the Expert in support of its position, and the other party may respond to such statements, documents or materials. All statements, documents, materials and responses submitted by a party shall be delivered concurrently to the Expert and the other party. The parties shall make available to the Expert all books and records relating to the issues in dispute and shall provide the Expert with any information or assistance reasonably requested by the Expert. The Expert shall establish a timetable for the making of submissions and replies, and endeavoring to notify the parties in writing of its decision within thirty (30) days after the date on which the Expert has been selected (or such other period as the parties may agree), but any delay in making or notifying the parties of the decision shall not affect the final and binding nature of the decision once made and noticed.

9.2.4 The Expert resolution shall be conducted in a "**baseball**" format pursuant to which each party shall submit its proposed resolution of the dispute to the Expert

(with a copy provided concurrently to the other party), and the Expert shall decide in favor of one of the positions presented by the parties, and may not make any determination other than by choosing one of the proposals presented by the parties. The Expert's authority shall be limited to deciding the specific issue presented to it, and shall have no authority to award damages, issue orders or take any other action whatsoever. The decision of the Expert shall be final and binding upon the parties and shall not be capable of appeal or other challenge, whether by arbitration or otherwise, except for manifest error or fraud.

9.3 Survival and Severance.The provisions of this Article 9 shall survive the Termination of this Agreement for any reason, regardless of whether a dispute arises before or after Termination of this Agreement, and regardless of whether the related mediation, arbitration or litigation proceedings occur before or after Termination of this Agreement. If any part of this Article 9 is held to be unenforceable, it shall be severed and shall not affect either the duties to mediate or arbitrate or any other part of this Article 9.

10. NAME OF HOTEL; LICENSE AGREEMENT AND TRUMP MARK

10.1 Name of Hotel. The Hotel shall be operated by Operator under the name "**Trump Ocean Club,**" or such other name as may be mutually acceptable to Owner and Operator.

10.2 License Agreement and Trump Mark. Owner and Operator are parties to Owner License Agreement. In the event the Owner License Agreement expires by its terms or is sooner terminated, either party may terminate this Agreement at any time thereafter upon not less than twenty (20) days' notice.

10.3 Proprietary Materials. In addition to the Trump Mark, Owner acknowledges that all slogans, distinguishing characteristics, copyright materials, software applications and data in written or tangible form or other intellectual property which is indicated as being confidential or which from its nature or content would be understood by a reasonable person to be confidential, relating to Operator or any of its Affiliates, the business or affairs of Operator or any of its Affiliates, or any hotel or residential project which Operator or any of its Affiliates owns or operates and manages (other than as relates exclusively to the Hotel) shall constitute Trump Proprietary Materials, shall remain the sole property of Operator and shall be under the exclusive control of Operator and its Affiliates. "**Trump Proprietary Materials**" shall include, without limitation, (i) operational manuals (including, without limitation, Physical and Brand Operating Standards, accounting, financial administration, personnel administration, and policies and procedures manuals), (ii) corporate records of Operator and its Affiliates, provided, however, corporate records of Operator and its Affiliates that relate to the Hotel shall be available to Owner for inspection, transcription, and review for five (5) years after Termination, (iii) recipes, menus, wine lists and related materials, (iv) software and other management programs developed by or on behalf of Operator, notwithstanding any modification or alteration made for application at the Hotel and notwithstanding their maintenance or administration by any other person, (v) the operating and design standards of any hotel or resort owned or operated by Operator or any of its Affiliates and any materials relating thereto, (vi) business and marketing plans (other than as related solely to the Hotel) and (vii) internal audit reports. Owner shall, without charge to Operator, execute, acknowledge and deliver all documents that may be necessary or desirable to enable Operator to protect or register its proprietary interest in any Trump Proprietary Materials.

PAGES 84-94 NOT INCLUDED

TRUMP OCEAN CLUB INTERNATIONAL HOTEL & TOWER

AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the 13 day of April, 2011.

OPERATOR:

TRUMP PANAMA HOTEL MANAGEMENT LLC, a Delaware limited liability company

By: _____
Donald J. Trump
President

State of New York
) ss.:
County of New York

On the 13th day of April in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Donald J. Trump, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as indicated in such instrument, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

MICHAEL COHEN
Notary Public, State of New York
No. 02CO6137349
Qualified in New York County
Commission Expires November 21, 2013

TRUMP OCEAN CLUB INTERNATIONAL HOTEL & TOWER

AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT

Signature Page

OWNER:

HOTEL TOC INC., a Panamanian corporation

By:_____
Charles Mark Stevenson
Secretary

HOTEL AMENITIES UNITS OWNER AND PROMOTER/DEVELOPER:

NEWLAND INTERNATIONAL PROPERTIES, CORP., a Panamanian corporation

By:_____
Roger Khafif
President

OWNERS MEETING:

OWNERS MEETING OF THE P.H. TOC

By:_____
Roger Khafif
President

Yo, Licdo. LUIS FRAIZ DOCABO, Notario Público Primero del Circuito de Panamá, con cédula de identidad personal No. 8-311-734,
CERTIFICO:
Que dada la certeza de la identidad del (los) sujeto(s) que firmo(firmaron) el presente documento la (s) firma (s) es (son) auténtica (s).
13 ABR 2011

Testigo Testigo

Licdo. LUIS FRAIZ DOCABO
Notario Público Primero

TRUMP OCEAN CLUB INTERNATIONAL HOTEL & TOWER

AMENDED AND RESTATED HOTEL MANAGEMENT AGREEMENT

Signature Page

HOTEL ASSET MANAGER

OCEAN POINT DEVELOPMENT CORP.,
a Panamanian corporation

By: _____
Roger Khalif
President

Yo, Licdo. LUIS FRAIZ DOCABO, Notario Público Primero del Circuito de Panamá, con cédula de identidad personal No. 8-311-734.

CERTIFICO:

Que dada la certeza de la identidad del (los) sujeto(s) que firmo(firmaron) el presente documento(s) su (s) firma (s) es (son) auténtica (s).

PANAMA, 13 ABR 2011

Testigo

Testigo

Licdo. LUIS FRAIZ DOCABO
Notario Público Primero

EXHIBIT B

AGREEMENT IN CONNECTION WITH A BULK SALE

This **AGREEMENT IN CONNECTION WITH A BULK SALE** (this "**Agreement**") is made as of the 15th day of February, 2017, by and among **TRUMP PANAMA HOTEL MANAGEMENT LLC,** a Delaware limited liability company ("**Operator**") and **ITHACA CAPITAL INVESTMENTS I S.A.**, a Panamanian corporation ("**Ithaca I**") as purchaser of more than ten (10) Hotel Units (as hereinafter defined) and **ITHACA CAPITAL INVESTMENTS II S.A.**, a Panamanian corporation ("**Ithaca II**) as purchaser of the Hotel Amenities Units (as hereinafter defined). (Ithaca I, together with Ithaca II, the "**Purchaser**"). Operator, Ithaca I and Ithaca II are referred to herein, each, individually, as a "**Party**" and, collectively, as the "**Parties.**"

RECITALS

A. Newland International Properties Corp., a Panamanian corporation ("**Promoter/Developer**") has registered with the Property Section, Panama Province, of the Public Registry, the Co-Ownership Regulations (as amended, restated, modified or supplemented, from time to time, the "**Co-Ownership Regulations**") of that certain Horizontal Property Regime known as the P.H. TOC (the "**P.H. TOC**"), established over that certain real property two hundred and thirty four thousand two hundred and forty (234240) (referred to herein as the "**Property**"), registered in Document six hundred and seven thousand eight hundred and seventy (607870), location Code eight seven zero eight (8708) of the Property Section, Panama Province, of the Public Registry, in accordance with the Legal Provisions of Law thirty one (31) of June eighteenth (18), two thousand and ten (2010) and other pertinent legal provisions, improved and consisting of a 70 story building (the "**Building**") subdivided into hotel units ("**Hotel Units**"), hotel amenities units ("**Hotel Amenities Units**") and the other units as more particularly described in the Co-Ownership Regulations.

B. Pursuant to the Co-Ownership Regulations, an Owners Meeting consisting of all owners of Units in the P.H. TOC, has been established as the supreme body of the P.H. TOC ("**Owners Meeting**"). Hotel TOC Inc., a Panamanian corporation ("**Owner**"), has been established as an entity owned by the Hotel TOC Foundation, a private interest foundation formed under the laws of Panama, the beneficiaries of which are all of the owners of the Hotel Units ("**Hotel Unit Owners**"), for the purpose of collectively exercising the rights and performing the obligations of the Hotel Unit Owners in connection with the operation of the Hotel Units and Hotel Amenities Units as a hotel (the "**Hotel**"), and performing the operating, management and maintenance services required for the Hotel, subject to the supervision and direction of the Operator pursuant to the Hotel Management Agreement (as defined on **Exhibit A**);

C. In connection with the development and operations of the Building and the Hotel, Promoter/Developer, Operator, Trump Marks Panama LLC, a Delaware limited liability company ("**Licensor**"), Owners Meeting and Owner, in various combinations among themselves and with other parties, have entered into and are parties to various licensing, management, operating and other agreements, as described on **Exhibit A** hereto (the "**Hotel Agreements**");

D. Ithaca I wishes to purchase the Hotel Units set forth on **Exhibit B** (the "**Selected Hotel Units**") from Promoter/Developer.

E. Ithaca II wishes to purchase the Hotel Amenities Units from Promoter/Developer

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Co-Ownership Regulations. Ithaca I acknowledges that the sale of more than ten (10) Hotel Units (a "**Bulk Sale**") is currently prohibited by the Co-Ownership Regulations and that the Co-Ownership Regulations may not be modified without the prior written approval of Operator. Subject to the terms and conditions of this Agreement including Operator's receipt of the items set forth in Section 2, Operator will, solely in its role as Operator under the Hotel Management Agreement, provide its written approval to the limited modification to the Co-Ownership Regulations that is necessary to permit a one-time Bulk Sale of the Selected Hotel Units to Purchaser (the "**Written Approval**"). Operator makes no statement or promise as to the likelihood or viability of obtaining the consents, modifications or approvals that are necessary, in addition to the Written Approval, to amend the Co-Ownership Regulations and Operator has no obligation to cooperate with Ithaca I's efforts to amend the Co-Ownership Regulation except as expressly set forth in this Section 1.

2. Effectiveness. Operator shall have no obligation to deliver its Written Approval until such time as Operator has received:

(A) a fully executed original counterpart of the Hotel Unit Maintenance Agreement ("**Hotel Unit Maintenance Agreement**") in Operator's then current form with respect to all Selected Hotel Units. The term of such Hotel Unit Maintenance Agreement with respect to each of the Selected Hotel Units shall run from the date on which Ithaca I's purchase of the Selected Hotel Units is consummated until the date that the following two conditions are met: (i) title to the Selected Hotel Unit in question has been legally transferred to a subsequent purchaser of such Selected Hotel Unit, and (ii) the purchaser of such Selected Hotel Unit has executed a Hotel Unit Maintenance Agreement as required by the terms of the Co-Ownership Regulations (the date on which both such conditions are satisfied, the "**Release Date**"). For the avoidance of doubt, if Ithaca I transfers title to some but not all of the Selected Hotel Units, such transfer shall not release Ithaca I from its obligations under the Hotel Unit Maintenance Agreement with respect to the Selected Hotel Units that were not transferred;

(B) a fully executed original counterpart of the Hotel Unit Rental Management Agreement ("**Rental Agreement**") in Operator's then current form with respect to all Selected Hotel Units. The term of such Rental Agreement with respect to each of the Selected Hotel Units shall run from the date on which Ithaca I's purchase of the Selected Hotel Units is consummated until the Release Date. For the avoidance of doubt, if Ithaca I transfers title to some but not all of the Selected Hotel Units, such transfer shall not release Ithaca I from its obligations under the

Rental Agreement with respect to the Selected Hotel Units which were not transferred;

(C) a fully executed original counterpart of the Hotel Amenities Units Maintenance Agreement ("**Hotel Amenities Units Maintenance Agreement**") in Operator's then current form with respect to the Hotel Amenities Units. The term of such Hotel Amenities Units Maintenance Agreement shall run from the date on which Ithaca II's purchase of the Hotel Amenities Units is consummated until the date that the following two conditions are met: (i) title to the Hotel Amenities Units have been legally transferred to a subsequent purchaser of such Selected Hotel Unit, and (ii) the purchaser of such Hotel Amenities Units has executed a Hotel Amenities Units Maintenance Agreement;

(D) evidence satisfactory to Operator and its Affiliates (as defined on **Exhibit C**) in their reasonable judgment that the Ithaca I has sufficient financial resources to fulfill all of the obligations associated with the ownership of the Selected Hotel Units;

(E) evidence satisfactory to Operator and its Affiliates in their reasonable judgment that the Ithaca II has sufficient financial resources to fulfill all of the obligations associated with the ownership of the Hotel Amenities Units;

(F) evidence satisfactory to Operator and its Affiliates in their reasonable judgment that neither Ithaca I nor any Person holding a direct or indirect interest in Ithaca I is a Prohibited Person (as defined on **Exhibit C**); and

(G) evidence satisfactory to Operator and its Affiliates in their reasonable judgment that neither Ithaca II nor any Person holding a direct or indirect interest in Ithaca I is a Prohibited Person.

3. Acknowledgments and Covenants. Purchaser acknowledges that Operator is and shall be the operator of the Hotel pursuant to the Hotel Management Agreement and hereby covenants that until the later of the expiration or termination of (1) the Hotel Management Agreement and (2) the License Agreement:

(A) By virtue of its purchase of the Hotel Amenities Units, Ithaca II shall be bound by the terms and conditions of the Hotel Management Agreement as successor to the Hotel Amenities Units Owner (as such term is defined in the Hotel Management Agreement). Notwithstanding anything to the contrary contained in the Hotel Management Agreement, Operator shall be the operator of the Hotel Amenities Units unless Operator elects to have a Third Party Manager (as defined in the Hotel Management Agreement) operate one or more of the Hotel Amenities Units (which decision, together with the selection of such Third Party Manager(s), must be approved as set forth in Section 1.7 of the Hotel Management Agreement). Without limiting the circumstances in which Operator may withhold its consent to the operation of any Hotel Amenities Unit by a Third Party Manager or the selection of any Third Party Manager(s) under the Hotel Management Agreement in any way, Operator may reasonably set certain minimum and maximum hours of operation of any Hotel Amenities Unit prior to approving the operation of any

such Hotel Amenities Unit by a Third Party Manager or the selection of any Third Party Manager;

(B) Any further sale of Hotel Units by Ithaca I (whether of all the Selected Hotel Units or a subset thereof) shall be subject to (i) if applicable, all restrictions on Bulk Sales as may then be contained in the Co-Ownership Regulations and (ii) Operator's right to approve the proposed purchaser of each such sale. Operator may elect, in its sole discretion, to condition its approval of the proposed purchaser of each such sale on Operator's receipt of an agreement containing the same terms and conditions as set forth in this Agreement from such proposed purchaser. By way of example and not limitation, if Ithaca I purchases 200 Hotel Units and subsequently wishes to sell 20 Hotel Units to 10 different purchasers, each such purchaser shall be subject to Operator's approval as set forth herein;

(C) Any further sale of the Hotel Amenities Units shall be subject to (i) all restrictions on a sale of the Hotel Amenities Units as may then be contained in the Co-Ownership Regulations, (ii) Operator's right to approve the proposed purchaser of the Hotel Amenities Units and (iii) Operator's receipt of written acknowledgment from the proposed purchaser of the Hotel Amenities Units that such purchaser shall be bound by the terms and conditions of the Hotel Management Agreement as successor to the Hotel Amenities Units Owner. Operator may elect, in its sole discretion, to condition its approval of the proposed purchaser of such sale of the Hotel Amenities Units on Operator's receipt of an agreement containing the same terms and conditions as set forth in this Agreement from such proposed purchaser;

(D) Purchaser shall not, directly or indirectly through any Affiliates or otherwise: (w) take (or refrain from taking) any action (including any legal action) that would interfere with or undermine the rights or obligations of Operator under and in respect of any of the Hotel Agreements, (x) exercise its vote with respect to any of the Hotel Units in any Owners Meeting or other constituent body of the P.H. TOC (or any of its components), including without limitation, Hotel TOC Inc., in any manner which is adverse to the interests of Operator and/or its Affiliates under and in respect of any of the Hotel Agreements, (y) take (or refrain from taking) any action (including any legal action) that could materially damage the relationship between Operator, its Affiliates and any other Person or (z) make, issue, solicit or endorse any statement that would damage or undermine the reputation of Operator or any of its Affiliates;

(E) Ithaca I shall not compete with the current rental program administered pursuant to the Rental Agreement (or such other similar rental program as may be subsequently administered by Operator or its Affiliates); and

(F) Purchaser shall not seek or accept an appointment or election to the position of manager or administrator (or other similar leadership role) of the P.H. TOC.

4. Representations and Warranties. Ithaca I and Ithaca II each represents and warrants, solely as to itself, that:

(A) Purchaser is a company validly existing under the laws of the Republic of Panama;

(B) this Agreement has been duly executed and delivered by Purchaser;

(C) Purchaser has the requisite power and authority to execute, deliver and perform its obligations under this Agreement and has taken all necessary action and received all necessary approvals to authorize the execution, delivery and performance of this Agreement;

(D) Ithaca I has sufficient financial resources to fulfill all of the obligations associated with the ownership of the Selected Hotel; and

(E) Ithaca II has sufficient financial resources to fulfill all of the obligations associated with the ownership of the Hotel Amenities Units.

5. Default. In the event that: (A) Purchaser takes an action that violates the covenants set forth in Section 3, (B) any of the representations and/or warranties in Section 4 are found to be untrue or (C) Purchaser is otherwise in default of any of the terms or conditions of this Agreement, then, in each case in addition to any other rights or remedies that may be available, Operator shall have no further obligation to comply with any its obligation under Section 1 of this Agreement.

6. Notices. All notices to be given by a Party to any other Party under this Agreement shall be in writing and shall be delivered (i) in person, (ii) by certified U.S. mail, with postage prepaid and return receipt requested, (iii) by overnight courier service, or (iv) by facsimile transmittal, with a verification copy sent by overnight courier service, to the other Party at the following address or facsimile number (or to such other address or facsimile number as a Party may designate hereafter by written notice to the other Parties pursuant to this Section 6):

A. If to Purchaser:

Orestes Fintiklis
Ithaca Capital Investments I. SA.
2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama, Republic of Panama
Ph: +13054690917

Orestes Fintiklis
Ithaca Capital Investments II. SA.
2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama, Republic of Panama
Ph: +13054690917

B. If to Operator:

Alan Garten, Esq.
c/o Trump International Hotels Management LLC
725 Fifth Avenue
26th floor
New York, NY 10022
ph: (212) 715-3203
fx: (212) 980-3821

Eric Trump
c/o Trump International Hotels Management LLC
725 Fifth Avenue
25th floor
New York, NY 10022
ph: (212) 715-7260
fx: (212) 688-8135

All notices delivered by a Party under this Agreement shall be deemed to have been received by the Party to whom such notice is sent upon (i) delivery to the offices of such Party, provided that such delivery is made prior to 5:00 p.m. (local time for such Party) on a business day, otherwise the following business day, or (ii) the attempted delivery of such notice if (A) such Party refuses delivery of such notice, or (B) such Party is no longer at such address, and such Party failed to provide the sending Party with its current address pursuant to this Section 5.

7. Successors and Assigns; Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns. This Agreement shall not confer any rights or remedies upon any other third party.

8. Prevailing Party. If a Party commences a legal proceeding to interpret or enforce the terms of this Agreement, the prevailing Party shall be entitled to recover its costs and expenses incurred in such legal proceeding, including reasonable attorneys' fees and expenses, from the losing Party in such proceeding.

9. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of New York, without giving effect to any conflict of law principles. Each of the Parties (a) irrevocably submit and consent to the exclusive jurisdiction of the federal and state courts of the State of New York and agree that all suits, actions or other legal proceedings with respect to this Agreement shall be brought only in the State of New York, (b) waive and agree not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceedings any claim that it is not personally subject to the jurisdiction of the federal and state courts of the State of New York, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Agreement or the subject matter hereof may not be enforced in such courts, and (c) agree to accept service of process in any such suit, action or proceeding anywhere in the world, whether within or without the jurisdiction of any such court, in accordance with the procedures for giving notices under this Agreement.

10. Recitals. Each of the Recitals is hereby incorporated by references and made a part of this Agreement.

11. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected terms or provisions at any other time or in any other jurisdiction.

12. Entire Agreement. This Agreement (including the recitals to this Agreements which are incorporated herein) sets forth the entire understanding and agreement of the Parties hereto any other agreements and understandings (written or oral) among the Parties on or prior to the date of this Agreement with respect to the matters set forth herein.

13. Amendments to Agreement. No amendment or modification to any terms of this Agreement, waiver of the obligations of any Party hereunder, or termination of this Agreement (other than pursuant to the terms of the Agreement), shall be valid unless in writing and signed by the Party against whom enforcement of such provision is sought.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

15. Interpretation. This Agreement shall be construed according to its fair meaning and neither for nor against either Party hereto irrespective of which Party caused the same to be drafted. Each of the Parties acknowledges that it has been, or has had the opportunity be represented by an attorney in connection with the preparation of and execution of this Agreement. Unless the language specifies or the context implies that a term of this Agreement is a condition, all of the terms of this Agreement shall be deemed and construed to be covenants to be performed by the designated party. "Shall" and "will" means "covenants to" whenever the context permits. The use of the terms such as "including", "include", and includes" followed by one or more examples is intended to be illustrative and shall not be deemed or construed to limit the scope of the classification or category to just the examples listed.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement as of the date first above written.

OPERATOR:

TRUMP PANAMA HOTEL MANAGEMENT LLC

By: _____
Name: Eric Trump
Title: President

PURCHASER:

ITHACA CAPITAL INVESTMENTS I S.A.

By: _____
Name: Orestes Fintiklis
Title: President

ITHACA CAPITAL INVESTMENTS II S.A.

By: _____
Name: Orestes Fintiklis
Title: President

EXHIBIT A
Hotel Agreements

1. Co-Ownership Regulations.

2. Pre-Opening Agreement: Pre-Opening Services Agreement dated as of April 13, 2011 among Newland International Properties Corp. ("**Promoter/Developer**"), Ocean Point Development Corp. (an affiliate of Promoter/Developer) and Operator, as amended by that certain First Amendment to Pre-Opening Services Agreement, dated as of July 3, 2013, and as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time, the "**Pre-Opening Services Agreement**").

3. Subsequent License Agreement: License Agreement dated as of April 13, 2011, Licensor, the Owners Meeting of the P.H. TOC ("**Owners Meeting**") and Hotel TOC Inc., a Panamanian corporation ("**Owner**"), as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time.

4. Hotel Management Agreement: Amended and Restated Hotel Management Agreement, dated as of April 13, 2011, among Operator, Promoter/Developer, Owner and Owners Meeting, as amended by that certain First Amendment to Amended and Restated Hotel Management Agreement, dated as of July 3, 2013, and as it may hereafter be further amended, restated, modified or supplemented time to time, the "**Hotel Management Agreement**");

5. Hotel Amenities Units Lease: Hotel Amenities Units Lease recorded April 13, 2011, between Promoter/Developer and Owner, as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time.

6. Hotel Unit Maintenance Agreement: Hotel Unit Maintenance Agreement dated as of closing of each purchase of a Hotel Unit, among Operator, Owner and each Hotel Unit owner, as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time.

7. Hotel Unit Rental Agreement: Hotel Unit Rental Agreement dated as of date entered into by each participating Hotel Unit Owner, among Operator, Owner and each voluntarily participating Hotel Unit Owner, as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time.

8. Hotel Amenities Units Maintenance Agreement: Hotel Amenities Units Maintenance Agreement dated as of April 13, 2011, among Operator, Owner (as lessee of Hotel Amenities Units) and Promoter/Developer (as owner and lessor of Hotel Amenities Units), as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time.

9. Unsold Hotel Units Participation Agreement: Unsold Hotel Units Participation Agreement dated as of April 13, 2011, between Operator, Owner and Promoter/Developer, as owner of all unsold Hotel Units, as it may hereafter be amended, restated, modified, supplemented, assigned and/or assumed from time to time (the "**Unsold Hotel Units Participation Agreement**").

10. License Agreement. License Agreement, originally dated as of March 16, 2006, between Donald J. Trump, as original licensor, and K Group Developers Inc., as original licensee, as assigned to Licensor, as licensor, and to Promoter/Developer, as licensee, as amended through that certain Eighth Amendment to License Agreement, dated as of July 3, 2013,(and as it may hereafter be further amended, restated, modified, supplemented, assigned and/or assumed from time to time, the "**License Agreement**").

EXHIBIT B

Selected Hotel Units

EXHIBIT C

Select Definitions

"**Affiliate**" means with respect to any Person, any Person that directly or indirectly Controls, is Controlled by, or is under common Control with, such Person.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of any Person, or the power to veto major policy decisions of any Person, whether through the ownership of voting securities or interests, by agreement, or otherwise. Controlling and Controlled shall have the correlative meanings related thereto.

"**Governmental Authority**" means any government or political subdivision or agency thereof.

"**Person**" means a natural person, partnership, corporation, limited liability company, Governmental Authority, trust or other legal entity.

"**Prohibited Person**" means any Person that (a) is engaged, or is an Affiliate of a Person engaged, in the business of owning, operating, licensing (as licensor or licensee) or franchising (as franchisor or franchisee) a hotel brand or lodging system; (b) is engaged, or is an Affiliate of a Person engaged, in the business of owning, operating, licensing (as licensor or licensee) or franchising (as franchisor or franchisee) a residential brand; (c) is not generally regarded in the business community as a person of high character and with a favorable reputation for integrity, honesty and veracity; (d) is or has been under indictment or convicted or is then under investigation by any Governmental Authority (or any Person Controlling it has been convicted) of a felony or crime of fraud or similar malfeasance; (e) could jeopardize any licenses, permits, approvals, certificates and/or other authorizations (x) required or desirable to operate the Property or (y) otherwise held by Donald J. Trump, Operator or any of their respective Affiliates; (f) could cause Operator or any of its Affiliates to violate any applicable law, or could cause any of their assets or interests, to be subject to any fines, penalties, sanctions, confiscation or similar liability or action under any law of the United States of America; or (g) is a Person or an Affiliate of a Person with whom Operator or any of its Affiliates (x) have in the past had, unsatisfactory business dealings or (y) maintain a conflict of interest with Operator or its Affiliates as reasonably determined by Operator.

EXHIBIT C

ARBITRATION ADMINISTERED BY
INTERNATIONAL CHAMBER OF COMMERCE

CASE NO. _____

HOTEL TOC, INC.,

Claimant,

-against-

TRUMP PANAMA HOTEL MANAGEMENT LLC, TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC, and JOHN DOES 1-5,

Respondents.

REQUEST FOR ARBITRATION

Joshua D. Bernstein
Darryl R. Graham
Kathleen M. Prystowsky
Vanessa I. Garcia
AKERMAN LLP

666 Fifth Avenue, 20th Floor
New York, New York 10103
Telephone 212.880.3800
Facsimile: 212.880.8965

Jose Carrizo
Orlando Tejeira
MORGAN & MORGAN

MMG Tower, 23rd Floor
Avenue Paseo del Mar, Costa del Este
Panama, Republic of Panama
Telephone: 507.265.7777
Facsimile: 507.265.7700

Attorneys for Claimant Hotel TOC, Inc.

October 14, 2017

Claimant Hotel TOC, Inc. ("Owner" or "Hotel TOC") hereby files this Request for Arbitration against Trump Panama Hotel Management LLC, Trump International Hotels Management, LLC (collectively "Operator"), and John Does 1-5 ("Does," and collectively with Operator, "Respondents"), and states as follows.

NATURE OF ACTION

1. This arbitration arises out of Operator's utter mismanagement of the Trump International Hotel & Tower Panama f/k/a the Trump Ocean Club International Hotel & Tower (the "Hotel"), a premier hotel property in Panama and Latin America, which Operator was charged to manage and operate pursuant to the parties' hotel management agreement (the "Management Agreement," as further defined herein)[1] as a luxury hotel, with a level of service and quality generally considered to be luxury, and in a manner designed to maximize the profitability and long term value of the Hotel.

2. As a direct result of Operator's abysmal management of the Hotel, material breaches of the Management Agreement and its fiduciary duties to Owner, the economic performance, physical condition, and guest service levels of the Hotel have dramatically declined. The Hotel is one of the finest hotels in Panama and Latin America; yet, as a result of Operator's conduct, including that detailed herein, the Hotel has been virtually empty resulting in abysmal occupancy rates and RevPAR, all the while guest complaints go unanswered, rooms go uncleaned, and Hotel amenities remain substantially underutilized.

3. By virtue of Operator's conduct, the Hotel (despite being a physically stunning structure with the best amenities and finishes in the market) has fallen to the very bottom of any

[1] A true and correct copy of the Amended and Restated Hotel Management Agreement for Trump Ocean Club International Hotel & Tower among Trump Panama Hotel Management LLC, Newland International Properties Corp., Hotel TOC Inc. and Owners Meeting of the P.H. TOC, dated as of April 13, 2011, is attached hereto as Exhibit 1 (without schedules). A true and correct copy of the First Amendment to the Amended and Restated Hotel Management Agreement, dated as of July 3, 2013, is attached hereto as Exhibit 2.

meaningful competitive set and guest satisfaction scores have plummeted, as evidenced by, among other things, ratings on TripAdvisor.com, Hotels.com, and Oyster.com.

4. While occupancy levels for the Hotel have collapsed over the last few years, significantly depressing revenues, Owner has been shouldering the burden of the Hotel operation out of its own pocket. Yet, Operator has provided Owner only sparse and deficient financial disclosure, all the while failing to make required distributions and develop an effective marketing plan to address the problems plaguing the Hotel caused by Operator's incompetence.

5. By contrast, Operator (and upon information and belief Operator's affiliates John Does 1-5) have enjoyed nothing but upside while the Hotel continues to lose market share at an alarming rate and while expenses are significantly higher than its regional luxury competitors.

6. Beneficiaries of the Owner have repeatedly raised these concerns and implored Operator to develop a sales and marketing strategy that will target the right market, encourage group and contract business to engage with the Hotel, reduce bloated expenses, and drive occupancy. Operator's gross incompetence and deficient sales organization stands in the way of Owner making any profit on its investment, all the while lining Operator's pockets.

7. Despite its obligation under the Management Agreement to operate the Hotel as a luxury hotel, perform its services "in accordance with the Operating Standard,"[2] and "use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel," Operator has materially breach the Management Agreement and done anything but act reasonably or maximize the Hotel's profitability.

---

[2] The Operating Standard is defined in the Management Agreement to mean "the level of service and quality generally considered to be luxury and no less than the level of service and quality prevailing from time to time at the Trump Brand Hotels, (b) [sic] consistent with the Trump Brand Standards, and (c) in accordance with this Agreement, and taking into consideration local custom, usage and standards in Panama, as agreed to by the parties...."

8. By its wrongful acts, incompetence, and violations of its own standards, Operator has not only cost Owner in excess of $15 million in damages, but has irreparably devastated the reputation, value and future success of the Hotel and Owner's investment therein.

9. Accordingly, on October 14, 2017, Hotel TOC served Operator with a Notice of Default (the "Default Notice")[3] detailing specific breaches of the Management Agreement and demanding that those breaches be cured (to the extent curable). However, as many, if not all, of the breaches articulated in the Default Notice are incurable pursuant to the express terms of the Management Agreement, Owner is entitled to immediately terminate the agreement as a matter of law.

10. Based on Operator's failure and/or inability to cure the defaults articulated in the Default Notice, Owner brings this arbitration seeking, among other things: (i) a declaration that uncured Events of Default have occurred entitling Owner to terminate the Management Agreement, including, but not limited to, breaches of Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4.2, 4.4, 4.6, 5.2(a), 5.2(e), 5.2(f), and 5.2(h); (ii) a declaration that, even if an Event of Default has not occurred, Owner is entitled to terminate the Management Agreement under the laws of personal services contracts and agency; and (iii) damages in an amount to be proven but no less than $15 million to compensate Owner for Operator's flagrant, calculated and material breaches of the Management Agreement and its fiduciary duties to Owner, including interest, costs, and attorneys' fees.

JURISDICTION AND VENUE

11. **ICC Arbitration**. This dispute is governed by the arbitration provision in the Amended and Restated Hotel Management Agreement for Trump Ocean Club International Hotel & Tower made among Trump Panama Hotel Management LLC, Newland International

[3] A true and correct copy of the Default Notice is attached hereto as Exhibit 3.

Properties Corp. ("Hotel Amenities Unit Owner," now owned by Ithaca Capital Investments II, S.A.), Hotel TOC, Inc., and Owners Meeting of the P.H. TOC (the "P.H. TOC"), dated as of April 11, 2011, and as amended (the "Management Agreement"). Pursuant to Article 9, disputes arising out of the Management Agreement, including, but not limited to, Events of Default, are to be resolved by binding arbitration before the International Chamber of Commerce (the "ICC").

12. Section 9.1 of the Management Agreement provides:

> Unless otherwise specifically provided for in this Agreement, all disputes, controversies, claims or disagreements arising out of or relating to the Agreement (singularly, a "Dispute", and collectively, "Disputes") shall be resolved in the following manner.
>
> 9.1.1 Either Party may submit the Dispute to the International Chamber of Commerce for binding arbitration under then existing ICC Commercial Arbitration Rules. …

13. Since the disputes raised herein in this Request for Arbitration concern Operator's material breaches of the Management Agreement and Owner's right to terminate Operator, these claims are properly brought before the ICC.

14. **Language and Place of Arbitration**. Pursuant to Sections 9.1.2 and 9.1.5 of the Management Agreement, the language of the arbitral proceedings shall be English and the place of the arbitration shall be Panama City, Panama.

15. **Governing law**. Section 12.3 of the Management Agreement further provides that "all disputes relating to the performance or interpretation of any term of this Agreement… shall be construed under and governed by the internal laws of the State of New York…."

APPOINTMENT OF ARBITRATOR

16. The Management Agreement provides that any arbitration conducted in accordance with Article 9 of the agreement will be conducted by a panel of three arbitrators.

17. Specifically, arbitrators must meet the following qualifications:

> Each arbitrator shall have not fewer than 10 years of experience (at the time the request for arbitration is filed) in the luxury hotel business as construed under U.S. market standards (and no fewer than five years of experience in the luxury condominium business), shall be independent of the parties as provided by the ICC Commercial Arbitration Rules, and shall not be an Affiliate of or a Person who has any past (within the prior three years from the date the arbitration is filed), present, or currently contemplated future business or personal relationship with Owner, Promoter/Developer, any owner of 10% of the Hotel Units or any other category of Units, or Operator.

Management Agreement at § 9.1.1.

18. The Management Agreement also provides the method for appointing an arbitration panel and specifies that each party to the arbitration is entitled to select one arbitrator. Specifically, the Section 9.1.1 provides:

> Each of Operator, on the one hand, and any one or more of the other Parties, on the other hand, shall propose one arbitrator by written notice incorporated into the request for arbitration and the answering statement, to the other Party, and the two arbitrators selected shall, within twenty (20) days after their appointment, select a third arbitrator. If either Party does not select an arbitrator within twenty days after the Dispute is submitted, then an arbitrator shall be selected for that Party under the ICC Commercial Arbitration Rules. In the event that the parties are unable to obtain the services of arbitrators which meet the qualifications set forth in this **Section 9.1.1**, the parties shall use diligent efforts to obtain the services of arbitrators whose qualifications are substantially similar to those set forth above.

Id. (emphasis in original).

19. Hotel TOC hereby designates Cecilia Fanelli as its party appointed arbitrator. Ms. Fanelli's contact information is as follows:

Cecelia L. Fanelli, Esq.
Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, New York 10036
Tel.: 212.506.3925
Fax: 212.506.3950
cfanelli@steptoe.com

THE PARTIES

20. Claimant, Hotel TOC, Inc., is a corporation formed under Panamanian law, with its principal place of business located at la Propiedad Horizontal P.H. TOC, Ciudad de Panamá, República de Panamá.

21. All communications to Hotel TOC in connection with this proceeding should be sent to its counsel, as follows:

Joshua D. Bernstein
Darryl R. Graham
Kathleen M. Prystowsky
Vanessa I. Garcia
AKERMAN LLP
666 Fifth Avenue, 20th Floor
New York, New York 10103
Tel: 212.880.3800
Fax: 212.259.7181
Joshua.Bernstein@akerman.com
Darryl.Graham@akerman.com
Kathleen.Prystowsky@akerman.com
Vanessa.Garcia@akerman.com

Jose Carrizo
MORGAN & MORGAN
MMG Tower, 23rd Floor
Avenue Paseo del Mar, Costa del Este
Panama, Republic of Panama
Tel.: 507.265.7777
Fax: 507.265.7700
Jose.Carrizo@morimor.com

22. Respondent Trump Panama Hotel Management LLC is a limited liability company formed under Delaware law, with its principal place of business at 725 Fifth Avenue, 26th Floor, New York, New York 10022.

23. Pursuant to the Management Agreement, all communications to Respondent Trump Panama Hotel Management LLC should be sent to all of the following:

Allen Weisselberg
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 26th Floor
New York, New York 10022
Tel: 212.715.7224
Fax: 212.832.5396
weisselberg@trumporg.com

Jason Greenblatt, Esq.
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 26th Floor
New York, New York 10022
Tel: 212.715.7212
Fax: 212.980.3821
jgreenblatt@trumporg.com

Donald J. Trump, Jr.
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7247
Fax: 212.688.8135
djtjr@trumporg.com

Ivanka Trump
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7256
Fax: 212.688.8135
itrump@trumporg.com

Eric Trump
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022

Tel: 212.715.7256
Fax: 212.688.8135
etrump@trumporg.com

Jim Petrus
c/o Trump Panama Hotel Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7227
Fax: 212.688.8135
jpetrus@trumporg.com

24. Upon information and belief, Respondent Trump International Hotels Management, LLC is a limited liability company formed under Delaware law, with its principal place of business at 725 Fifth Avenue, 26th Floor, New York, New York 10022.

25. Upon information and belief, Respondent Trump International Hotels Management, LLC assigned certain of its interests in the Management Agreement to Respondent Trump Panama Hotel Management LLC.

26. All communications to Respondent Trump Panama Hotel Management LLC should be sent to all of the following:

Allen Weisselberg
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 26th Floor
New York, New York 10022
Tel: 212.715.7224
Fax: 212.832.5396
weisselberg@trumporg.com

Jason Greenblatt, Esq.
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 26th Floor
New York, New York 10022
Tel: 212.715.7212
Fax: 212.980.3821
jgreenblatt@trumporg.com

Donald J. Trump, Jr.
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7247
Fax: 212.688.8135
djtjr@trumporg.com

Ivanka Trump
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7256
Fax: 212.688.8135
itrump@trumporg.com

Eric Trump
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7256
Fax: 212.688.8135
etrump@trumporg.com

Jim Petrus
c/o Trump International Hotels Management LLC
725 Fifth Avenue, 25th Floor
New York, New York 10022
Tel: 212.715.7227
Fax: 212.688.8135
jpetrus@trumporg.com

27. Upon information and belief, Respondents John Does 1-5 are individuals and/or legal entities, affiliated with Operator, the names and addresses of which are presently unknown.

28. Upon information and belief, at all relevant times, John Does 1-5 are individuals and/or entities that dominated and controlled Operator, and primarily transacted Operator's business instead of its own.

29. Upon information and belief, John Does 1-5 used their control and domination of Operator to breach Operator's legal duties, causing damages to Owner.

30. Indeed, upon information and belief, Operator is nothing but a pass-through entity created by John Does 1-5 to manage the Hotel and purportedly and fraudulently shield John Does 1-5 from liability to Operator's creditors (including Hotel TOC), thereby attempting to make Operator judgment proof so as to prevent an actual recovery for Operator's breaches of the Management Agreement and its fiduciary duties, among other things.

31. Accordingly, pursuant to New York law (which governs the Management Agreement and this proceeding), Hotel TOC is entitled to pierce the corporate veil and to a judgment in this arbitration declaring that John Does 1-5 are liable for all damages awarded.

FACTUAL BACKGROUND

I. The Development of the Trump Ocean Club International Hotel & Tower

32. The Trump International Hotel & Tower Panama is part of a 70-story, luxury mixed-use, multi-component tower located on the waterfront overlooking Panama Bay in the Punta Pacifica area of Panama City, Panama, which includes a hotel, residences, event space, restaurants, and casino.

33. The tower complex is comprised of five components: the Hotel, residential condominiums, offices, commercial space, and a casino. Collectively, these components are governed by a horizontal property regime known as the P.H. TOC, a condominium association.

34. The Hotel, one of the finest luxury hotel properties in Latin America, consists of 369 Hotel Units and a Hotel Amenities Unit, each of which are owned by individual unit owners. To ensure effective management of the Hotel, these individual unit owners are beneficiaries in an entity known as the Hotel TOC Foundation, which in turn controls Hotel TOC, Inc. – the Claimant here.

35. The tower's developers envisioned that the P.H. TOC and Hotel TOC would be managed and operated by an international luxury hotel brand to ensure the efficient and

comprehensive operation of the tower as a luxury property that would maximize the investment for all component owners.

36. In connection with this project, the developer entered into a series of agreements with Donald J. Trump and his affiliates to brand, manage and operate the Building, including a condominium management agreement, hotel management agreement, and license agreement. These agreements streamlined the management of the Building to ensure that all the components, particularly the Hotel and condominium, would be maintained and operated in a cohesive manner as a luxury property.

37. To that end, on or about March 16, 2006, K Group Developers Inc. entered into a License Agreement with Donald J. Trump to license the "Trump" trademark as the brand for the tower.[4] Pursuant to that agreement, the developer received a license to use the Trump Mark to brand the tower.

38. In connection with the development of the tower, P.H. TOC entered into a twenty-year management agreement with a Trump affiliate, known as the Trump Panama Condominium Management LLC ("Trump Condo"), to operate common areas of the tower. Under that agreement, Trump Condo agreed to provide luxury services to P.H. TOC, including the maintenance and operation of the tower.

39. Upon information and belief, the P.H. TOC Management Agreement was terminated after allegations arose concerning Trump Condo's gross negligence and potentially fraudulent conduct, including the commingling of accounts for the various components and the distribution of funds from P.H. TOC bank accounts without authorization. Upon information

[4] Thereafter, K Group Developers Inc. assigned its interests in the agreement to Newland and Mr. Trump assigned his interest in the agreement to Trump Marks Panama LLC.

and belief, Trump Condo agreed to the termination of the P.H. TOC Management Agreement pursuant to a Mutual Release and Settlement Agreement.

40. Additionally, on or about August 11, 2008, Hotel TOC (as Owner of the Hotel component and representative of the individual hotel unit owners) entered into the Management Agreement, which is the subject of this arbitration, with Respondent Operator (another Trump affiliate) to manage and operate the Hotel Units and Hotel Amenities Units[5] as a first class, luxury hotel. Operator's obligations under the Management Agreement are described more fully below.

II. The Hotel Management Agreement

A. Operator's Contractual and Fiduciary Obligations to Owner

41. In connection with the Management Agreement, Operator held itself out to be a sophisticated international luxury hotel manager that could position the Hotel as a luxury property and maximize the revenue stream to Owner.

42. Indeed, the express purpose of retaining Operator was to "operate the Hotel Units and Hotel Amenities Units as a first class, luxury hotel." Management Agreement at p.2.

43. Based on these representations, Owner engaged Operator "as its agent to supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel." *Id.* at § 2.1.1.

44. The initial term of the Management Agreement is for a period of twenty (20) years after the Opening Date, which runs until July 6, 2031. *Id.* at § 5.1. While the Management Agreement includes an automatic five (5) year Renewal Term, both the Owner and the Operator

[5] In connection with the Management Agreement, the Hotel Amenities Unit Owner leased the Hotel Amenities Unit to Owner. Pursuant to the Management Agreement, Operator is contractually obligated to oversee compliance of the lease and cause Owner to perform its obligations under the lease. *See* Management Agreement at § 2.2.29.

have the right to forgo the Renewal Term by terminating the agreement by notice given twelve (12) months prior to the expiration date. *Id.* at § 5.1.2.

45. Under the Management Agreement, Operator is contractually obligated to "use its commercially reasonable efforts to operate the Hotel in a manner to endeavor to maximize the profitability and long term value of the Hotel." *Id.* at § 2.2.

46. Specifically, Section 2.2 provides:

> Operator hereby accepts the foregoing engagement and covenants and agrees to manage the Hotel and perform Operator Hotel Services and Other Operator Services during the Term of this Agreement in accordance with the Operating Standard and to ***use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel***. Without limiting the generality of the foregoing, but subject to the limitations set forth in Sections 2.3 and 2.6-2.11 and the other provisions of this Agreement, Operator shall have the authority and duty, as necessary or advisable for the proper operation and maintenance of the Hotel and performance of the other Operator Services in accordance with the Operating Standard....

Id. at § 2.2 (emphasis added).

47. Moreover, Operator also has the "authority and duty" to operate and maintain the Hotel in accordance with the Operating Standard, *i.e.* as a luxury hotel. *Id.*

48. The definition of "Operating Standard" in the Management Agreement provides:

> Operating Standard - means the ***level of service and quality generally considered to be luxury*** and no less than the level of service and quality prevailing from time to time at the Trump Brand Hotels, (b) consistent with the Trump Brand Standards, and (c) in accordance with this Agreement, and taking into consideration local custom, usage and standards in Panama, as agreed to by the parties; provided however, in the event the Parties are unable to agree upon the local standard, if any, to be applied, such dispute shall be resolved pursuant to Section 9.1 hereof.

Id. at 15 (emphasis added).

49. To that end, and evidencing Operator's overall power and control over the Hotel, the Management Agreement states that "except as may otherwise be expressly provided for [therein], Owner delegates all authorities and responsibilities for operation of the Hotel to Operator." *Id.* at § 2.1.3.

50. This delegation to Operator includes providing customary hotel operator services, supervising Hotel personnel, causing the Hotel to be maintained in good order, and making "all necessary repairs, replacements, corrections and maintenance … to maintain the competitive position of the Hotel in its market." *See e.g.*, *id.* at §§ 2.2.14-2.2.15, 2.2.19, 2.2.27, 2.2.32.

51. Operator is also charged with the authority to operate the Hotel as Owner's agent in all of the following aspects, among others:

- "[T]he establishment and maintenance of the Hotel Accounts…" *Id.* at § 2.1.3.
- "[D]irecting all Gross Operating Revenue/Hotel and Gross Operating Revenue/Hotel Amenities Units, respectively to the appropriate bank account." *Id.*
- "[D]etermining room rates, food and beverage menu prices and charges to Hotel Guests for Other Operator Services." *Id.*
- Determining "the terms of guest occupancy and admittance to the Hotel, use of rooms for commercial purposes, policies relating to entertainment, labor policies, publicity and promotion activities and technology services and equipment to be used in the Hotel…" *Id.*
- Establishing and implementing "marketing, sales and reservations programs and systems to secure reservations for the Participating Units, including all arrangements with wholesale and bulk volume purchasers." *Id.* at § 2.2.1.
- Supervision and procurement of "all inventories, provisions, consumable supplies and OS&E as Operator…" *Id.* at § 2.2.19.

- Performance of "such other tasks as are customary in the performance of the hotel operator services at hotels the standard of the Operating Standard." *Id.* at § 2.2.32.

52. Operator also has the obligation under the Management Agreement to maintain the Hotel's accounts in accordance with the Uniform System of Accounting and to provide regular, detailed statements of accounts to Owner. *Id.* at § 2.5.

53. For example, Operator is required to provide Owner with monthly operational statements that provide a "statement of net cash flow from operations in reasonable detail for such month as well as the cumulative Fiscal Year-to-date," "balance sheet including current month and prior beginning of year balance comparisons and differences in reasonable detail," and "schedule of Capital Expenses showing, in reasonable detail, items budgeted, actual expenditures to date and the amount of expenditures projected for completion." *Id.* at § 2.5.3.

54. Operator is also obligated to make distributions to the Hotel Unit Owners and the Hotel Amenities Unit Owner based on quarterly financial statements detailing the performance of each such Hotel Unit Owner's Hotel Unit(s) during that period. *Id.* at § 2.5.4.

55. Operator, like any hotel operator, is also responsible for developing a cogent and effective sales and marketing plan for the Hotel. Specifically, Section 2.3.1(c) of the Management Agreement provides that the plan must include the following:

> Operator's intentions for the next Fiscal Year for the promotion and positioning of the Hotel, including a plan for the activities to be undertaken by Operator pursuant to Section 2.2, which plan shall include a description of the Hotel's target markets, the Hotel's relative position in those markets, the proposed room rate structures for each market segment, the current and future sales plan for the Hotel, the advertising and public relations plan for the Hotel, and the proposed staffing for the sales and marketing activities of the Hotel ("Marketing Plan").

56. In exchange for these services, Operator charges Owner a Base Fee of 3.5% of Gross Operating Revenue for the Hotel for fiscal year 2017, which increases to 3.75% for fiscal years 2018 – 2031.

57. An incentive fee of 10% over and above the Base Fee is also included in the Management Agreement if certain contractually prescribed benchmarks are met, as motivation for Operator to fully perform its obligations under the agreement.

58. Operator has not come close to reaching the required benchmarks to receive the incentive fee in the last few years.

59. Rather, Operator has consistently and materially breached its contractual and fiduciary obligations by failing to develop an effective sales and marketing strategy to target the proper market, encourage group and contract business to engage in the Hotel, and to drive occupancy. Instead, Operator has been losing market share steadily and stands in last place among its peer luxury hotels in all the relevant metrics for success in the hotel industry, including ADR, RevPAR, and occupancy. This decline in occupancy has a direct impact on the Hotel's bottom line. The resulting decline in revenues has been particularly precipitous in the past two years, leaving Owner to shoulder the financial burden of the Hotel on its own, all the while Operator lines its pockets with ill-gotten management fees.

B. Owner's Contractual Rights to Terminate the Management Agreement

60. The Management Agreement provides Owner with a contractual mechanism to terminate Operator in the event Operator defaults on its obligations under the Management Agreement.

61. Pursuant to Section 5.2 of the Management Agreement, Owner is entitled to serve a Notice of Default upon a specified "Event of Default." These defaults include:

a. the failure of Operator to disburse any amount to Hotel Unit Owners or Hotel Amenities Unit Owner as provided for in this Agreement ... for a period of thirty (30) days after the date on which notice of the failure has been given to the defaulting party by the other party;

* * *

e. the commission of fraud, crime of moral turpitude or willful misconduct or gross negligence which does not otherwise constitute a breach of any express covenant or obligation under this Agreement;

f. a termination of the ... Condominium Management Agreement[6] in accordance with [its] terms, for any reason, for which there shall be no opportunity to cure under this Agreement;

h. the failure of any Party to fulfill any of the other material covenants, undertakings, obligations, or conditions set forth in this Agreement, and the continuance of any such default for a period of thirty (30) days after written notice of the failure; provided that if upon the receipt of any notice the defaulting party promptly and with all due diligence attempts to cure the default and, if the non-monetary default is not susceptible of being cured within the thirty (30) days period and the defaulting party advises the other party in writing of the reasonable period which will be required to cure the default and with all due diligence takes and continues action to cure and cures the failure within the reasonable period so advised, then no Event of Default shall be deemed to have occurred unless and until the defaulting party has failed to take or to continue to take action or to complete the cure within such reasonable period.

Id. at § 5.2

62. The Management Agreement further provides that the non-defaulting party may, "without prejudice to any other recourse at law or in equity" issue a notice of termination upon the defaulting party, and that such termination "shall be effective no earlier than thirty (30) days and no later than ninety (90) days following the date the notice of termination is given." *Id.* at § 5.2.2.

[6] Condominium Management Agreement is defined in the Management Agreement to mean the P.H. TOC Management Agreement, referred to herein, and which has been terminated surrounding allegations of the mismanagement.

63. Notwithstanding these provisions, pursuant to Section 5.2.4 of the Management Agreement, "[a]ny termination notice given pursuant to Section 5.2.2 … shall not result in the termination of this Agreement if a bona fide dispute with respect to any alleged Event of Default … has arisen and such dispute has been submitted to [the ICC for] resolution."

64. Based on Operator's numerous defaults under the Management Agreement, as described in further detail below, and the reasonable expectation that Operator will contest Owner's Default Notice, and any forthcoming Notice of Termination, Owner submits these disputes to this arbitration panel in accordance with Sections 5.2.4 and 9.1 of the Management Agreement.

III. Operator's Material Breaches and Incurable Defaults of the Management Agreement

65. Each day that the Management Agreement remains in place, Owner's investment in the Hotel is in jeopardy due to Operator's gross incompetence, deficient sales organization and failure to implement an effective sales and marketing strategy designed to drive occupancy and compete with its peer luxury hotels.

66. Over the past few years, Operator has consistently failed to meet its obligations under the Hotel Management Agreement. With the P.H. TOC Management Agreement now terminated, the Hotel's bottom line has been even worse.

67. Operator has materially breached its contractual and fiduciary obligations under the Management Agreement to "supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel," operate the Hotel in accordance with the Operating Standard, and to "use its commercially reasonable efforts to operate the Hotel in such a manner as to endeavor to maximize the profitability and long term value of the Hotel."

68. Operator has also breached its obligations to maintain the Hotel as a luxury hotel, use its commercially reasonable efforts to manage the costs and expenses of the Hotel, make disbursements to Hotel Unit Owners based on actual costs and expenses, maintain the Hotel's financial records in accordance with the Uniform System of Accounts, include the minimum disclosures required in the monthly operating reports, maintain the appropriate funds in segregated reserve accounts, and permit Owner to make monthly payment for Common Area Maintenance of the Hotel amenities and reimburse the Hotel Amenities Unit Owner for all such payments made to date.

69. This conduct is a material breach and default of, among other things, Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4.1, 4.2, 4.4, 4.6, 5.2(a), 5.2(e), 5.2(f), and 5.2(h) of the Management Agreement.

A. The Termination of the P.H. TOC Management Agreement Is an Incurable Event of Default Entitling Owner to Terminate As a Matter of Law

70. As explained above, the developer intended for all the components of the tower to be managed and operated as a luxury property by one international luxury brand management company – Trump and his affiliated companies – in order to realize economies of scale and maximize the profitability of the each component.

71. Recognizing that Operator may not be able to fulfill its obligations to operate the Hotel if the P.H. TOC Management Agreement were terminated, the parties to the Management Agreement included in Section 5.2(f) a cross-termination provision, which allows Owner the option to terminate the Management Agreement as a matter of right if the P.H. TOC Management Agreement is terminated. By contract, this default is incurable as a matter of law.

72. Indeed, since the termination of the P.H. TOC Management Agreement in Summer 2015, the Hotel's bottom line has rapidly deteriorated.

73. In addition to the loss of efficiencies and Operator's apparent lack of interest in continuing to operate the Hotel as a luxury brand, Owner has also been directly, financially impacted by the termination of P.H. TOC Management Agreement in the form of lost economies of scale and detrimental expense allocations, as evidenced by, among other things, the July 16, 2016 readjustment charged to Hotel TOC of approximately $1.5 million.

74. Accordingly, Owner is exercising its right under Section 5.2(f) to terminate the Management Agreement, which default is incurable and results in immediate termination of Operator.

75. On this basis alone, and as a matter of law, Owner is entitled to a declaration that the Management Agreement is terminated.

B. Operator's Fatally Flawed Sales and Marketing Strategy

76. Owner is also entitled to terminate the Management Agreement based on Operator's inability to develop an effective sales and marketing strategy, which is causing the Hotel to lose market share dramatically and which has resulted in the Hotel underperforming compared to its luxury competitors.

77. Beneficiaries of the Owner have repeatedly raised its concerns with Operator and implored Operator to develop a sales and marketing strategy that will target the right market, encourage group and contract business to engage with the Hotel, and drive occupancy. Operator's gross incompetence and deficient sales organization stands in the way of Owner making any profit on its investment.

78. Significantly, over the last few years, Operator has failed to generate room nights and is continuously losing market share to lower quality hotels at an exponential rate. Operator represents itself as the manager of a luxury brand and has been given the opportunity to manage

one of the best hotels in Panama (if not the best) in terms of amenities, finishes, and waterfront location. Yet, despite Operator's boasts, the Hotel is practically empty.

79. As compared to its peers, the property was 2 out of 7 in terms of occupancy for all of 2015, but fell to 7 out of 7 in 2016 and remains in last place for most of 2017.

80. This decline in occupancy has a direct impact on the Hotel's bottom line. In May 2017, the Hotel was outperformed in RevPAR by lesser hotels with substandard amenities, smaller rooms, and lower quality finishes, including select service hotels like the Courtyard by Marriott. This decline in revenue relative to not only its luxury peers, but also to bargain hotels in Panama City, is the direct result of Operator's gross incompetence and failure to implement a commercially reasonable strategy to market the Hotel.

81. Operator has also failed to dedicate the standard brand resources to marketing the Hotel. For example, even though Latin America is the Hotel's primary source market, the Global Sales Office has only one person dedicated to that market. Of the seven individuals working in the Global Sales Office, not a single person is located in Florida, Brazil, Colombia or Mexico, despite those being some of the main markets for guests to the Hotel.

82. Moreover, upon information and belief, only a fraction of room nights (approximately 5%, or even less) comes through Operator's reliance on its brand resources; whereas a typical international luxury hotel management company produces approximately 18-22% of room nights, with some at 30%.

83. However, despite recognizing that lead generation is a significant issue plaguing the Hotel, Operator has not developed any, much less an effective, sales and marketing strategy. Rather than address the growing concern of market saturation as any other reasonable operator would, including by ensuring a steady stream of corporate accounts and group stays, Operator

has in fact lost this business. In an attempt to reverse course, beneficiaries of the Owner solicited dozens of corporate accounts in order to have some regular room nights at the Hotel, but Operator failed to use commercially reasonable efforts to solicit these accounts.

84. Additionally, despite knowing that the W Hotel will be opening a new hotel in Panama City this year, Operator has refused to develop a detailed strategic plan to mitigate further market saturation, does not know what to do, and has refused to develop any contingency plans to ensure sufficient occupancy and revenues after the W Hotel opens. This same failure has occurred twice before, with the openings of the Hilton Panama and the Westin Panama Hotel.

85. As a result of Operator's continued failure to implement an effective sales strategy, occupancy has declined significantly over the last two years and revenue generation is down approximately 35% from 2015, an unprecedented decline for any hotel, in any market, especially since over half of that decline occurred in 2017, without a new luxury hotel entering the market year to date.

86. Furthermore, Operator has failed to take reasonable cost saving measures based on the steep decline in occupancy and revenue. Rather, Operator's costs are far higher when compared to regional luxury competitors. Based on a review of the scant financial information that Operator provides, it appears that costs relating to rooms, payroll, food and beverage, and administrative and general expenses, among others, are materially and needlessly higher (especially given the abysmal occupancy rates at the Hotel).

87. Alarmingly, the one area where Operator appears to have reduced costs is marketing – the very place where dollars are needed and should be wisely invested in order to ensure appropriate occupancy and revenue levels for this luxury Hotel.

88. Beneficiaries of the Owner have repeatedly notified Operator of its objections to Operator's sales and marketing strategy (for example, the July 13, 2017 meeting in New York and the August 27, 2017 meeting at the Hotel, as well as many other meetings and communications).

89. Beneficiaries of the Owner has also repeatedly offered solutions that Operator could implement to generate room nights, including engaging wholesalers to increase group business, implementing a performance review for the Director of Sales and Marketing, developing well-articulated value propositions against each of its competitors based on a SWOT analysis, and prioritizing lost accounts based on the volume they generate in the Panama market, among other things.

90. In response to these critiques, Operator admitted that it needs to improve its sales and marketing strategy. But despite this acknowledgement, Operator has not taken any of the obvious and imminently reasonable steps recommended and has not developed any other reasonable or effective steps that any reasonable operator would – and as the Hotel's competitors clearly have. Moreover, Operator has failed to develop its own plans to improve occupancy, decrease costs, and improve the long term value of the Hotel.

91. Based on Operator's inability to develop an effective sales and marketing strategy over the last two years, and the Hotel's continued decline relative to both its luxury peers and lesser quality hotels, Operator has materially breached its obligations under the Management Agreement, including, but not limited to, Sections 2.1, 2.2, 2.3, 2.4, and 2.6. Operator is, therefore, in default pursuant to Sections 5.2(e) and 5.2(h) of the Management Agreement, which defaults cannot be cured, as evidenced by Operator's prior attempts to implement an effective sales and marketing strategy.

92. Accordingly, Owner is entitled to both a declaration that an Event of Default has occurred and damages in an amount not less than $15 million resulting from Operator's material breaches of the Management Agreement, including interest, costs, and attorneys' fees.

C. Operator's Failure to Operate the Hotel as a Luxury Property

93. As reflected by the Hotel's abysmal and unsustainable financial performance for the 2015 and 2016 fiscal years, Operator has also failed to operate the Hotel as a luxury hotel in accordance with the Operating Standard.

94. Recent guest reviews made on third-party websites, such as TripAdvisor, Hotels.com, and Oyster.com evidence Operator's failure to maintain and operate the Hotel as a luxury property. For example, reviews from TripAdvisor for the period March 2017 through the present include guest complaints about service problems, and rooms that have not been cleaned.

95. The reviewers repeatedly noted that management did not seem invested in the property with at least two guests described the Hotel as feeling "abandoned." Repeat guests have also noted the changes in the Hotel, with one guest, who had stayed at the property 6 times, explaining "it is unlikely we will return as the changes we experienced are too drastic from the last time we stayed."

96. In response to many of these guest complaints, Operator provides a boilerplate response that admits it did not provide the luxury stay expected, further damaging the Hotel's reputation. For example, in June 2017, the Guest Relations Manager of the Hotel responded to a guest's complaint that the hotel room door was broken and that an employee entered without even knocking with its standard response, as follows:

> TOCGM, Guest Relations Manager at Trump International Hotel & Tower Panama, responded to this review
>
> Responded June 30, 2017

Dear Guest,

Thank you for taking the time to share your feedback. It is feedback like this that we learn from and use to improve. We work hard to deliver an exceptional guest experience, and it's apparent in this case that we fell short. If you give us a chance to earn back your trust, I can assure you that we will do our best to give you the great hotel experience that so many of our guests have grown so fond of.

Sincerely,
TrumpPanama
Executive Office Manager

97. By failing to maintain the service levels that its guests expect from a luxury hotel, provide clean rooms, and adequately and appropriately address guest's complaints, Operator has violated its duty to operate the Hotel as a luxury hotel and caused severe reputational damage to the Hotel. Accordingly, it has materially breached its obligations under the Management Agreement, including, but not limited to, Sections 2.1, 2.2, 2.3, 2.4, and 2.6, and is thus in default of Sections 5.2(e) and 5.2(h), which defaults cannot be cured.

98. For these reasons, Owner is entitled to a declaration that an Event of Default has occurred and damages for these material breaches of the Management Agreement, including interest, costs, and attorneys' fees.

D. Operator's Failure to Make Regular Disbursements to Unit Owners

99. In addition to the breaches described above, Operator has also breached the Management Agreement by failing to make distributions to the unit owners in accordance with Sections 2.5 and 4.6.

100. Significantly, rather than calculate distributions to Unit Owners based on actual revenues and actual costs, Operator has impermissibly chosen to calculate distributions based on budgeted costs, which far exceed the Hotel's actual expenditures due to such abysmal occupancy levels. This results in Unit Owners receiving little in distributions, while Operator hoards

Owner's cash, possibly in order to fund prior deficiencies and unfunded reserves, in violation of Sections 2.5, 4.4, and 4.6 of the Management Agreement.

101. Pursuant to Section 5.2(a) of the Management Agreement, an Event of Default has occurred based on Operator's failure to disburse owed amounts to Hotel Unit Owners and the Hotel Amenities Unit Owner.

102. Accordingly, Owner is entitled to a declaration that an Event of Default has occurred, an order that Operator must make distributions in accordance with the Management Agreement, as explained herein, and damages resulting from Operator's failure to make such distributions, with interest.

E. Operator's Failure to Make Regular Disclosures

103. Operator has also failed to meet its obligation to make disclosures of financial information that is necessary for Owner to properly evaluate how the Hotel and Operator are actually performing.

104. Operator's meager disclosures do not meet the standards required in Section 2.5 of the Management Agreement. For example, the Operator is not providing all aspects of the Consolidated Income Statement in accordance with the Uniform System of Accounts, including portions of the base management fee, brand marketing fee, and FFE Reserve related to the revenues of the Food and Beverage department. Other deficiencies include the failure to provide an adequate monthly statistical report, and a detailed labor analysis. These deficiencies result in misstatements, including understated Food and Beverage profit and Gross Operating Profit, as well as understated marketing expenses, management fees, and Non-Operating Income and Expenses.

105. Operator has also failed to provide Owner all contractually required information in the monthly reports, including, but not limited to:

- A statement of net cash flow from operations in reasonable detail for such month as well as the cumulative Fiscal Year-to-date;
- A statement of the amount of the Management Fees and Reimbursable Expenses payable or reimbursable to Operator or its Affiliates;
- A balance sheet including current month and prior beginning of year balance comparisons and differences in reasonable detail;
- A schedule of Capital Expenses showing, in reasonable detail, items budgeted, actual expenditures to date and the amount of expenditures projected for completion;
- The monthly bank statements and reconciliation;
- A monthly statistical report, including room availability and room sales;
- A detailed labor analysis in such form as Owner shall reasonably request; and
- The general ledger for the prior month.

106. Moreover, Operator failed to timely provide Owner with audited financial statements, which arrived more than 8 months after the close of the fiscal year, prompting Owner to question the integrity of Operator's accounting operations.

107. Similarly, the 2016 budget was not issued until January 2017 – three months late. Operator's purported excuse was that P.H. TOC would not cooperate with Operator and provide actual figures, so Operator could not develop a budget. Given the termination of the P.H. TOC Management Agreement, Operator eventually produced a budget relying on budgeted figures for P.H. TOC. Operator could have produced this "budget" in October 2016, as required by the Management Agreement.

108. Most recently, in a meeting on October 3, 2017, Operator failed to present the Owner or the beneficiaries of the Owner with an annual budget for 2018 for their comment and

approval in compliance with the Management Agreement. Rather, Operator claims that it (Operator) has approved the budget because it acts for Hotel TOC, the Owner.

109. Upon information and belief, Operator never presented the 2018 budget to the board of Hotel TOC, the Assembly of Shareholders, or any of the Beneficiaries of the Foundation for their approval, but instead has purported to usurp control of Hotel TOC and dispensed with corporate formalities, in flagrant violation of its contractual and fiduciary obligations to Owner.

110. These failures constitute material breaches of Sections 2.1, 2.2, 2.3, and 2.5 of the Management Agreement, among others, as well as breaches of fiduciary duties. Owner is, therefore, entitled to a damages resulting from these breaches and a declaration that an Event of Default has occurred pursuant to Sections 5.2(e) and 5.2(h).

F. Operator's Additional Breaches of the Management Agreement and Breaches of Fiduciary Duty

111. Additionally, Operator has violated other provisions of the Management Agreement meant to maintain the integrity of Operator's accounting records.

112. Notably, Section 4.2 of the Management Agreement requires Operator to maintain certain separate Capital Reserve Funds for the Hotel Units and the Hotel Amenities Units, which Operator is only entitled to use "for the purpose of the funding of Capital Improvements and replacement and renewal of FF&E for the Hotel Units, Hotel Amenities Unit, and Hotel Common Areas."

113. In a meeting on October 3, 2017, Operator produced a written presentation to beneficiaries of the Owner, admitting a reserves funding shortfall of approximately $1.9 million. Upon information and belief, not only do the reserve accounts have a deficit of $1.9 million, but Operator has also commingled these accounts in violation of the Management Agreement.

114. Upon information and belief, Operator has drained these reserve accounts to cover operational expenses, all the while lining its pockets with management fees.

115. For example, Hotel TOC's 2016 Audited Financials state in Note 14:

> Provision for food, beverage, furniture and equipment
>
> Transactions in the provision for purchases of food, beverages, furniture, and equipment are summarized below:

	2016	2015
Provision for food and beverage		
Beginning balance	1,073,019	826,983
Provision charged to expenses	268,519	236,046
Project, acquisition of food and beverage	(153,212)	-
Ending balance	1,188,326	1,073,019

> The bank account as of December 31, 2016 maintains a balance available for the provision for purchase of food and beverages of USD785,500, showing an insufficiency with respect to the provision for USD402,825.

Provision for furniture and equipment		
Beginning balance	1,996,161	1,530,857
Provision charged to expenses	383,774	465,304
Project, acquisition of furniture and equipment	(929,886)	-
Ending balance	1,450,049	1,996,061

> The bank account as of December 31, 2016 maintains a balance available for the provision for purchase of furniture and equipment of USD518,339, showing an insufficiency with respect to the provision on for USD931,710.
>
> ***Hotel Toc, INC. has account receivable from unit owners for an amount of B/.392,859 (See Note 6) which explains in part the insufficiency of funds to make the contributions to the reserve fund.***

Hotel TOC's 2016 Audited Financials, n. 4 (emphasis added).

116. The auditor's note confirms that Operator is not funding the reserves as required, but is in fact using what reserves remain to fund operational expenses. Moreover, the auditor's note confirms that Operator is routinely withdrawing funds from the reserve accounts and, at times, replacing those withdrawals with funds from other sources (such as the receivables referred to above), expressly breaching the requirement that reserves can only be funded from Hotel revenues and must be segregated, not commingled.

117. Moreover, based on Operator's admission that the unfunded reserves have increased from the approximately $1.3 million indicated in the 2016 Audited Financials to $1.9 million today, Operator has also breached Section 4.2 of the Management Agreement by not funding the reserve accounts, while also making distributions to unit owners. In particular, Operator was aware in January 2017 that there was a binding agreement in place to sell the majority of Hotel Units and the Hotel Amenities Unit. Despite this knowledge, Operator made distributions to unit owners who were in the process of selling their units without first funding the reserve accounts, as required under the Management Agreement, to the detriment of Owner and the current beneficiaries of Owner.

118. As a result, Operator is liable to Owner for conversion and breach of fiduciary duties and must immediately fund the entire reserve shortfall, resulting from Operator's systemic, continued, and intentional breaches of Section 4.2. of the Management Agreement.

119. Similarly, in accordance with the P.H. TOC Management Agreement, Operator was required to maintain segregated accounts for the various components, including Hotel TOC Inc. and the P.H. TOC. However, upon information and belief, the funds for the two entities were commingled and the accounts looted.

120. In addition to Owner's concerns that Operator is improperly commingling and distributing reserve funds, upon information and belief, that there have been significant improprieties in the procurement department and the way Operator's corporate expenses have been allocated to Owner.

121. Operator is liable to Owner for damages resulting from Operator's breach of fiduciary duties and conversion, including interest, costs, and attorneys' fees.

IV. Owner's Default Notice

122. On or about October 14, 2017, by reason of the breaches of the Management Agreement described above, Owner served Operator with a Default Notice.

123. This Default Notice informed Operator that, by virtue of its wrongful acts and conduct, Operator was in default of, among other things:

> Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 4.1, 4.2, 4.4, and 4.6, 5.2(a), 5.2(e), 5.2(f), and 5.2(h) of the Management Agreement in that, by virtue of the foregoing conduct Operator has failed to, among other things: (i) supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel, including establishing a market-driven sales and marketing strategy that drives occupancy and is responsive to the Hotel's target market; (ii) operate the Hotel in accordance with the Operating Standard; and (iii) "use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel."

124. Pursuant to the procedures set forth in the Management Agreement, Owner put Operator on further notice that it was required to cure the enumerated defaults (to the extent curable – and many are not curable) by November 20, 2017 (the "Cure Date"), that being at least thirty (30) days from service of the Notice of Default, or Owner could terminate the Management Agreement.

125. The Notice of Default required Operator to cure the defaults by taking the following actions:

> [C]ompensating Owner for all damages caused by the foregoing conduct in an amount of up to at least $15 million;[7] (ii) increasing the average yearly occupancy level of the Hotel to 65%; (iii) achieving RevPAR penetration against the Competitive Set of at least 100%; (iv) developing immediate contingency plans that will generate more group lead generation; (v) developing a contingency plan to address the opening of the W Hotel in Panama; (vi) utilizing Operator's brand resources to contribute at least 18% in both group and transient sales; (vii) reviewing the job performance of the Director of Sales and Marketing; (viii) developing a detailed tactical sales action plan that clearly articulates strategic goals that are precise and objectively measureable to compare the Hotel's performance against that of its competitors; (ix) conducting a SWOT analysis against each of the Hotel's competitors; (x) revamping its cleaning and maintenance program; (xi) having a Management level employee respond to guest comments on publicly available review platforms, which includes a sales pitch of other Hotel amenities the guest may not have been aware of; (xii) permitting Hotel TOC to pay Common Area Maintenance for the Hotel amenities and reimburse all such payments to date; and (xiii) including Owner in Operator's regular sales meetings.

126. The Notice of Default also notified Operator that some, if not all, of the foregoing defaults are incurable, including, but not limited to, the termination of the P.H. TOC Management Agreement pursuant to Section 5.2(f) of the Management Agreement.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

127. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 126 hereof as though fully set forth herein.

128. The Management Agreement constitutes a legally binding and enforceable contract.

129. The Management Agreement requires Operator to, among other things, (i) supervise, direct, and control the management, operation, and promotion of all aspects of the

[7] Owner reserves the right to seek additional and other damages for Operator's breaches of the Management Agreement and its fiduciary duties, including, but not limited to, the diminution in value of the Hotel, as well as damages that accrue in the future.

Hotel, including establishing a market-driven sales and marketing strategy that drives occupancy and is responsive to the Hotel's target market, Management Agreement at § 2.1; (ii) operate the Hotel in accordance with the Operating Standard, *id.*, at 2.2; and (iii) "use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel," *id.*

130. Operator breached the Management Agreement by, among other things, failing to perform according to Operating Standard, and failing to make commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel by, among other things, (i) employing fatally flawed sales and marketing strategies, (ii) failing to properly manage the Hotel staff and physical condition of the Hotel, (iii) failing to address the plummeting occupancy levels, declining revenues, and increased costs despite repeated demands by Owner, and (iv) wasting funds and assets, all to Owner's detriment.

131. By virtue of Operator's breaches of these contractual obligations of the Management Agreement, Owner has been damaged in an amount to be determined through arbitration but not less than $15 million, plus interest, costs, and attorneys' fees.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

132. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 131 hereof as though fully set forth herein.

133. The Management Agreement required Operator to, among other things, (i) make disbursements to Hotel Units Owners based on actual costs and expenses; (ii) maintain the Hotel's financial records in accordance with the Uniform System of Accounts; (iii) include in the minimum disclosures required in the monthly operating report; and (iv) maintain the appropriate funds in segregated reserve accounts.

134. Operator has failed to perform all of these obligations.

135. Owner has fully complied with its obligations under the Management Agreement.

136. By virtue of Operator's breaches of these obligations under the contract, Owner has been damaged in an amount to be determined through arbitration but not less than $5 million, plus interest, costs, and attorneys' fees.

AS AND FOR A THIRD CAUSE OF ACTION
(Conversion)

137. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 126 hereof as though fully set forth herein.

138. Claimant has a possessory right or interest in the Hotel property and assets.

139. Operator has dominion over Hotel property and assets, namely Hotel funds and revenue.

140. In derogation of Owner's right or interest in the Hotel assets, Operator interfered with and converted Hotel assets by, among other things, failing to maintain segregated bank accounts for Hotel TOC and P.H. TOC. Instead, upon information and belief, the funds for the two entities were commingled up until 2015 and the accounts looted.

141. By reason of Operator's conduct, Claimant has been damages in the amount of the stolen funds, which is an amount to be determined at arbitration but not less than $3 million, plus interest, costs, and attorneys' fees.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

142. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 141 hereof as though fully set forth herein.

143. Pursuant to Section 2.1.1 of the Management Agreement, Operator serves as Owner's "agent" to "supervise, direct, and control the management, operation, and promotion of

all aspects of the Hotel in accordance with and subject to the terms and conditions of [the Management Agreement]."

144. Further, pursuant to Section 2.1.2, Operator agreed to operate the Hotel "for the account" of Owner.

145. Because Operator undertook to operate and manage the Hotel solely on Owner's behalf and pursuant to the inherent agency powers granted by the Management Agreement, Operator is Owner's agent and owes it fiduciary duties.

146. Further, even if Operator were an independent contractor and not an agent, Operator nonetheless owes Owner a fiduciary duty.

147. Indeed, Operator undertook the duty to act on behalf of Owner.

148. Owner was induced by Operator to, and did, repose trust and confidence in Operator and in its knowledge and expertise to (i) manage the Hotel; (ii) engage in honest dealings with Owner's best interests in mind; and (iii) perform its responsibilities under the Management Agreement.

149. Additionally, upon information and belief, Operator appointed directors to Owner's Board of Directors in an effort to further control the Hotel, Owner's sole asset during the time of the relevant breaches.

150. Accordingly, Operator held a position of authority and trust and retained control over the day-to day operations of the Hotel.

151. Because, among other things, Operator induced reliance independent of the Management Agreement, Operator owes fiduciary duties to Owner.

152. By reason of Operator's wrongful acts and conduct, including but not limited to (i) looting its accounts, (ii) failing to maintain segregated accounts, (iii) operating the Hotel

without regard to the maximization of the Hotel's long term value and profitability, and (iv) causing the Hotel's reputation to be severely injured by its conduct, Operator has breached its fiduciary duties to Claimant.

153. As a direct and proximate result of Operator's breaches of its fiduciary duties to Owner, Owner has been damaged in an amount be determined at arbitration but not less than $15 million, plus interest, costs, and attorneys' fees.

AS AND FOR A FIFTH CAUSE OF ACTION
(Breach of the Covenant of Good Faith and Fair Dealing)

154. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 152 hereof as though fully set forth herein.

155. Under New York Law, which governs the Management Agreement, the covenant of good faith and fair dealing is implied in every contract.

156. The Management Agreement imposed on Operator the duty to use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel.

157. By reason of Operator's wrongful acts and conduct described above, Operator breached the covenant of good faith and fair dealing and unfairly frustrated the agreed upon common purpose of the Management Agreement, disappointed Owner's reasonable expectations of Operator, and thereby deprived Owner of the benefits of the Management Agreement.

158. By virtue of Operator's breaches of the covenant of good faith and fair dealing, Owner has been damaged in an amount to be determined through arbitration but not less than $15 million, plus interest, costs, and attorneys' fees.

AS AND FOR A SIXTH CAUSE OF ACTION
(Declaratory Judgment)

159. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 158 hereof as though fully set forth herein.

160. Pursuant to Section 5.2(f) of the Management Agreement, an Event of Default has occurred based on the termination of the P.H. TOC Management Agreement.

161. Pursuant to the Management Agreement, Owner has the option to elect to terminate the Management Agreement based on this default, which default is incurable pursuant to the express provisions of the Management Agreement.

162. On October 14, 207, Owner notified Operator of this Event of Default in its Default Notice in accordance with the terms of the Management Agreement.

163. As a matter of contract and a matter of law, Operator cannot cure this default.

164. Upon information and belief, Operator disputes these contentions and will refuse to recognize the validity of a termination notice based on a default of Section 5.2(f) of the Management Agreement.

165. Therefore, an actual and justiciable controversy now exists as to Owner's right to terminate the Management Agreement.

166. Accordingly, Owner is entitled to a declaration that the termination of the P.H. TOC Management Agreement constitutes an incurable Event of Default, and as such, Owner may terminate Operator.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Declaratory Judgment)

167. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 166 hereof as though fully set forth herein.

168. Pursuant to Sections 5.2(e), and 5.2(h), of the Management Agreement, an Event of Default has occurred based on Operator's failure to "supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel," operate the Hotel in accordance with the Operating Standard, and "use its commercially reasonable efforts to operate the Hotel in such a manner to endeavor to maximize the profitability and long term value of the Hotel."

169. These material breaches and gross negligence and/or willful misconduct includes, but is not limited to, Operator's failure to develop an effective sales and marketing strategy, to maintain the Hotel as a luxury hotel, to use its commercially reasonable efforts to manage the costs and expenses of the Hotel, to maintain the Hotel's financial records in accordance with the Uniform System of Accounts, to include the minimum disclosures required in the monthly operating report, to maintain the appropriate funds in segregated reserve accounts; and to permit Owner to make monthly payments for Common Area Maintenance of the Hotel amenities.

170. On October 14, 207, Owner notified Operator of these defaults in its Default Notice in accordance with the terms of the Management Agreement.

171. Despite repeated requests by Owner, Operator has failed to cure or commence curing the defaults set forth in the Default Notice. Upon information and belief, Operator is unable to cure the defaults set forth in the Notice of Default.

172. Furthermore, some, if not all, of the defaults set forth in the Default Notice are incurable.

173. Upon information and belief, Operator disputes these contentions and will refuse to recognize the validity of a termination notice based on a default of Sections 5.2(e) and/or 5.2(h) of the Management Agreement.

174. Therefore, an actual and justiciable controversy now exists as to Owner's right to terminate the Management Agreement.

175. Accordingly, Owner is entitled to a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

176. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 175 hereof as though fully set forth herein.

177. Pursuant to Section 5.2(a) of the Management Agreement, an Event of Default has occurred based on Operator's failure to make distributions to the Hotel Unit Owners and Hotel Amenities Unit Owner based on actual costs and actual expenses in accordance with Section 4.6 of the Management Agreement.

178. On October 14, 2017, Owner notified Operator of these defaults in its Default Notice in accordance with the terms of the Management Agreement.

179. Despite repeated requests by Owner, Operator has failed to cure or commence curing the defaults set forth in the Default Notice. Upon information and belief, Operator is unable to cure the defaults set forth in the Notice of Default.

180. Furthermore, some, if not all, of the defaults set forth in the Default Notice are incurable.

181. Upon information and belief, Operator disputes these contentions and will refuse to recognize the validity of a termination notice based on a default of Section 5.2(a) of the Management Agreement.

182. Therefore, an actual and justiciable controversy now exists as to Owner's right to terminate the Management Agreement.

183. Accordingly, Owner is entitled to a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement.

AS AND FOR A NINTH CAUSE OF ACTION
(Declaratory Judgment)

184. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 183 hereof as though fully set forth herein.

185. Under New York common law, it is a well-settled matter of public policy that personal services contracts can be terminated at any time and cannot be specifically enforced or compelled.

186. Under New York law, it is also recognized that hotel management agreements are classic examples of personal services contracts that may not be enforced by injunction.

187. Pursuant to the Management Agreement, Owner agreed to provide "Operator Hotel *Services*" that are "consistent with the Operating Standard." Management Agreement at § 1.4.1.

188. The Operating Standard relates to the "level of *service* and quality" Operator must provide, *e.g.,* luxury. *Id.* at 15. Operator also has great discretion to operate the Hotel in accordance with the Operating Standard through its provision of "General Manager *Services*." *Id.* at § 2.1.

189. Owner has the absolute right under New York law to terminate the Management Agreement as a personal services contract.

190. Upon information and belief, Operator disputes these contentions and will refuse to recognize the validity of a termination notice based on Owner's rights under personal services contract law.

191. Therefore, an actual and justiciable controversy now exists as to Owner's right to terminate the Management Agreement on personal services contract grounds.

192. Accordingly, Owner is entitled to a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement as a matter of right on the basis that the agreement is a personal services contract.

AS AND FOR A TENTH CAUSE OF ACTION
(Declaratory Judgment)

193. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 192 hereof as though fully set forth herein.

194. Under New York law, it is well-settled that a principal has the power to revoke his agent's authority to represent him at any time.

195. Operator serves as Owner's "agent" under the Management Agreement, and is repeatedly referred to as an "agent" in the agreement. Management Agreement at §§ 2.4.3; 2.6.1; 4.1.1; 12.3.

196. The Management Agreement also specifies that "*Operator and Owner are not* joint venturers, partners, or *joint owners* with respect to the Hotel ...." *Id.* at § 12.3 (emphasis added).

197. Owner has the absolute right under New York law to terminate the Management Agreement under agency law.

198. Upon information and belief, Operator disputes these contentions and will refuse to recognize the validity of a termination notice based on Owner's rights under agency law.

199. Therefore, an actual and justiciable controversy now exists as to Owner's right to terminate the Management Agreement on agency law grounds.

200. Accordingly, Owner is entitled to a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement as a matter of right on the basis of agency law.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Declaratory Judgment)

201. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 200 hereof as though fully set forth herein.

202. Upon information and belief, at all relevant times, John Does 1-5 dominated and controlled Operator.

203. Upon information and belief, John Does 1-5 used their control and domination of Operator to breach Operator's legal duty and cause Owner's losses.

204. Indeed, upon information and belief, Operator is nothing but a pass-through entity created by John Does 1-5 to manage the Hotel and purportedly and fraudulently shield John Does 1-5 from liability to Operator's creditors (including Owner) thereby attempting to make Operator judgment proof so as to prevent an actual recovery for Operator's breaches of the Management Agreement and its fiduciary duties.

205. In fact, upon information and belief, Operator and all of the John Does 1-5 routinely commingle assets, disregard corporate formalities and are all part of the same family office known as the "Trump Organization" controlled by John Does 1-5.

206. Thus, Operator is, by design, nothing more than a shell that John Does 1-5 created and used to fraudulently shield them from liability under, among other things, the Management Agreement. Operator is intentionally undercapitalized, is funded solely by contributions from John Does 1-5, and those contributions were, upon information and belief, intentionally

insufficient to pay Operator's obligations, including those obligations under the Management Agreement.

207. Accordingly, pursuant to New York law (which governs the Management Agreement and this proceeding), Owner is entitled to judgment in this arbitration declaring that it can pierce the corporate veil and that John Does 1-5 are liable for all damages awarded to Owner.

208. Claimant is, therefore, entitled to a declaration that under the theory of corporate piercing, John Does 1-5 are personally liable for any damages awarded to Owner.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Accounting)

209. Claimant repeats and realleges each and every allegation contained in paragraphs 1 through 208 hereof as though fully set forth herein.

210. Operator undertook to operate and manage the Hotel solely for the account of Owner, as its agent and fiduciary, exercising exclusive control over the Hotel's revenue, assets, and books and records.

211. Operator breached its fiduciary duties owed to Owner concerning the management and operation of the Hotel.

212. Claimant has an interest in the Hotel as the Hotel's Owner.

213. Owner is entitled to an accounting pursuant to Section 2.5.1 of the Management Agreement, which provides that "[a]ll books of account and other financial records shall be available at the Hotel to Owner … at all reasonable times and on reasonable notice for examination, audit, inspection and copying…"

214. Accordingly, Owner is entitled to an accounting of all Hotel assets.

STATEMENT OF RELIEF SOUGHT

215. Hotel TOC respectfully requests that upon final hearing the Arbitral Tribunal without prejudice to any other or further claims that Hotel TOC may make in this arbitration enter an award as follows:

a. On its First Cause of Action, an award of Claimant's damages in an amount to be determined through arbitration but not less than $15 million, plus interest;

b. On its Second Cause of Action, an award of Claimant's damages in an amount to be determined through arbitration but not less than $5 million, plus interest;

c. On its Third Cause of Action, an award of Claimant's damages in an amount to be determined through arbitration but not less than $3 million, plus interest;

d. On its Fourth Cause of Action, an award of Claimant's damages in an amount to be determined through arbitration but not less than $15 million, plus interest;

e. On its Fifth Cause of Action, an award of Claimant's damages in an amount to be determined through arbitration but not less than $15 million, plus interest;

f. On its Sixth Cause of Action, a declaration that the termination of the P.H. TOC Management Agreement constitutes an incurable Event of Default, and as such, Owner may terminate Operator;

g. On its Seventh Cause of Action, a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement;

h. On its Eighth Cause of Action, a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement;

i. On its Ninth Cause of Action, a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement as a matter of right on the basis that the agreement is a personal services contract;

j. On its Tenth Cause of Action, a declaration that an Event of Default has occurred, and that Owner may terminate the Management Agreement as a matter of right on the basis of agency law;

k. On its Eleventh Cause of Action, a declaration that under the theory of corporate piercing, John Doe Entities 1-5 are personally liable for any damages awarded to Hotel TOC;

l. On its Twelfth Cause of Action, an accounting;

m. Interest, cost, and attorneys' fees in an amount to be determined through arbitration but not less than $50,000.00; and

n. Such other and further relief as the Arbitrator deems just and proper.

216. Hotel TOC estimates that the amount in controversy in this dispute is approximately $15 million.

Dated: October 14, 2017

Respectfully submitted,

By: _____

Joshua D. Bernstein, Esq.
E-mail: joshua.bernstein@akerman.com
Darryl R. Graham, Esq.
Email: darryl.graham@akerman.com
Kathleen M. Prystowsky, Esq.
E-mail: kathleen.prystowsky@akerman.com
Vanessa I. Garcia, Esq.
E-mail: vanessa.garcia@akerman.com
AKERMAN LLP
666 Fifth Avenue, 20th Floor
New York, New York 10103
Telephone: 212.880.3800
Facsimile: 212.880.8965

Jose Carrizo
E-mail: Jose.Carrizo@morimor.com
Orlando Tejeira
E-mail: Orlando.Tejeira@morimor.com
MORGAN & MORGAN
MMG Tower, 23rd Floor
Avenue Paseo del Mar, Costa del Este
Panama, Republic of Panama
Telephone: 507.265.7777
Facsimile: 507.265.7700

Attorneys for Claimant Hotel TOC, Inc.

EXHIBIT D

INTERNATIONAL CHAMBER OF COMMERCE

HOTEL TOC, INC.,

Claimant,

-against-

TRUMP PANAMA HOTEL MANAGEMENT LLC, TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC, and JOHN DOES 1-5,

Respondents.

Case No.: 23149/MK

RESPONDENTS' ANSWER, COUNTERCLAIMS, REQUEST FOR JOINDER AND THIRD-PARTY CLAIMS

TRUMP PANAMA HOTEL MANAGEMENT LLC, and TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC,

Counterclaimants,

-against-

HOTEL TOC, INC.,

Counterclaim-Respondent.

TRUMP PANAMA HOTEL MANAGEMENT LLC, and TRUMP INTERNATIONAL HOTELS MANAGEMENT, LLC,

Third-Party Claimants,

-against-

ORESTES FINTIKLIS, GARY LUNDGREN, ITHACA CAPITAL INVESTMENTS I, S.A., ITHACA CAPITAL INVESTMENTS II, S.A., MORGAN & MORGAN, OWNERS MEETING OF THE P.H. TOC, HOTEL FOUNDATION, INC. (SOLE SHAREHOLDER OF CLAIMANT) AND JOHN DOES 1-10,

Third-Party Respondents.

TABLE OF CONTENTS

Page

INDEX OF EXHIBITS ii

NATURE OF PROCEEDINGS 1

I. Overview 1

II. Claimant's and Third Party Respondents' Wrongful Conduct 4

ALL PARTIES TO THESE PROCEEDINGS 8

JURISDICTION, VENUE AND GOVERNING LAWS 12

APPOINTMENT OF ARBITRATORS 19

FACTS COMMON TO ALL CLAIMS 21

I. LUNDGREN'S AND OWNERS MEETING'S PRIOR ICC PROCEEDINGS 21

II. THE BULK SALE TO FINTIKLIS 23

III. FINTIKLIS MAKES HIS NEXT MOVE IN FURTHERANCE OF HIS FRAUD AND UNLAWFUL RICO SCHEME 26

IV. THE HOTEL TOC "LUNCH MEETING" 27

V. THE "OCTOBER 14 MEETINGS," NOTICE OF DEFAULT, AND REQUEST FOR ARBITRATION 28

VI. THE SHAM DEFAULT NOTICE AND OPERATOR'S RESPONSE 36

VII. THE NOVEMBER 2017 TERMINATION LETTER 39

VIII. DENIAL OF CLAIMANT'S CLAIMS 40

CLAIMS FOR RELIEF 40

RESERVATION OF RIGHTS 71

INDEX OF EXHIBITS

Exhibit	Description
A	Amended and Restated Hotel Management Agreement for Trump Ocean Club® International Hotel & Tower Among Trump Panama Hotel Management LLC, Newland International Properties Corp., Hotel TOC Inc. And Owners Meeting of the P.H. TOC, as further amended
B	Agreement in Connection with a Bulk Sale by and among Trump Panama Hotel Management LLC, Ithaca Capital Investments I, S.A. and Ithaca Capital Investments II, S.A., dated February 15, 2017
C	Statement of Claim, *Trump Panama Condominium Management LLC v. Owners Meeting of the P.H. TOC, Ocean Club Casino Incorporated, Sun International Limited and Sun International Co.*, No. 21415/RD (before the International Chamber of Commerce)
D	Mutual Release and Settlement Agreement by and between Owners Meeting of the P.H. TOC, the board of directors of Owners Meeting of the P.H. TOC, and Trump Panama Condominium Management LLC
E	Notice of Default, dated October 14, 2017
F	Trump Ocean Club® International Hotel & Tower Panama P.H. TOC Management Agreement by and between Trump Panama Condominium Management LLC, as Manager, And Owners Meeting of the P.H. TOC, dated April 13, 2011, as amended
G	Respondents' Request for Extension, Objection to Fanelli, and Nomination of Goodwin 11.8.2017
H	Respondents' Reply Letter Challenging Fanelli, dated December 1, 2017
I	Co-Ownership Regulations of the Building PH TOC
J	Operator's Written Approval of the Bulk Sale
K	October 3, 2017 Presentation
L	Fintiklis's October 3, 2017 Email
M	Partial Transcript of October 14, 2017 Meeting
N	Hotel Foundation, Inc. Foundation Charter/Articles of Incorporation
O	Foundation Minutes, filed October 16, 2017
P	Claimant Minutes, filed October 16, 2017
Q	Response to Notice of Default, dated November 6, 2017
R	Termination Notice, dated November 21, 2017
S	Response to Termination Notice, dated November 22, 2017

Pursuant to the Arbitration Rules of the International Chamber of Commerce, Respondents Trump Panama Hotel Management LLC ("Trump Panama" or "Operator") and Trump International Hotels Management, LLC ("Trump International," and together with Trump Panama, "Respondents," "Counterclaimants" and/or "Third-Party Claimants"), by their undersigned attorneys, Pryor Cashman LLP, hereby submit their Answer and Counterclaims in response to the Request for Arbitration of Claimant Hotel TOC, Inc. ("Claimant" or "Hotel TOC"), dated October 14, 2017 (the "Request"), along with a Request for Joinder and third-party claims against Third-Party Respondents Orestes Fintiklis ("Fintiklis"), Gary Lundgren ("Lundgren"), Ithaca Capital Investments I, S.A. ("Ithaca I"), Ithaca Capital Investments II, S.A. ("Ithaca II"), Morgan & Morgan and Owners Meeting of The P.H. TOC ("Owners Meeting"), Hotel Foundation, Inc. ("Hotel Foundation") and John Does 1-10 (the "Third-Party Respondents"), upon information and belief, as follows:

NATURE OF PROCEEDINGS

I. Overview

1. Fintiklis is an attorney and a Cypriot citizen who apparently resides in Florida. He purports to be the "authorized representative" of Claimant Hotel TOC, Inc. in said purported capacity, Fintiklis, together with Third-Party Respondents, has caused Claimant to commence this arbitration against Respondents alleging sham, fabricated breaches of the Hotel Management Agreement (the "HMA") relating to the Trump International Hotel Panama (the "Hotel").[1] These same sham defaults, which lack credibility and which were resoundingly refuted by Operator in a detailed letter to Fintiklis dated November 6, 2017 (to which Fintiklis never responded), form the

[1] A true and correct copy of the Amended and Restated HMA, as further amended, is attached hereto as **Exhibit A** (without schedules).

basis of the bogus termination notice that was subsequently served by Fintiklis in his (un) authorized capacity.

2. In fact, Fintiklis has unlawfully conspired with the Third-Party Respondents in an effort to unlawfully seize control of the Hotel, in breach of numerous covenants and in violation of laws, including, but not limited to, civil RICO statutes.

3. Furthermore, Fintiklis by and through his alter ego vehicles, Ithaca I and Ithaca II, obtained control of over 200 hotel units in 2017 by sheer fraud and deceit.

4. Fintiklis and his alter ego vehicles knew they needed the written consent of Trump Panama as Operator to achieve any bulk purchase over ten hotel units. To obtain such consent to the acquisition of more than 200 units, Fintiklis and Ithaca I and II fraudulently promised by written agreement dated as of February 15, 2017 (the "Consent to Bulk Sale Agreement" annexed hereto as **Exhibit B**) to refrain from taking any action, directly or indirectly, to interfere with or undermine the rights of Operators, including the exercise of any votes with respect to the Hotel or any components or units thereof which would be adverse to Operator.

5. Shortly after closing on the acquisition of these units, in direct breach of the Consent to Bulk Sale Agreement, Fintiklis, together with Lundgren and Third-Party Respondents, organized what they falsely said was an informal lunch to be held on October 14, 2017 on the Hotel premises. As surreptitiously planned and conspired, the "informal lunch" and "meet and greet" quickly morphed into two purported "board meetings" of Hotel TOC and Hotel Foundation, called without proper notice.

6. At the purported "board" meetings, Fintiklis, Lungdren and the Third-Party Respondents staged an unlawful corporate take-over; unlawfully removing board members and appointing themselves in their stead. In preparation for their corporate maneuver, Fintiklis already

had a contrived, pre-arranged Notice of Default prepared by counsel and ready for service on Respondents.

7. As if this weren't enough, further evidencing the pre-textual and contrived nature of these notices, on the same date the purported "board" meetings were held, Fintiklis and his co-conspirators commenced this sham arbitration.

8. Thus, on October 14, 2017, Fintiklis purporting to act as the "Authorized Representative" of both Claimant and Hotel Foundation personally signed and delivered to Respondents a purported Notice of Default under the HMA alleging sham breaches of the HMA and demanding cure of the same (if applicable under the HMA). Every aspect of the Notice of Default is fraudulent including the purported claim for $15 million in damages, which was inserted by Fintiklis' lawyer for the sole purpose of attempting to insure that there could be no cure. To be clear, there is and was at the time of the delivery of the default notice, zero basis for the phony damages claim.

9. Of course, the Notice of Default demanding a cure was a complete sham because that very same day, Fintiklis and the Third-Party Respondents caused Claimant to file the instant sham arbitration demand, "based on [Respondents'] failure and/or inability to cure the defaults" and sought various declarations alleging Claimant's purported right to terminate the HMA, and damages relating thereto.

10. Conspicuously absent from Claimant's Request for Arbitration are the facts and circumstances leading up to the fraudulent events of October 14, 2017. These facts and circumstances reveal these proceedings to constitute sham litigation under New York law: A fraud upon this tribunal by which Fintiklis and his co-conspirators are abusing legal process in a tortious and unlawful attempt to injure Respondents' rights through their 37 entities owning Units in the

Hotel, and by and through their corporate alter egos, and the Third-Party Respondents – all with the design to wrongfully seize control over the hotel property.

II. Claimant's and Third Party Respondents' Wrongful Conduct

11. Lundgren, effectively *persona non grata* in the United States, has previously litigated with Affiliates of Respondents concerning his unlawful activities with respect to the management of the condominium portion of the property. That litigation took place in a 2015 proceeding before the ICC (the "Lundgren Proceeding'). A copy of that complaint is annexed hereto as **Exhibit C**. The Lundgren Proceeding settled by agreement in February 2016 (the "Lundgren Settlement Agreement"). The Lundgren Settlement Agreement, to which Lundgren is personally bound, affirmed (i) that as of February 2016, there were no material breaches of the HMA; and (ii) that Lundgren will take no actions to interfere with Respondents or Operator in the management of the Hotel. A copy of the Lundgren Settlement Agreement is annexed hereto as **Exhibit D**.

12. A mere four months after the Lundgren Settlement Agreement, Fintiklis, with knowledge of Lundgren Proceeding, met with Respondents concerning his proposed bulk purchase of over 200 Units in the Hotel.

13. On or about February 15, 2017, by execution of the Consent to Bulk Sale Agreement, Fintiklis fraudulently obtained, by and through his alter egos Ithaca I and Ithaca II, Respondents' consent, required under the governing documents and the HMA, to purchase 202 Units in the Hotel (through Ithaca I) and the 13 Hotel Amenities Units (through Ithaca II) from the Hotel developer/promoter ("Newland" and together, the "Bulk Sale"), which was then involved in bankruptcy proceedings. Fintiklis accomplished this purchase with financing from Canal Bank.

Fintiklis and Canal Bank performed significant due diligence on the Hotel, in advance of the purchase, including the financial condition of the Hotel.

14. By agreement dated February 15, 2017, Respondents' gave their consent to the Bulk Sale, but conditioned their consent upon the material promise and consideration that Ithaca I and Ithaca II:

> shall not, directly or indirectly through any Affiliates or otherwise: (w) **take (or refrain from taking) any action (including any legal action) that would interfere with or undermine the rights or obligations of Operator under and in respect of any of the Hotel Agreements,** (x) **exercise its vote** with respect to any of the Hotel Units in any Owners Meeting or other constituent body of P.H. TOC (or any of its components), including without limitation, Hotel TOC Inc., **in a manner which is adverse to the interests of the Operator and/or its Affiliates under and in respect of any of the Hotel Agreements**, (y) take (or refrain from taking) any action (including any legal action) that could materially damage the relationship between Operator, its affiliates and any other Person, or (z) make, issue, solicit or endorse any statement that would damage or undermine the reputation of Operator or any of its Affiliates.

See Consent to Bulk Sale Agreement at **Ex. B** (emphasis added).

15. Deeds evidencing the Bulk Sale were recorded in Panama on August 10, 2017. Following that closing and together with Lundgren, who purportedly through at least 35 separate entities claims to own 50 Units in the Hotel, the two at best may have wielded 68.2% of the votes of Third-Party Respondent Hotel Foundation, Inc., the sole shareholder of Claimant.[2] A vote of the Hotel Foundation, Inc. with 75% of its voting interests, together with cause (*i.e.*, the occurrence of an Event of Default), is required in order to terminate the HMA. Lundgren and Fintiklis were knowingly lacking both a 75% super-majority and a genuine Event of Default -- but neither chose to see those glaring defects as an impediment to their tortious acts and conspiracy.

[2] As set forth below, in fact, Lungdren's alleged ownership in those 50 units, via his affiliates, is in material violation and breach of Operator's rights under the HMA and of the Co-Ownership Regulations and therefore is subject to resolution by the ICC pursuant to Respondents' claims against the Third-Party Respondents. In fact, Fintiklis and his Third-Party Respondents co-conspirators have far less than even 68% of the required votes.

16. Mere weeks after the closing the Bulk Sale, Fintiklis arranged a "lunch meeting" under false representations and pretence, purportedly to meet unit owners at the Hotel. No notice of this meeting was given to the Council of Hotel Foundation, Inc., the sole shareholder of Claimant, as required by Panamanian law.

17. Despite the lack of notice, Fintiklis, together with Lungdren and an attorney from Morgan & Morgan – Claimant's Panama counsel in these proceedings – proceeded to have a purported set of board meetings of Hotel TOC and Hotel Foundation on October 14, 2017, and soon after the beginning of this supposed meeting, excluded Respondents' representative from such meeting, despite Respondents having Board representatives, owning the Hotel Administrative Unit of the Hotel and operating the Hotel for the benefit of all Owners.

18. At this purported board meeting of Hotel TOC and Hotel Foundation, Fintiklis and his attorney and a John Doe under Fintiklis's control, purported to install themselves on the board of Claimant and Hotel Foundation and, following their installation, immediately and simultaneously declared an alleged Event of Default under the HMA by serving – that same day – a Notice of Default to Respondents which had been prepared well in advance of the meeting with the obvious assistance of counsel. Additionally, that same day, October 14, 2017, Fintiklis, Lundgren and the Third Party Respondents caused Claimant to commence the instant arbitration proceedings, despite the contractual right of Operator to cure such alleged (sham) defaults over the next 30 days.

19. The simultaneous orchestration on October 14, 2017 by Fintiklis, Lundgren and the Third Party Respondents of calling an "informal lunch" under false pretence, (1) which morphed into two purported Board meetings, (2) simultaneously produced a Notice of Default, with 30 days to cure but (3) which also simultaneously resulted in an immediate arbitration proceeding, is

evidence of the malicious intent, fraud and RICO conspiracy by and amongst the Third Party Respondents.

20. Indeed, their unlawful conspiracy produced a lawless coup despite wielding less than the 75% super majority number of votes required to terminate Operator, and despite lacking an actual Event of Default to do so under the HMA. To be clear, Fintiklis, Lundgren, Ithaca and their Panama counsel Morgan & Morgan (who now, unsurprisingly, purports to represent Claimant in these proceedings) had prepared *in advance* of the October 14, 2017 Meeting documents seeking to terminate the HMA and commencing these proceedings. Moreover, Fintiklis, by and through, without limitation, his alter egos Ithaca I and Ithaca II and John Does 1-10, brazenly violated every covenant in the Consent to Bulk Sale Agreement upon which the purchase of his 200-plus Hotel Units was predicated including, but not limited to, voting his Units to terminate the HMA.

21. Notably, the Notice of Default, is signed by Fintiklis personally as the purported "Authorized Representative of Hotel TOC, Inc. and Hotel Foundation, Inc." The Notice complains of, among other things, the purported collapse of occupancy levels "over the past few years" (and citing occupancy rankings from 2015 and 2016). The Notice of Default also relied on purported outperformance by other hotels in RevPAR "in May 2017."[3]

22. The complaints in the Notice of Default, however, are a complete sham and a fraud upon this Honourable tribunal as they are belied by the extensive pre-purchase due diligence deny performed by Fintiklis, Ithaca I and II, and their Panama lender Canal Bank in the weeks and months preceding service of the alleged Notice of Default. Moreover, despite reciting years-long decline in the property and concerns regarding the Hotel management, Third Party Respondent and co-conspirator Lundgren, as of February 2016, agreed in the Lundgren Settlement Agreement

[3] For the avoidance of doubt, Respondents hereby deny each and every claim asserted by Claimant in the Request.

– as evidenced by the Lundgren Settlement Agreement -- that there were no material breaches of the HMA. Indeed, Claimant and Third Party Respondents would have this Honourable Tribunal believe that Fintiklis and his alter egos Ithaca I and II – and Ithaca's investors – borrowed tens of millions from Canal Bank Panama for the Bulk Sale, without having done complete due diligence on the Hotel and its operations, costs, liabilities, assets, revenues, and profits. Simply stated, the Notice of Default is a complete and total fabrication by Fintiklis and the Third-Party Respondents, constituting a sham, as is Claimant's arbitration demand for which Operator shall hold the Third Party Respondents jointly and severally liable.

23. Fintiklis's and Lundgren's striking and swift reversal concerning the management of the Hotel is damning evidence of their scienter and exposes Claimant and the Third Party Respondents to significant liability resulting from their attempts to terminate the HMA and injure Operator.

ALL PARTIES TO THESE PROCEEDINGS

24. **Claimant.** Claimant Hotel TOC, Inc. is a Panamanian corporation with its principal place of business located at La Propriedad Horizontal P.H. TOC, Cuidad de Panamá, República de Panamá.

25. Upon information and belief, Third-Party Respondents Fintiklis, Lundgren, Ithaca I and Ithaca II, together with others John Does 1-10, dominate and control Claimant and caused Claimant to take actions to benefit their own interests. Third-Party Respondents' domination of Claimant caused the damages complained of in the Counterclaims and Third-Party Claims in this proceeding and, as such, Third-Party Respondents are liable to Respondent for such damages.

26. **Respondents.** Respondent Trump Panama Hotel Management LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, New York 10022.

27. Respondent Trump International Hotels Management LLC is a Delaware limited liability company with its principal place of business at 725 Fifth Avenue, New York, New York 10022.

28. Respondents are represented in these proceedings by Todd Soloway, Esq., Perry M. Amsellem, Esq., Bryan T. Mohler, Esq. and Marion R. Harris, Esq. of Pryor Cashman LLP, 7 Times Square, New York, New York 10036.

29. **Third-Party Respondents**. Upon information and belief, Third-Party Respondent Orestes Fintiklis is a citizen of Cyprus, and a resident of Florida, and the president and principal of Third-Party Respondents Ithaca Capital Investments I, S.A. and Ithaca Capital Investments II, S.A., owners of various Units in the Hotel. Third-Party Respondent Fintiklis holds himself out personally as the "Authorized Representative" of Claimant Hotel TOC, Inc. and its sole shareholder, Hotel Foundation, Inc. pursuant to invalid and illegal activities at a meeting of Hotel TOC, Inc. on October 14, 2017. Upon information and belief, Third-Party Respondent Fintiklis receives notices at 520 W Ave #1502, Miami Beach FL 33139.

30. Upon information and belief, Third-Party Respondent Gary Lundgren is a resident of Panamá. In violation of the HMA and Co-Ownership Regulations, Lundgren unlawfully obtained ownership of 50 Units at the Hotel through 35 separate entities that he owns, controls and dominates.[4] Upon information and belief, Third-Party Respondent Lundgren receives notices at

[4] Those Lundgren-controlled entities owning Units in the Hotel are Ocean Two Properties S.A. (6 Units), John Galt Panama S.A. (11 Units), and Celestial 10, Inc. City Scape, S.A., Comercializadora Alderbaran S.A., Destiny 12-B, S.A., Grupo Comercial Julmar, S.A., Hubert Enterprises Corp, Inversiones TMMJ, S.A., John Galt Advisors, S.A.,

c/o Griselda L. Perez, Board of Directors of P.H. TOC, 5th Floor, Office Tower, Calle Punta Colón, Punta Pacífica, Ciudad de Panamá, República de Panamá.

31. Upon information and belief, Third-Party Respondent Owners Meeting is a Panamanian company with its principal place of business in Panama City, Panama. Owners Meeting of P.H. TOC, through its Board of Directors, represents the interests of the Condominium Unit owners at the property. Upon information and belief, Third-Party Respondent Owners Meeting receives notices at Torre Global Bank, Calle 50 & Calle 58 Este Oficina 3501-Piso 35, Ciudad de Panamá, República de Panamá.

32. Upon information and belief, Third-Party Respondent Ithaca Capital Investments I, S.A. is a Panamanian corporation, and the alter ego of Third-Party Respondent Fintiklis who is the president and principal of Ithaca I and who controls and dominates Ithaca I. Fintiklis by and through Ithaca I and Ithaca II, entered into the February 15, 2017 Consent to Bulk Sale Agreement by and between Ithaca I, Ithaca II and Respondent Trump Panama Hotel Management LLC, by which Fintiklis and his alter egos fraudulently obtained the necessary consent to purchase 215 Units in the Hotel. Upon information and belief, Respondent Ithaca I has its principal place of business at 2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama.

33. Upon information and belief, Third-Party Respondent Ithaca Capital Investments II, S.A. is a Panamanian corporation dominated and controlled by Respondent Fintiklis who is the president and principal of Ithaca II. Fintiklis, by and through his alter egos, entered into the Consent to Bulk Sale Agreement on behalf of Ithaca I and Ithaca II with Respondent Trump

---

John Galt Company, S.A., John Galt Properties, S.A., Ocean Club 1618, Corp., Ocean Club 2016, Corp., Ocean Club 2120, Corp., Ocean Club 2414, Corp., Ocean Club 2422, Corp., Ocean Club 2426 Corp., Ocean Club 2616, Corp., Ocean Club 2810, Corp., Ocean Club 2823, Corp., Ocean Club Properties, S.A., Palmever, Cpr., Panama TOC 010907, Inc., Phenomenal Alliance, Corp., TOC 2009, Corp., TOC 2811, Corp., TOC Condo Hotel Unit 2722, Corp., TOC Condo Hotel Unit 2819, Corp., TOC Condo Hotel Unit 2917, Corp., TOC Panama 2724, Inc., TOC2019, Inc., Trump Ocean Club 1918, Corp., Trump Ocean Club 3126, Corp. and TTC Service, Corp., each owning 1 Unit apiece.

Panama, only after misleading and fraudulently inducing and obtaining the consent of Operator. Upon information and belief, Ithaca II has its principal place of business at 2nd Floor, Humboldt Tower, East 53rd Street, Urb. Marbella, Panama.

34. Upon information and belief, Fintiklis dominates and controls Ithaca I and Ithaca II, exposing their investors and lenders to significant liabilities without their knowledge. Moreover, Fintiklis, through his domination and control of Ithaca I and Ithaca II, caused Ithaca I and Ithaca II to breach Respondents' contractual rights under the HMA and, as such, is liable for significant damages resulting therefrom.

35. As reflected in a November 13, 2017 Unit Owner Designation Form, Third-Party Respondent Ithaca I is represented by Claimant's counsel, Akerman LLP and Morgan & Morgan. Upon information and belief, Respondents Fintiklis, Lundgren and Ithaca II are similarly represented by Akerman LLP and Morgan & Morgan.

36. Third-Party Respondent Morgan & Morgan is a Panamanian law firm with offices at MMG Tower, 23rd Floor, Ave. Paseo del Mar, Costa del Este, Ciudad de Panamá, República de Panamá.

37. Morgan & Morgan is Panama counsel to Claimant, Fintiklis, Ithaca I and Ithaca II. At the illegal board meetings on October 14, 2017, Morgan & Morgan, by and through attorney Orland Tejeira ("Tejeira") purported to represent all beneficiaries of Hotel Foundation, Inc., which Tejeira, described as "all of you" to the owners in attendance on October 14, 2017. Tejeira further unlawfully excluded Respondents and their representative from the illegally-noticed meetings of Hotel TOC and Hotel Foundation.

38. At the time Morgan & Morgan, by and through Mr. Tejeira, made such false statements, none of the members of the Council of Hotel Foundation, Inc. were present. Tejeira's

and Morgan & Morgan's statement that he represents "all of [the Hotel Unit Owners]" was knowingly false, and constitutes evidence of his (and, by virtue of his position, Morgan & Morgan's) knowing participating in the fraudulent scheme described herein and for which Respondents are entitled to significant damages.

39. Upon information and belief, Respondents John Does 1-5 are individuals and/or legal entities, affiliated with Fintiklis and Lundgren, the names and addresses of which are presently unknown. At all relevant times, John Does 1-10 conspired with and participated in the fraudulent scheme orchestrated by Fintiklis and Lundgren to wrest control of the management of the Hotel from Respondents, causing damages to Respondents. Respondents' reserve the right to amend this pleading as discovery progresses to identify John Does 1-10.

JURISDICTION, VENUE AND GOVERNING LAWS

40. **ICC Jurisdiction over all HMA Signatories.** Section 9.1 of the HMA provides that "all disputes, controversies, claims or disagreements arising out of or relating to the Agreement (singularly, a "Dispute", and collectively, "Disputes") shall be resolved in the following manner." Section 9.1.1 continues to provide that "Either Party may submit the Dispute to the International Chamber of Commerce for binding arbitration under then existing ICC Commercial Arbitration Rules."

41. Notably, this provision does not limit the jurisdiction of the ICC to hear disputes *only* between the parties. Indeed, as described below, the Third-Party Respondents must be joined in these proceedings to prevent against inconsistent judgments issued by different courts, produce a fair and equitable result with joint and several liability and because the Third Party Respondents are closely related persons and entities that through their acts and conduct, as set forth herein, have

created disputes, controversies, claims and disagreements which arise out of or are related to the HMA.

42. Additionally, Section 9.1.1 of the HMA provides that "Each Party shall submit all Disputes then known to that party within the same arbitration proceeding and any such claim that is not submitted shall be barred."

43. Accordingly, in the absence of the ICC's proper exercise and grant of its lawful jurisdiction, as set forth below under the law of New York, Respondents shall under duress risk waiver of Disputes known and set forth by Respondents herein, despite that they arise from or relate to the HMA.

44. Claimant and Respondents are signatories to the HMA and the Claims and Counterclaims asserted in this Proceeding arise out of and relate to the HMA. Thus, such Claims and Counterclaims are properly before the ICC in this proceeding.

45. In addition to those reasons listed herein and below, Third-Party Claimant Ithaca II is properly joined in these proceedings as it is bound to the HMA by virtue of its ownership of the Hotel Amenities Units. In Paragraph 3(A) of the Consent to Bulk Sale Agreement, Ithaca II specifically acknowledged that "[b]y virtue of its purchase of the Hotel Amenities Unites, Ithaca II shall be bound by the terms and conditions of the Hotel Management Agreement as successor to the Hotel Amenities Unit Owner (as such term is defined in the Hotel Management Agreement)."

46. **ICC's Proper and Lawful Jurisdiction over the Third Party Respondents that are not HMA Signatories.** Third-Party Respondents Ithaca I and Ithaca II are parties to Consent to Bulk Sale Agreement annexed hereto as **Exhibit B**. Fintiklis signed on behalf of Ithaca I and Ithaca II, as he dominates and controls such entities which are alleged to be his alter egos. Exhibit

A to the Consent to Bulk Sale Agreement enumerates and incorporates by reference all the Hotel-related agreements to which Ithaca I's purchase of Hotel Units and Ithaca II's purchase of the Hotel Amenities Units were and remain subject, including the HMA. As set forth above, Ithaca I and Ithaca II, as the material consideration to the Consent to Bulk Sale Agreement promised and covenanted that they:

> Shall not, directly or indirectly…take…any action (including legal action) that would interfere with or undermine the rights…of Operator under and in respect to any of the Hotel Agreements…

47. In short, Ithaca I and Ithaca II upon signing the Consent to Bulk Sale Agreement expressly incorporated by reference the Hotel Agreements and the HMA, as well as the arbitration agreement set forth therein, and promised to not interfere with Operator's rights under the HMA.

48. Accordingly, Ithaca I and Ithaca II are properly joined in this proceeding as they are subject to Section 9.1 of the HMA, such terms having been expressly incorporated in and by the Consent to Bulk Sale Agreement. *Progressive Cas. Ins. Co. v. C.A. Reaseguradora Nacional de Venezuela*, 991 F.2d 42, 46 (2d Cir. 1993) (finding that a non-signatory to an agreement to arbitrate was bound by arbitration when such agreement to arbitrate was incorporated by reference in a subsequent agreement with the non-signatory); *Pagaduan v. Carnival Corp.*, No. 16-465, 2017 WL 4117339, at *2-3 (2d Cir. Sept. 18, 2017) (affirming an order compelling an individual to arbitrate where such individual signed an agreement that "does not contain an arbitration provision on its face. It does, however, reference secondary documents that . . . do call for arbitration.").

49. As Respondents' claims asserted against Ithaca I and Ithaca II unquestionably arise from and relate to the HMA and the rights and responsibilities thereunder, Ithaca I and Ithaca II are properly included in this Proceeding and the third party claims against them set forth herein should proceed.

50. Fintiklis is also properly before this Honourable Tribunal, the ICC's jurisdiction over him is lawful under New York law and the claims against him should proceed for three independent reasons:

(i) First, as the Notice of Default dated October 14, 2017 evidences, Fintiklis holds himself out personally as the "Authorized Representative" of Claimant and Third-Party Respondent Hotel Foundation; Fintiklis, along with his alter egos Ithaca I and Ithaca II, together with Lundgren, dominate and control Claimant and Hotel Foundation for their own benefit, such that Claimant and Hotel Foundation, with respect to the acts described herein, are alter egos of Fintiklis and Lundgren, who are liable to the same extent as, and jointly and severally with, Claimant and Hotel Foundation. *See* The Notice of Default dated October 14, 2017 annexed hereto as **Exhibit E**.

(ii) Second, Fintiklis, the President and principal of Ithaca I and Ithaca II, derives substantial benefit from his domination and control of Ithaca I and Ithaca II (which are bound to the HMA) and their ownership of Units; Fintiklis purports to be Owner representative for the Hotel Units owned by Ithaca I, which formed the basis for Fintiklis's illegal attempted coup of the Board of Claimant on October 14, 2017. Fintiklis knowingly exploited and benefited from the agreements to which Ithaca I and Ithaca II were bound, including the Consent to Bulk Sale Agreement and HMA; as such, Fintiklis is estopped as a matter of law from denying the jurisdiction of the ICC over him concerning disputes relating thereto. *Deloitte Noraudit A/S v. Deloitte Hasks & Sells, U.S.*, 9 F.3d 1060, 1064 (2d Cir. 1993) (compelling arbitration against a non-signatory to an agreement to arbitrate under estoppel doctrine because such non-signatory knowingly and directly benefitted from the agreement providing for arbitration); *Servaas Inc. v. Republic of Iraq*, 686 F. Supp. 2d 346, 355 (S.D.N.Y. 2010) ("Where a party derived a direct benefit from the contract containing an arbitration provision, . . . it will be estopped from 'raising any question of being a nonsignatory to the agreement.'"); *Alfa Laval U.S. Treasury Inc. v. National Union Fire Ins. Co. of Pittsburgh, Penn.,* 857 F. Supp. 2d 404, 415 (S.D.N.Y. 2012) ("The non-signatory plaintiffs have received a direct benefit from the Indemnity Agreements and are estopped from denying their obligation to arbitrate as the Agreements require."); *HD Brous & Co., Inc. v. Mrzyglocki*, No. 03 Civ. 8385, 2004 WL 376555, at *9 (S.D.N.Y. Feb. 26, 2004).

(iii) Third, Fintiklis so dominates and controls Ithaca I and Ithaca II for his own benefit, that he knowingly caused Ithaca I and Ithaca II to take unlawful actions in breach of both the HMA and the Consent to Bulk Sale Agreement, which breaches are directly responsible for damages complained of by Respondents in this Proceeding. As such, under New York law, Respondents may pierce the veil of Ithaca I and Ithaca II, (which as discussed above are bound to the dispute resolution provisions of the HMA) to reach Fintiklis personally. *See Thomson-CSF, S.A. v. American*

> *Arbitration Ass'n*, 64 F.3d 773, 777-8 (2 Cir. 1995) (discussing that veil piercing/alter ego may be used to bind a non-signatory to an arbitration agreement).

51. Lundgren is also properly before this Honourable Tribunal and the ICC has proper jurisdiction over him under New York Law. Lundgren, along with Fintiklis, dominated and controlled Claimant and its sole shareholder, Hotel Foundation, causing it to commit the illegal and tortious acts that have damaged Respondents and are the subject of the Third-Party Claims asserted in this proceeding. As such, Lundgren is personally liable to Respondents for the tortious actions he caused Claimant to take and which have caused injury to Respondents; Lungdren's inclusion as a party in this proceeding is both appropriate and necessary.

52. Additionally, an independent basis for the ICC's lawful exercise of jurisdiction over Lundgren and Third-Party Respondent Owners Meeting is because both have expressly agreed to ICC jurisdiction; Lundgren and Owners Meeting are also being sued herein, *without limitation*, for breach of the Lundgren Settlement Agreement as it relates to the facts and claims set forth herein. Lungdren and Owners Meeting just last year, in 2016, settled an ICC proceeding arising out of Lundgren's bad actions concerning the Condominium portion of the property, captioned *Trump Panama Condominium Management LLC v. Owners Meeting of the P.H. TOC et al.,* Case No. 21415/RD.[5] Specifically, in the Lundgren Settlement Agreement, Lundgren and Owners Meeting made material promises which are at the heart of the current Dispute and Respondents' rights under the HMA:

> neither B.H. TOC nor any current or future Board of Directors nor any current or future member of the Board of Directors (**including, without limitation, Mr. Lundgren**, Ms. Perez, Mr. Graser, Mr. Soloway and Mr. McGowan), whether acting in their capacity as a director or **individually, shall**, at any time, directly or indirectly, **take any action** (including, without limitation, exercising any voting

[5] *See* **Exhibit C.** Respondents, the Hotel Operator, are affiliates of Trump Panama Condominium Management LLC, a signatory to the Lundgren Settlement Agreement, and are expressly intended third-party beneficiaries of the Lundgren Settlement Agreement, as Section 6 specifically references Hotel Operator and confers benefits/imposes obligations with respect to Hotel Operator on the signatories to the Lundgren Settlement Agreement.

> rights as Members of the Board of Directors) **which could reasonably be expected to interfere or compete with the duties, services, functions, management responsibilities** (including the obligation to operate the Rental Program and the Hotel Amenities Unites (as defined in the Hotel Management Agreement)), **rights and responsibilities of Hotel Operator, whether under the Hotel Management Agreement or otherwise**, or which could otherwise be expected to damage the relationship between Hotel Operator and any parties with an interest in the Building.

Lundgren Settlement Agreement, Section 6, **Ex. D** hereto (emphasis added).

53. Section 10 of the Lundgren Settlement Agreement provides, that "all disputes relating to the performance of any term hereunder shall be decided in accordance with the procedures set forth in Article 17 of the P.H. TOC Management Agreement." Section 17.2 thereof,[6] provides that "all disputes, controversies, claims or disagreements arising out of or relating to this Agreement (singularly, a "Dispute", and collectively, "Disputes") shall be resolved in the following manner . . . Either party may submit the Dispute to the International Chamber of Commerce for binding arbitration under the then existing ICC Commercial Arbitration Rules" – identical to the language used in the HMA by Claimant to commence these proceedings. *Compare* ¶ 40 *supra* and Request for Arbitration ¶ 12 (quoting HMA Section 9.1).

54. Third-Party Respondent Owners Meeting, as a direct signatory to the Lundgren Settlement Agreement, is unquestionably bound by its terms and properly joined in this proceeding.

55. Another independent basis for the lawful exercise of jurisdiction by the ICC over Third-Party Respondent Lundgren is that he has directly, knowingly and personally benefitted from the Lundgren Settlement Agreement and, as such, is bound by its terms, including ICC jurisdiction over any disputes arising from his breach of the Lundgren Settlement Agreement. *See*

[6] A true and correct copy of the P.H. TOC Management Agreement is attached hereto as **Exhibit F**.

¶ 50 above, (collecting cases concerning the binding of non-signatories who derive direct benefits from agreements containing arbitration provisions).

56. Moreover, the Lundgren Settlement Agreement which Lundgren signed specifically restricts Lundgren's actions with respect to Respondents rights under the HMA and provides for resolution of any disputes arising from the Lundgren Settlement Agreement in proceedings before the ICC. Thus, joinder of Third-Party Respondent Lundgren in the instant proceedings is appropriate.

57. Joinder of Third-Party Respondent Morgan & Morgan is also lawful and justified because Morgan & Morgan acted as an agent of Third-Party Respondents Ithaca I, Ithaca II, and Fintiklis, each of whom is bound to arbitrate in these proceedings. As set forth below, Morgan & Morgan, by and through the actions of (at least) Orlando Tejeira, deliberately acted in furtherance of a conspiracy to tortiously interfere with Respondents' rights under the HMA and the Hotel-related agreements. As such, Morgan & Morgan is properly joined in these proceedings and the ICC has jurisdiction over same, because Morgan & Morgan is an agent of parties that are themselves bound to arbitrate in this proceeding. *See, e.g., Thomson-CSF, S.A. v. American Arbitration Ass'n*, 64 F.3d 773, 776 (2d Cir. 1995) ("This Court has made clear that a nonsignatory party may be bound to an arbitration agreement if so dictated by the 'ordinary principles of contract and agency.'") (quoting *McAllister Bros., Inc. v. A & S Transp. Co.*, 621 F.2d 519, 524 (2d Cir. 1980)).

58. Such joinder is particularly appropriate here since the HMA provides that all disputes relating to or arising from the HMA – which Morgan & Morgan's tortious conduct unquestionably does – must be brought in this proceeding or are barred.

59. **Venue**. Section 9.1.5 of the HMA provides:

> The arbitration hearing shall be held in Panama City, Panama and, except for those procedures specifically set forth in this Section 9.1, including, without limitation, the application of the internal laws of the Republic of Panama or the State of New York (without regard to conflict of law principles), shall be conducted in accordance with the Commercial Arbitration Rules of the International Chamber of Commerce as in effect as on the date thereof. The seat of arbitration shall be in the State of New York, County of New York, and any action by any party challenging the validity of the arbitration award shall be filed in the appropriate federal or state court located in the State of New York, County of New York.

60. **Governing Law**. The HMA, in Section 12.3, provides:

> This Agreement, all disputes relating to the performance or interpretation of any term of this Agreement and the validity of any arbitration awards issued in accordance with Section 9.1 of this Agreement, shall be construed under and governed by the internal laws of the State of New York (without regard to conflict of laws principles), except to the text that the subject of the dispute arises out of or concerns the enforcement of rights where only local law is applicable such as Panama real estate or Panama real estate interests, employment, gaming and permitting from governmental entities or municipalities (such as liquor permits).

61. The Lundgren Settlement Agreement, in Section 10, incorporates the dispute resolution provisions of Article 17 of the P.H. TOC Management Agreement, which, in Section 17.1.1, likewise provides:

> This Agreement, all disputes relating to the performance or interpretation of any term of this Agreement and the validity of any arbitration awards issued in accordance with Section 9.1 of this Agreement, shall be construed under and governed by the internal laws of the State of New York (without regard to conflict of laws principles), except to the text that the subject of the dispute arises out of or concerns the enforcement of rights where only local law is applicable such as Panama real estate or Panama real estate interests, employment, gaming and permitting from governmental entities or municipalities (such as liquor permits).

APPOINTMENT OF ARBITRATORS

62. **Constitution of Panel**. Article 9 of the HMA provides that this proceeding shall be conducted by a panel of three arbitrators.

63. **Qualifications of Arbitrators.** The HMA further provides that the arbitrators for this proceeding shall be free of conflicts with the parties and their affiliates and experienced in the luxury hotel and condominium businesses. Specifically:

> Each arbitrator shall have not fewer than 10 years of experience (at the time the request for arbitration is filed) in the luxury hotel business as construed under U.S. market standards (and no fewer than five years of experience in the luxury condominium business), shall be independent of the parties as provided by the ICC Commercial Arbitration Rules, and shall not be an Affiliate of or a Person who has any past (within the prior three years from the date the arbitration is filed), present, or currently contemplated future business or personal relationship with Owner, Promoter/Developer, any owner of 10% of more of the Hotel Units or any other category of Units, or Operator. Each of Operator, on the one hand, and any one or more of the other Parties, on the other hand, shall propose on arbitrator by written notice incorporated into the request for arbitration and answering statement, to the other party, and the two arbitrators selected shall, within twenty (20) days after their appointment, select the third arbitrator. If either Party does not select an arbitrator within twenty (20) days after the Dispute is submitted, then an arbitrator shall be selected for that party under the ICC Commercial Arbitration Rules. In the event that the parties are unable to obtain the services of arbitrators which meet the qualifications set forth in this Section 9.1.1, the parties shall use diligent efforts to obtain the services of arbitrators whose qualifications are substantially similar to those set forth above.

HMA, Section 9.1.1.

64. **Claimant's Proposed Appointment**. Claimant, in its Request for Arbitration, purported to nominate Cecelia L. Fanelli, Esq. of Steptoe & Johnson LLP. As addressed in Respondents' application and reply to challenge and disqualify attorney Fanelli, respectively dated and filed November 8, 2017 and December 1, 2017 with the ICC, which are specifically incorporated by reference herein (**Exhibit G**; **Exhibit H**), the nomination is improper as Ms. Fanelli is not qualified as an arbitrator under either the HMA or under New York law.

65. **Respondents' Proposed Appointment**. By letter dated November 8, 2017, Respondents notified the ICC and Claimant of its nomination of Mr. Bruce L. Goodwin as an

arbitrator in these proceedings, such correspondence being incorporated herein by reference. (**Exhibit G**) Mr. Goodwin's contact information is as follows:

Goodwin & Associates
3027 Dalen Place
San Diego, California 92122
Tel: 858-558-4488
goodwinassociates2@gmail.com

FACTS COMMON TO ALL CLAIMS

I. LUNDGREN'S AND OWNERS MEETING'S PRIOR ICC PROCEEDINGS

66. This is not the first proceeding before the ICC in which the Property and Hotel were featured. In a proceeding commenced in 2015 and settled just last year in 2016, an Affiliate of Respondents commenced a proceeding in the ICC concerning the residential condominium portion of the Property.

67. Specifically, the proceeding concerned Lundgren's unlawful seizure of control of the Board of Directors of Owners Meeting of P.H. TOC (the equivalent of the actions here with Fintiklis and his co-conspirators with respect to the Hotel Units) and purported to terminate Respondents' Affiliate's management agreement for the condominium units. History repeats itself.

68. As alleged at the time, and true to this day, Gary Lundgren, over the course of his career, has never hesitated to engage in unlawful, devious and unethical business practices to line his pockets and advance his personal interests at the expense of anyone.

69. In the United States, Lundgren, upon information and belief, has been the subject of numerous complaints, arrests and even criminal proceedings involving allegations of assault, resisting arrest, disorderly conduct, malicious destruction of private property and even domestic violence. Moreover, Lundgren has faced a number of lawsuits and regulatory inquiries into his work in the U.S. securities industry.

70. As a result, **Lundgren was censured by the National Association of Securities Dealers in 1983 and, as of February 2016, barred from affiliating with any securities firm that is a member of the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization for broker-dealers in the United States. In short, Lundgren is no stranger to fraud and criminality.** Accordingly, it comes as no surprise that he and Fintiklis have unlawfully conspired to maliciously injure Operator's rights and interests through this sham proceeding and violations of law.

71. Indeed, one of the facts giving rise to the prior ICC proceeding was Lundgren unilaterally appointing his wife, owner of a local property management company, as "Acting Interim President" of the Board of P.H. TOC.

72. Ultimately, the 2015 ICC proceeding settled in 2016 pursuant to the Lundgren Settlement Agreement, in which the Respondents' Affiliate allowed the condominium management agreement to expire by its terms in exchange for material covenants from Owners Meeting of P.H. TOC and its board members, including Lundgren personally, which promises and covenants are directly related to the present Dispute before the ICC.

73. Specifically, the Lundgren Settlement Agreement provided that Lundgren and Owners Meeting agreed as follows:

> neither B.H. TOC nor any current or future Board of Directors nor any current or future member of the Board of Directors (including, without limitation, Mr. Lundgren, Ms. Perez, Mr. Graser, Mr. Soloway and Mr. McGowan), whether acting in their capacity as a director or individually, **shall, at any time, directly or indirectly, take any action (including, without limitation, exercising any voting rights as Members of the Board of Directors) which could reasonably be expected to interfere or compete with the** duties, services, functions, management responsibilities (including the obligation to operate the Rental Program and the Hotel Amenities Unites (as defined in the Hotel Management Agreement)), **rights and responsibilities of Hotel Operator, whether under the Hotel Management Agreement or otherwise**, or which could otherwise be

> expected to damage the relationship between Hotel Operator and any parties with an interest in the Building.

Lundgren Settlement Agreement, Section 6 (emphasis added).

74. Not surprisingly, following the agreed-upon expiration of the condominium management agreement, the property management company owned by Lundgren's wife was appointed, in a blatant self-dealing manner, to manage the residential condominium portion of the Property.

75. Now, in a continuing pattern of RICO activities, Lundgren has subsequently conspired with Fintiklis and others, including the Third-Party Respondents and John Does 1-10, for a similar purpose and in violation of Respondents' rights under the HMA and law.

76. Specifically, Lundgren, Fintiklis, Ithaca I and II and Morgan & Morgan, and the other Third-Party Respondents conspired to unlawfully acquire Hotel Units in the Property with the goal of ousting, by *ultra vires* acts, the Respondents as managers and Operator of the Hotel.

II. THE BULK SALE TO FINTIKLIS

77. In 2016, Newland, the developer of the Property, commenced bankruptcy proceedings.

78. In or about May 2016, Newland offered the remaining 202 Hotel Units and the 13 Hotel Amenities Unit as a package for bid. Pursuant to the P.H. TOC Co-Ownership Regulations, however, any sale of this size required consent from Respondents, as Hotel Operator and Licensor.[7]

---

[7] Article 75.4 of the Co-Ownership Regulations provides:

> **The extent to which 4. NUMBER OF HOTEL UNITS**. No **OWNER** of a **HOTEL UNIT** may subdivide his / her **HOTEL UNIT**; no **OWNER** may purchase, possess or control, directly or indirectly through affiliates, related parties or in any other way, more than ten (10) **HOTEL UNITS**. For these effects, ownership or control of a **HOTEL UNIT** shall be considered to exist if said **HOTEL UNIT** belongs, directly or indirectly to the **OWNER**, a family member of the **OWNER**, any entity where the **OWNER** or the **OWNERS** family members may have an interest or are partners, or any partner, affiliate, controlling company or affiliate of any of the above. The limitation

In addition, the HMA provides Respondents with the right to consent or reject any purchase or acquisition of more than 10 Units.

79. On October 14, 2016, Fintiklis, operating by and through both of his Ithaca alter egos, came to Respondents' New York offices accompanied by Newland's representatives to meet about a potential purchase of those Units. Four days later, Fintiklis sent an email to those in attendance at the meeting, and stated that he (or, rather, Ithaca) "look[ed] forward to closing the transaction and working together to turning around this wonderful property." That was the beginning of a series of knowingly false representations made by Fintiklis to Respondents with the fraudulent intent that Respondents would rely upon the false statements to their detriment, which they did and which caused them resulting damages.

80. Fintiklis intended to close the purchase, and did in fact close the purchase, using in part tens of millions of dollars in loan proceeds obtained from Canal Bank, a Panama entity. The extent to which Canal Bank has relevant information or was defrauded by Fintiklis or participated in any manner in aiding and abetting this massive fraud and series of unlawful RICO acts shall be determined by and through discovery in this proceeding, and other proceedings in New York and Panama if and as necessary. Upon information and belief, as part of that financing transaction, Canal Bank performed extensive due diligence into the Property on which it was extending tens of millions in financing, as did Ithaca I and Ithaca II, the alter egos of Fintiklis.

> above shall not apply to the **LICENSOR** or any entity or purchaser buying more than ten (10) **HOTEL UNITS** from the **LICENSOR**, provided that any **OWNER** possessing or owning more than ten (10) **HOTEL UNITS** shall only be allowed to resell these **HOTEL UNITS** in one exclusive transaction. As an example, but not limiting, if the **LICENSOR** sells twenty (20) **HOTEL UNITS** to a buyer, said buyer shall only be allowed to resell those twenty (20) **HOTEL UNITS** to another purchaser in a single transaction.

Co-Ownership Regulations of the Building P.H. TOC (the "COR"), Art. 75.4, attached hereto as **Exhibit I**.

81. Fintiklis executed the first version of the Consent to Bulk Sale Agreement in or about January 2017 on behalf of Ithaca I and Ithaca II, which were incorporated in Panama and created to commit fraud and further an unlawful RICO scheme by and through the Bulk Sale. Before Respondents countersigned the Consent to Bulk Sale Agreement, Fintiklis requested further changes to it, specifically that the sale be bifurcated between his two alter egos: Ithaca I as the purchaser of the 202 Hotel Units, and Ithaca II as the purchaser of the thirteen Hotels Amenities Units.

82. After making revisions requested by Fintiklis, Respondents – to avoid the very scenario giving rise to these sham proceedings conceived and commenced by Fintiklis and the Third-Party Respondents – clarified the language of Section 3(d) of the Consent to Bulk Sale Agreement.

83. Simply stated, in exchange for allowing the Bulk Sale, Section 3(d) of the Consent to Bulk Sale Agreement is the main consideration that Respondents were to receive from Fintiklis and his alter egos: express covenants by Ithaca I and Ithaca II that they and their Affiliates shall not directly or indirectly take any actions to interfere with or undermine ANY of Respondents' rights under or in respect to ANY of the related Hotel Agreements, including specifically the HMA, including but not limited with respect to any voting rights to any of the Hotel Units, or Hotel TOC, or any and all components of the P.H. TOC.

84. Section 3(d) states as follows:

> Purchaser shall not, directly or indirectly through any Affiliates or otherwise: (w) take (or refrain from taking) any action (including any legal action) that would interfere with or undermine the rights or obligations of Operator under and in respect of any of the Hotel Agreements, (x) *exercise its vote with respect to any of the Hotel Units in any Owners Meeting or other constituent body of the P.H. TOC (or any of its components), including without limitation, Hotel TOC Inc., in any manner which is adverse to the interests of Operator and/or its Affiliates under and in respect of any of the Hotel Agreements,* (y) *take (or refrain from taking) any*

> *action (including any legal action) that could materially damage the relationship between Operator, its Affiliates and any other Person or* (z) make, issue, solicit or endorse any statement that would damage or undermine the reputation of Operator or any of its Affiliates.

Consent to Bulk Sale Agreement § 3(D) (emphasis added).

85. Section 3(F) of the Consent to Bulk Sale Agreement further restrained Ithaca I and Ithaca II and its Affiliates from taking, directly or indirectly, any leadership positions within the P.H. TOC regime. That provision states in part that "Purchaser shall not seek or accept an appointment or election to the position of manager or administrator (or other similar leadership role) of the P.H. TOC." *Id.* § 3(F).

86. In February 2017, Fintiklis personally executed the Consent to Bulk Sale Agreement, on behalf of his alter egos Ithaca I and Ithaca II, which were formed for the purpose of furthering the unlawful fraud and RICO scheme set forth herein. Respondents countersigned in good faith believing that Fintiklis was an honest businessman. Pursuant to the Consent to Bulk Sale Agreement, Operator's required Written Approval necessary for the purchase was deposited in escrow with Newland's attorney, with release pending acceptance of the Licensing Fee.

87. On July 30, 2017, the P.H. TOC Board of Directors issued its Paz y Salvo (a certificate that the property is unencumbered by liens), allowing Newland to close the deal.

III. FINTIKLIS MAKES HIS NEXT MOVE IN FURTHERANCE OF HIS FRAUD AND UNLAWFUL RICO SCHEME

88. On or about August 10, 2017, the deeds to the 202 Hotel Units and the 13 Hotel Amenities Units were recorded in the Panama Public Registry, reflecting Ithaca I as the owner of 202 Hotel Units, and Ithaca II as the owner of the 13 Hotel Amenities Units.

89. On August 25, 2017, Operator received the License Fee pursuant to the Consent Agreement and, accordingly, Operator released its Written Approval of the Bulk Sale the same day. (**Exhibit J**)

90. Following the transfer of ownership of the 202 Hotel Units and the 13 Hotel Amenities Units, Fintiklis again met with high-ranking members of Respondents on August 28, 2017, this time in Panama. At this meeting Jeff Wagoner, EVP of Hotel Operations for Trump Hotels, made two presentations. The first presentation reviewed Respondents' sales and marketing strategies at the corporate level; and the second presentation discussed market highlights, financial performance, and key Hotel objectives at the property level.

91. A little over a month later, on October 3, 2017, Fintiklis again met with five high-ranking members of Respondents, as well as the entire Hotel Executive Committee, in Panama. At that meeting, Jeff Wagoner again made a presentation (**Exhibit K**), this time concerning new initiatives and revenue strategies to mitigate the effects of the increasingly saturated high-end hotel market in Panama City, Panama, an issue that has been building over the past few years. The presentation also included a preview of the Hotel's budget for 2018.

IV. THE HOTEL TOC "LUNCH MEETING"

92. On October 3, 2017 at 9:03 PM local Panama time—the same day Fintiklis met with the Respondents in Panama — Fintiklis sent a mass email to all Hotel Unit Owners requesting their attendance "at a meeting of the beneficiaries of Hotel Foundation, Inc. (*i.e.*, all Hotel Unit Owners) on 14 October 2017," declaring that it was an opportunity to meet as many Hotel Owners as possible and "hear [Hotel Unit Owners'] thoughts and ideas." (**Exhibit L**) This was another false statement made by Fintiklis and his alter ego entities which was designed to mislead Operator and Respondents and made to further the fraud, unlawful acts and RICO violations set forth herein.

93. Upon learning of this proposed Hotel Unit Owners meeting, Respondents contacted Fintiklis directly to remind him of his obligations under the Consent to Bulk Sale Agreement—specifically the covenants and acknowledgements as laid out in Section 3, quoting subsections (D)–(E). Specifically, Respondents noted that Ithaca I and II "expressly bound themselves and committed that they 'shall not seek or accept an appointment or election to the position of manager or administrator (or other similar leadership role) of the PH TOC.'" Respondents further requested that its General Manager of the Hotel attend the meeting, and that Fintiklis notify Respondents of any future plans to convene Hotel Unit Owners.

94. Fintiklis fraudulently responded to Respondents, and continued to make further knowingly false statements in furtherance of the fraud and RICO violations set forth herein. Fintiklis wrote, "With regard to the second point, this is not a legal point. So you prefer for the positions to continue to be vacant and hotel to continue to be exploited and extorted? What is this business issue/detriment to your organization form us appoint the position we are entitled to the board of PH Toc under the PH condo docs?" Fintiklis and his alter egos further confirmed their awareness of the provisions quoted, and claimed that the meeting was merely an informal lunch that he put together because he was being approached by Hotel Unit Owners and thought that a "lunch meeting" would be a good way to meet everyone. Fintiklis also agreed to have the General Manager in attendance, a knowingly false statement made with the intent that Respondents would rely upon it to their detriment and damage, which they did. At this point, Ithaca I had been the majority shareholder of the Foundation for a little under two months.

V. THE "OCTOBER 14 MEETINGS," NOTICE OF DEFAULT, AND REQUEST FOR ARBITRATION

95. On Saturday, October 14, 2017, Fintiklis, Lundgren, Ithaca I and II, Morgan & Morgan and John Does 1-10, met with Hotel Unit Owners at the Hotel, under the guise and deceit

of an informal lunch. The Hotel's General Manager, Carlos Abaunza, who is an employee and representative of Respondents, was in attendance for the first 10 or 15 minutes of the meeting, until he was forced to leave by the Third-Party Respondents.

96. Fintiklis effectively started the meeting by declaring that "we called the meeting because most of you have been telling us you are troubled by the fact that . . . every month you have to reach into your pocket and make a payment to support what you thought was an otherwise profitable investment, which is clearly not the case . . . ." He continued, "if we have the best hotel why are we losing money [?] [S]o that's wh[y] we're here . . . to discuss . . . basically we think and we heard from you . . . [t]he Operator is supposed to perform the functions of the Operator . . . [but] the owner and the Operator have effectively been the same person." (**Exhibit M**) Those statements are false, were knowingly false when made and were made in furtherance of the unlawful fraud and RICO scheme set forth herein. Among other things, Fintiklis, and the Third Party Respondents who participated and orchestrated this sham meeting know very well that Operator has never been the Owner and never held itself out to be the Owner.

97. Lundgren, through various corporate entities which had fraudulently obtained ownership of 50 Hotel Units without the required consent of Respondents, was present and spoke at the meeting as well in furtherance of the fraud and RICO scheme set forth herein.

98. Orlando Tejeira, of Morgan & Morgan, was also in attendance at the meeting and stated as follows:

> Orlando Tejeira: good afternoon ok so as I mentioned my name is Orlando Tejeira an attorney for Morgan and Morgan representing Ithaca and all of you. I just want to make sure that first of all and prior for me to reading the resolution that you are voting as beneficiaries of the foundation and as owners. I have to say that I am compelled by law to establish that this information that I am going to read is privileged and strictly confidential only for the beneficiaries

> of the foundation so everyone who is not an owner should please leave room for the next 10-15 minutes then can come in . . . .

See **Ex. C** hereto.

99. When Operator, by and through the General Manager of the Hotel, attempted to inform Fintiklis, Lundgren, the Ithaca alter egos and Morgan & Morgan that it had lawful proxies for votes, Fintiklis and the Third-Party Respondents ordered him – and effectively Respondents – out of the room. Morgan & Morgan's assertions that it and Tejeira represented the all of the Beneficiaries (i.e., all of the Unit Owners) of the Foundation in this meeting is patently FALSE as he and Morgan & Morgan are not the Legal Representative of Hotel Foundation, Inc. and certainly could not have been at the time that statement was made, before any sham vote had even been taken. Moreover, Morgan & Morgan and knew that no Board of Directors meeting had been properly noticed, and knew in fact it was falsely and deceptively called "a lunch meeting" for the purpose of orchestrating this fraud and series of RICO acts and violations. In fact, after Operator by and through its agent the Hotel's General Manager said "we were told this meeting was a simple meet and greet," Fintiklis said: **"Ok. It don't matter what was the purpose of the meeting now we have everybody here and I don't think people here have an issue."**

100. Article 5 of Hotel Foundation, Inc. Foundational Charter (attached hereto as **Exhibit N**) establishes that the "Legal Representative of the Foundation shall be the President of the Council. In his absence, the legal representative shall be whomever is elected by the majority of the votes of the Members of the Council." (Foundation Charter, Art. 5). Before, as of and on October 14, 2017, the Legal Representative and President of the Foundation was Roger Khafif. Mr. Khafif, Hotel Foundation, Inc.'s Legal Representative, did not receive notice of the meeting, nor did he attend.

101. The failure to provide notice to Mr. Khafif was no mistake, but rather an intentional fraudulent act designed to ensure that Fintiklis, Lundgren, and Ithaca, together with the able assistance of Morgan & Morgan and John Does 1-10, could exercise their unlawful scheme without protest or bound by legal impediments, such as notice to and participation by the duly-installed Council of Hotel Foundation, Inc., in violation of law.

102. Tejeira of Morgan & Morgan continued aiding and abetting the fraud and RICO scheme set forth herein, claiming that Morgan & Morgan, as purported counsel to ALL hotel unit owners was duly "compelled by law to establish that [the resolution] that [Tejeira] is going to read is privileged and strictly confidential—only for the Beneficiaries of the Foundation," and thus all non-Hotel Unit Owners were required to leave. This purportedly included the Hotel's General Manager and Respondents' on-site representative, Carlos Abaunza.

103. Under Article 11 of the Foundational Charter, meetings of the Beneficiaries may only be convened by the Foundation Council or upon written request of Beneficiaries representing 35% of Hotel Units, provided notice is given not less than 10, but no more than 60, days before the meeting. (Foundation Charter, Art. 11). Because the Foundation Council did not convene the meeting, because the meeting was held under the fraud and deceit of being an informal lunch and because no written request was made to have a board meeting, much less by any requisite percentage of Hotel Units, and because no member of the incumbent Foundation Council was notified about the October 14, 2017 meeting, the so-called "meeting" on October 14, 2017 was not a valid Meeting of the Beneficiaries as laid out in Article 11 and was merely one of several acts orchestrated and enacted in furtherance of the fraud, RICO violations and unlawful acts set forth herein from which Respondents have suffered significant damages. In short, Fintiklis, Lundgren, Morgan & Morgan, Owners Meeting, Ithaca I, Ithaca II, and John Does 1-10 are engaged in a

complete sham to usurp unlawful control of Hotel TOC and Hotel Foundation, in an effort to injure Respondents, which sham includes there commencement of this arbitration proceeding in violation of Section 487 of the New York Judiciary Law.

104. After the Respondents, represented by the Hotel General Manager, were directed to leave, Fintiklis, and his alter egos Ithaca I and II represented at this meeting in person by Morgan & Morgan & Morgan, together with Lundgren – in direct and knowing violation of their collective obligations under the Consent to Bulk Sale Agreement and the Lundgren Settlement Agreement – purported to hold an unlawful "Meeting of the Beneficiaries" to change the composition of the Foundation Council, and at the same time, an unlawful "Assembly of the Shareholders" to change the members of the Board of Directors of Claimant.

105. The foregoing events occurred in furtherance of Fintiklis's, Lundgren's and Third-Party Respondents' fraud and RICO scheme, including for the purpose to wrongfully usurp control of Hotel TOC and its sole shareholder Hotel Foundation, remove Operator in violation of its rights under the HMA and remove from the Foundation Council the incumbent President James Petrus; the incumbent Secretary Michael Dieter Straube; and the incumbent Treasurer Charles Mark Stevenson; and to elect Fintiklis as President of the Foundation Council; Alfredo Guerra as Secretary; and Jamie Fernandez as Treasurer.

106. The Minutes of the alleged October 14, 2017 Meeting of the Beneficiaries filed on October 16, 2017 with the Panama Public Registry (attached hereto as **Exhibit O**) confirms as much and states that:

> [A] meeting of the Beneficiaries . . . of the Hotel Foundation, Inc. . . . was held on October 14, 2017 at 12:00 PM at the [H]otel . . . . Upon approval and designation of the Beneficiaries . . . Orestes Fintiklis, Director – President and Legal Representative of Ithaca Capital Investments S.A. I, a Panamanian corporation and Beneficiary of the Foundation, acted as President of this meeting. . . Upon approval and designation of the Beneficiaries, Orestes Fintiklis, Director – President and

> Legal Representative of Ithaca Capital Investments S.A. II acted as Secretary of this meeting. . . . The President of the meeting [Fintiklis] declared that there were present in person and/or duly represented by proxy at the meeting 284 of the 369 Beneficiaries of the Foundation and that notice of the meeting was sent and given to all the Beneficiaries of the Foundation pursuant to Article Eleventh of the Foundational Charter of the Foundation.

(Foundation Minutes, filed Oct. 16, 2017).

107. The Foundation Minutes, which the Third-Party Respondents caused to be filed declaring that 284 of the 369 Beneficiaries of the Foundation were in attendance or represented by proxy and that proper notice was given pursuant to Article 11 of the Foundation Charter is false, were knowingly false when made and were made in furtherance of the fraud and RICO scheme herein for which Respondents assert Counterclaims and Third Party claims and seek relief.

108. Fintiklis, acting as both ad-hoc President *and* Secretary of the meeting, (Foundation Minutes, Oct. 14, 2017), and blatantly disposing with any corporate formalities as it were, quickly "resolved" to remove the three aforementioned Council Members so as to elect himself and those under his control, including his lawyer Alfredo Guerra, to Council Member positions, enabling Fintiklis to control the Foundation Council, which is "responsible for the management, administration and representation of the Foundation." (Foundation Charter, Art. 4(k)).

109. The Minutes of the alleged "Shareholder's Assembly Meeting" of October 14, 2017, filed with the Panama Public Registry on October 16, 2017 state that Fintiklis again acted as ad-hoc President and Secretary of the meeting. (Claimant Minutes, Oct. 14, 2017, attached hereo as **Exhibit P**). The alleged Shareholder Meeting Minutes go on to say that "[t]he President of the meeting [Fintiklis] declared in the presence and/or representation of all of the issued and outstanding shares of the company, the notice of call could be waived, and the quorum being in force, the meeting could proceed to deal with any matter submitted to it." *Id.*

110. Again, as explained above, the assertion that all the issued and outstanding shares of the company were lawfully present and/or represented at the alleged October 14th Meetings is false, was knowingly false when made and was made in furtherance of an unlawful RICO and fraudulent scheme.

111. The alleged Shareholder Minutes further state that Fintiklis, as ad-hoc President, informed the alleged Shareholders Assembly that it was resolved in the alleged Meeting of the Beneficiaries to (i) remove Mark Hawthorn (an employee of Operator), Charles Thierry Baurez and Carlos Abaunza (both Operator's representatives) as current Directors and Officers of the Corporation; and to, in turn, (ii) appoint Jaime Fernandez as Director and Treasurer; Fintiklis as Director and President, and Alfredo Guerra as Director and Secretary. These are the same three people that were allegedly voted to the Foundation Council.

112. Even though the General Manager of the Hotel, Carlos Abaunza, a Director of Claimant was present at the beginning of the "lunch meeting," Fintiklis and the Third-Party Respondents unlawfully excluded him from the alleged Shareholders Assembly Meeting by demanding that he leave before the alleged "Meeting of the Beneficiaries" and alleged votes took place, without disclosing that such an alleged Shareholders Assembly Meeting would be held in the next hour. These acts were undertaken by and through the conspiracy of the Third Party Respondents in furtherance of the fraud and RICO scheme set forth herein.

113. Upon information and belief, the Third Party Respondents caused Fintiklis to be wrongfully elected, together with those under his control, to the Foundation Council and Claimant's Board of Directors to wrest control of the Hotel Management, injure Respondents, wrongfully terminate the HMA, and to effectuate the fraud and RICO scheme set forth herein.

114. Under Panama law, the Foundation Charter would require an affirmative vote of 75% of all Beneficiaries (Hotel Unit Owners) or the written consent of all Beneficiaries to "[t]erminat[e] for cause, and/or decision not to renew any agreements entered into by the [Corporation] with any hotel operator and/or manager with respect to the operation of the Hotel." (Foundation Charter, Art. 10(b)(iv)). Even assuming the meetings had been properly noticed and called, which they were not, this additional legal requirement was not met.

115. Moreover, under the express voting prohibitions of the Consent to Bulk Sale Agreement and Lundgren Settlement Agreement, neither Fintiklis nor his alter ego Ithaca entities, or Lundgren and his affiliated entities could take any vote or take any action adverse to Operator or which would undermine Operator's rights under the HMA. Accordingly, the decision orchestrated by Third Party Respondents to terminate the HMA, whether under Article 10(b)(iv) of the Foundation Charter or otherwise, is invalid.

116. Tellingly, the same day these meetings – arranged by Fintiklis and Third-Party Respondents in furtherance of their fraud and RICO scheme – took place, Fintiklis, purporting to act as an authorized representative of Claimant Hotel TOC and Hotel Foundation, served Respondents with a seven-page sham Notice of Default under the HMA, dated October 14, 2017. That this Notice of Default was served the same day as the alleged meetings occurred is certainly no coincidence and was planned and conspired by the Third-Party Respondents in furtherance of their fraud and RICO scheme. To the extent that unknown parties John Does 1-10, including lawyers and law firms, took part in this fraudulent scheme, they shall be discovered in the ICC proceedings and identified and sued in the place of John Does.

117. Fintiklis and the Third-Party Respondents apparently convened these alleged October 14th Meetings without proper notice and obstructing the participation of Operator's

representatives as well as the President and Legal Representative of the Foundation, to falsely claim that 75% of the Beneficiaries approved the termination of the HMA, prompting the simultaneous service of a sham Notice of Default and bogus ICC Arbitration filing dated *the exact same day.* This is fraud and a violation of RICO, without limitation.

118. Even worse, the very same day that the alleged "Meetings" were held and the Notice of Default was sent, Fintiklis and others John Does 1-10, caused the filing of a 47-page sham Request for Arbitration with the ICC pursuant to HMA § 9.1, purporting to act on behalf of Claimant the same day that Fintiklis fraudulently appointed himself to Claimant's Board of Directors.

119. That these three events, (1) the fraudulent meeting; (2) the Notice of Default; and (3) the Request for Arbitration, all occurred on the same day, October 14, 2017, compels the conclusion that Fintiklis, and Lundgren, their controlled alter ego entities and affiliates, together with Morgan & Morgan and the Third-Party Respondents, including John Does 1-10, designed this fraud and RICO scheme to usurp control of the Hotel and to injure Operator's rights and interests under the HMA, long before October 14, 2017.

VI. THE SHAM DEFAULT NOTICE AND OPERATOR'S RESPONSE

120. The Notice of Default, dated October 14, 2017 and signed personally by Fintiklis as an alleged "authorized representative of Hotel TOC, Inc. and Hotel Foundation, Inc.," purported to provide notice of the:

> ongoing, material defaults under the [HMA], in particular Operator's failure to comply with its contractual and fiduciary obligations to supervise, direct, and control the management, operation, and promotion of all aspects of the Hotel; operate Hotel in accordance with the Operating Standard; and 'to maximize profitability and long term value of the Hotel.

(Notice of Default, at 2) (quoting HMA §§ 2.1, 2.2).

121. The Notice of Default further alleges "Operator has provided Owners only sparse and deficient financial disclosure, all the while failing to make required distributions, develop an effective marketing plan to address Owners problems plaguing the Hotel caused by Operator's incompetence, and obtain Owner's consent to amend the Annual Plan." (*Id.* at 3) (citing HMA §§ 2.1—2.5, 4.2, 4.4, 4.6, 5.2(a), 5.2(e), 5.2(h)).

122. Section 5.2.1 provides a list of example "events [that] shall constitute an 'Event of Default' by the party as to which such event occurs."

123. Subsection 5.2.2 of the HMA provides the procedure by which a party to whom an "Event of Default" has occurred under the HMA may seek recourse:

> Upon the occurrence of any Event of Default pursuant to Section 5.2.1, the non-defaulting Party may, without prejudice to any other recourse at law or in equity which the non-defaulting Party may have, give to the defaulting Party notice of its intention to terminate this Agreement, which termination shall be effective no earlier than thirty (30) days and no later than ninety (90) days following the date the notice of termination is given.

HMA §5.2.2.[8]

124. Fintiklis and Third-Party Respondents caused Claimant to issue the Notice of Default pursuant to Section 5.2.2 under the HMA, and required Operator to cure any defaults by November 20, 2017.

125. However, because Fintiklis and the Third-Party Respondents caused Claimant to also file its Request for Arbitration on October 14, 2017, the same day of the sham Notice of Default (and sham "lunch meeting"), Section 5.2.4 was triggered which states:

> Any termination notice given pursuant to Section 5.2.2 . . . **shall not result in the termination** of this Agreement **if a bona fide dispute with respect to any alleged Event of Default** . . . entitling a party to terminate this Agreement has arisen between the parties and such dispute has been submitted to resolution pursuant to Section 9.1.

[8] For the avoidance of doubt, Respondents deny each and every claim asserted by Claimant in the Request.

Id. § 5.2.4 (emphasis added).

126. Section 5.2.4 further clarifies that once a party submits the issue of whether an Event of Default under the HMA has occurred is submitted to resolution by the ICC pursuant to Section 9.1, the HMA requires the arbitrator to determine that an Event of Default has occurred and that the party seeking to terminate the Agreement is so entitled. The specific language of Section 5.2.4 is as follows,

> If an arbitrator determines that an Event of Default has in fact occurred or that any other event entitling a party to terminate this Agreement has in fact occurred . . . the party entitled to terminate this Agreement may give notice to the other party of its intention to terminate this Agreement upon a date to be specified in such notice, which date shall be not less than 30 days from the date of such determination. In the event such notice is given, this Agreement shall terminate upon the date specified in such notice.

Id.

127. On November 7, 2017, Respondents duly responded to the Notice of Default ("Notice Response") a copy of which is annexed hereto as **Exhibit Q**. In the Notice Response, Respondents asserted, in great detail, their rejection of the Notice of Default. As a matter of law, Fintiklis and the Third-Party Respondents have no authority to act on behalf of Claimant. Thus, Respondents provided numerous examples of how the Notice of Default was clearly a contrived sham to mount baseless claims of nonperformance under the HMA. In reality, no Event of Default exists.

128. As a result of Respondents' November 7 letter, together with Respondents' instant pleading, the "Events of Default" alleged are certainly in dispute and have been submitted to resolution by the ICC pursuant to Section 9.1 of the HMA. Consequently, even if Fintiklis could establish under law that he is the authorized representative of Claimant, Claimant could not lawfully terminate the Agreement until an arbitration has determined Claimant is so entitled.

VII. THE NOVEMBER 2017 TERMINATION LETTER

129. In flagrant violation of Section 5.2.4 of the HMA, which expressly prohibits termination of the HMA where a bona fide dispute has been submitted to arbitration, on November 21, 2017, Fintiklis and Third-Party Respondents furthered this fraud and RICO scheme when they caused to be issued a purported letter notice of termination ("Termination Notice"), effective December 22, 2017, attached hereto as **Exhibit R**. As explained above, this Termination Notice is improper because the issue has already been submitted to the ICC pursuant to Section 9.1, and thus the Claimant and the Third Party Respondents through which it acts must now wait until the parties agree otherwise, or an arbitrator orders "the party entitled to terminate this Agreement [to] give notice to the other party of its intention to terminate this Agreement upon a date to be specified in such notice, which date shall be not less than 30 days from the date of such determination." HMA § 5.2.4. On November 22, 2017, Operator responded,[9] rejecting the Termination Notice and reminding Claimant of Section 5.2.4, confirming that there is a bona fide dispute concerning the existence of an Event of Default that has been submitted to arbitration pursuant to Section 9.1.

130. Neither Claimant, Fintiklis or his conspirator Third Party Respondents parading as some "authorized representative" of Claimant, is entitled to terminate the HMA; despite this, Fintiklis, masquerading as an "authorized representative" of Claimant, has sent Respondent numerous—and often duplicative—notices and correspondence, alleging that Respondents' continued alleged default under the HMA entitles Claimant to take further action under the HMA. This is simply false and are further acts undertaken in furtherance of the fraud and RICO scheme.

131. In reality, the continued persistence of Fintiklis and the Third Party Respondents in threatening the immediate termination of the HMA in violation of its plain language and in the

[9] A true and correct copy of the November 22, 2017 Response to Termination Notice is attached hereto as **Exhibit S**.

face of the sham proceeding they have commenced is part and parcel of the fraudulent RICO scheme devised by Fintiklis, Lundgren and the Third-Party Respondents, the goal of which is to injure Respondents and remove Respondents from the Property at all costs, contractual requirements and legal restrictions be damned.

132. These actions alleged above and herein, however, themselves violate the HMA, New York and Panama laws and entitle Respondents to significant damages, including but not limited to treble damages for RICO violations and attorneys' fees.

VIII. DENIAL OF CLAIMANT'S CLAIMS

133. Respondents hereby deny each and every Claim in the Request for Arbitration and all material allegations in support thereof.

CLAIMS FOR RELIEF

FIRST COUNTERCLAIM
BREACH OF THE HMA

134. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

135. Claimant Hotel TOC, Inc. and Respondents are party to the HMA, which has an initial term of 20 years. Absent an Event of Default or performance-related issues under Section 5.3, the HMA may not be terminated.

136. No such Event of Default exists and Claimant does not assert default under Section 5.3 of the HMA. Accordingly, Claimant's service of Notice of Default is a sham, designed to carry out an unlawful scheme and breaches the HMA.

137. Moreover, subsequent to commencing this arbitration, Claimant has notified Respondents of its unlawful intention to terminate Respondents as Hotel Operator and remove Respondents from the Hotel property. Such conduct blatantly violates the HMA.

138. Specifically, Section 5.2.4 of the HMA provides:

> Any termination notice given pursuant to Section 5.2.2, 5.3 or 5.4 **shall not result in the termination** of this Agreement **if a bona fide dispute with respect to any alleged Event of Default or other event entitling a party to terminate this Agreement has arisen between the parties and such dispute has been submitted to resolution pursuant to Section 9.1**.

139. A bona fide dispute clearly exists between Claimant and Respondents concerning the existence of an Event of Default (*see, e.g.,* ¶¶ *146* - 150 *supra*). Fintiklis, Lundgren and the Third-Party Respondents, conspired to undertake unlawful *ultra vires* acts and have no authority to act on Claimant's behalf or to take any adverse actions against Operator, and such all Disputes arising under or related to the HMA have been submitted for resolution in this proceeding.

140. Accordingly, Claimant's persistent threats to terminate Respondents is a material and unequivocal repudiation and breach of the HMA, including, but not limited to, Section 5.2.4.

141. As a direct result of Claimant's breaches of the HMA, Respondents have suffered damages in an amount to be proven at the hearing in this proceeding, but in no event less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

SECOND COUNTERCLAIM
DECLARATORY JUDGMENT

142. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

143. There exists real and justiciable controversies affecting the rights of Respondents and Claimant that are ripe for determination.

144. The October 14, 2017 meeting of the Hotel Foundation, Inc. violated its Articles of Incorporation by failing to provide notice to all Beneficiaries and failing to achieve at least 75% participation of Beneficiaries for the decisions undertaken. Because of this failure, Hotel Foundation, Inc.'s actions with respect to the composition of the Board of Claimant are null and void, and Claimant's subsequent actions are *ultra vires*. Even assuming *arguendo*, that meeting had been called on proper Notice and even assuming 75% of those beneficiaries with valid

ownership and valid voting rights had voted – which neither fact exists or occurred – Third Party Respondents Ithaca I and II, Fintiklis and Lundgren and the Lundgren-related affiliates and entities had zero right to vote or cause to be voted any matters undermining the Operator or averse to Operator's interests under the Consent to Bulk Sale Agreement and the Lundgren Settlement Agreement .

145. As a result of the *ultra vires* acts taken on and after October 14, 2017 by Claimant, Respondents are entitled to a declaration that:

(i) the removals and appointments purportedly made to the Foundation Council and Hotel TOC, Inc. BOD on October 14, 2017 are null and void;

(ii) Fintiklis, is not an authorized representative of Claimant, had no authority to issue the Notice of Default, and consequently, the Notice of Default is null and void;

(iii) any termination of the HMA authorized by Fintiklis or other persons purportedly appointed to the Foundation Council and the Hotel TOC, Inc. BOD during the October 14, 2017 Meeting is null and void;

(iv) the claims fraudulently asserted by Claimant in this Arbitration Proceeding are *ultra vires* and null and void.

THIRD COUNTERCLAIM
DECLARATORY JUDGMENT

146. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

147. There exists real and justiciable controversies affecting the rights of Respondents and Claimant that are ripe for determination.

148. Absent an expiration of the HMA by the natural the passage of time, the HMA may only be terminated in an Event of Default (under Section 5.2) or performance-related issues (under

Section 5.3).[10] Claimant's Notice of Default is predicated on the existence of alleged fictional Events of Default under the HMA.

149. As demonstrated in the November 7 Response to the Notice of Default, no such Events of Default exist, however, and Respondents continue to perform their obligations under the HMA, as agreed by Lundgren and Owners Meeting in the Lundgren Settlement Agreement and as discovered by the Third Party Respondents, *i.e.*, Fintiklis, Ithaca I and Ithaca II, their lawyers Morgan & Morgan, John Does 1-10 and the lender of Fintiklis's alter egos, Canal Bank, during their extensive pre-purchase due diligence.

150. Accordingly, because no Event of Default exists under the HMA, Respondents are entitled to a declaration that:

(i) no Event of Default exists under the HMA;

(ii) Claimant's Notice of Default is improper and ineffective under the HMA; and

(iii) the claims fraudulently asserted by Claimant in this Arbitration Proceeding are ultra vires and null and void.

FIRST THIRD-PARTY CLAIM
VIOLATION OF RICO, 18 U.S.C. § 1962(c)
(against Ithaca I, Ithaca II, Fintiklis, Lundgren and Morgan & Morgan)

151. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

152. The Federal Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961, *et seq.*, applies in New York by virtue of the supremacy clause of the U.S. Constitution (Art. IV, Clause 2). Courts in the State of New York have concurrent jurisdiction to hear actions under the Federal RICO Act. *Tafflin v. Levitt*, 493 U.S. 455 (1990). Accordingly, claims under the Federal RICO Act arising from or relating to the HMA are properly included in this proceeding.

[10] In effect, under the HMA and because of the failure to build out certain amenities, including the beach club, there is no performance test that can be violated under Section 5.3. In any event, no such violation is asserted in this proceeding by Claimant.

153. Pursuant to 18 U.S.C § 1964(c), this Third-Party Claim seeks relief from Third-Party Respondents Ithaca I, Ithaca II, Fintiklis, Lundgren, Morgan & Morgan and John Does 1-10 (together, the "RICO Respondents") for violation of 18 U.S.C. § 1962(c).

154. At all relevant times, the RICO Respondents were and are each a "person" within the meaning of 18 U.S.C. §§ 1962(c) and 1961(3).

155. The RICO Respondents violated 18 U.S.C. § 1962(c) by the acts described in the prior paragraphs and as further described below.

The RICO Enterprise

156. At all relevant times, Fintiklis, individually and through his agents, employees and/or representatives, including but not limited to Ithaca I and Ithaca II, together with Lundgren, individually and through his agents, employees and/or representatives, Morgan & Morgan, along with John Does 1-10 and other known and unknown Unit owners and entities relating to the Property, associated in fact with each other so as to constitute an "enterprise" within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c) (the "RICO Enterprise").

157. At all times relevant to these proceedings, the RICO Enterprise was engaged in, and its activities affected, interstate and foreign commerce, including, *without limitation*, because Fintiklis and Lundgren (i) communicated with each other about their fraudulent scheme; and (ii) made fraudulent misrepresentations and omissions to Plaintiffs using interstate and international wires through (a) telephone calls to and from the United States; and (b) emails to and from the United States that traveled through email servers in the United States.

158. The RICO Enterprise has an ascertainable structure separate and apart from the pattern of racketeering activity in which the members of the RICO Enterprise engaged. Specifically, the members of the RICO Enterprise associated with the RICO Enterprise through

their personal involvement in the underlying racketeering offenses as well as by (1) making fraudulent misrepresentations and omissions to Respondents through in-person meetings, telephone calls and emails; (2) fraudulently inducing Respondents to enter into the Consent to Bulk Sale Agreement; (3) promoting the RICO Enterprise's activities and goals to others, including Hotel Unit Owners, and concealing them from Respondents.

159. The members of the RICO Enterprise associated with one another for the common purpose of injuring Respondents and improperly wresting control of the management of the Property – including its Hotel and Condominium components – from Respondents and their affiliates via unlawful acts alleged above, including an improper takeover of Unit Owner organizations relating to the Property, including Claimant.

160. The RICO Enterprise began as early as 2010 and continues to this day.

161. During this time period, in furtherance of the RICO Enterprise, the members of the RICO Enterprise committed numerous predicate acts of racketeering activity, including (1) violations of the wire fraud statute (18 U.S.C. § 1343); and (2) mail fraud statute (18 U.S.C. § 1341).

162. The members of the RICO Enterprise directly or indirectly benefitted from the fraudulent scheme due to, among other things, receipt by Ithaca I, Ithaca II and Fintiklis of the consent to bulk sale from Respondents, resulting in the transfer of 215 Units in the Property on false pretenses (202 Hotel Units and 13 Hotel Amenities Units).

The Purpose and Object of the Racketeering Activity

163. The members of the RICO Enterprise associated with each other for the common purpose of improperly wresting control of the management of the Property – including its Hotel and Condominium components – from Respondents.

164. The members of the RICO Enterprise agreed to engage in a pattern of racketeering activity to further the objectives of the RICO Enterprise.

Direction of the RICO Enterprise's Affairs

165. The RICO Respondents knowingly conducted or participated in, directly or indirectly, the RICO Enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5), 1962(c).

166. Additionally, each of the RICO Respondents was "employed by or associated with" the RICO Enterprise within the meaning of 18 U.S.C. §§ 1962(c).

167. The RICO Respondents, individual and through their agents, employees and or/representatives, participated in the operation or management of the RICO Enterprise by, among other things, (i) knowingly and fraudulently aiding, abetting and/or inducing Respondents to consent to the bulk sale of 215 Units to Ithaca I and Ithaca I; (ii) making fraudulent misrepresentations and omissions in in-person meetings and emails to Respondents and others concerning the Property.

168. The fraudulent scheme carried out by members of the RICO Enterprise could not have succeeded without the fraudulent and false statements and omissions of Fintiklis, Ithaca I and Ithaca II, to obtain the consent to bulk sale of Units from Respondents, and without the fraudulent and false material statements and omissions by Fintiklis, Lundgren, Ithaca I and II, Morgan & Morgan and John Does 1-10 made at the October 14, 2017 so-called Board meeting of Claimant and Hotel Foundation.

The Pattern of Racketeering Activity

169. In the course of conducting and participating the in RICO Enterprise, the RICO Respondents committed numerous predicate acts of racketeering activity, under 18 U.S.C. §1961(1)(B).

170. Specifically, the RICO Respondents executed a pattern of predicate acts of racketeering as defined in 18 U.S.C. §§ 1961(1) and 1961(5), in violation of 18 U.S.C. § 1962(c), including but not limited to (a) wire fraud in violation of 18 U.S.C. § 1343; and (b) mail fraud in violation of 18 U.S.C. § 1341.

Wire Fraud

171. In furtherance of the RICO Enterprise, as described herein, the RICO Respondents, individually and through their respective agents, employees and/or representatives, used wire communications in interstate or foreign commerce via telephone and email in violation of 18 U.S.C. § 1343.

172. Specifically, the RICO Respondents communicated about and facilitated the fraudulent scheme through wire facilities including (1) telephone calls to and from the United States; and (2) emails to and from the United States that traveled through servers in the United States.

173. In addition, Third-Party Respondents Fintiklis, Ithaca I and Ithaca II and John Odes 1-10, made fraudulent misrepresentations and omissions to Respondents via (1) telephone calls placed to or from the United States and (2) emails to or from the United States that traveled through servers in the United States.

Mail Fraud

174. In furtherance of the RICO Enterprise, as described herein, the RICO Respondents, individually and through their respective agents, employees and/or representatives, used the mail for purposes of executing their fraudulent scheme, in violation of 18 U.S.C. § 1341.

175. Specifically, the RICO Respondents made fraudulent misrepresentations and omissions to Respondents by use of the mail, including those misrepresentations that induced Respondents to consent to the bulk sale of Units to Fintiklis and his alter egos, Ithaca I and Ithaca II, in furtherance of the RICO Enterprise.

Relationship

176. The RICO Respondents conducted these and other predicate acts to further the common purpose of the RICO Enterprise to injure Respondents and improperly wrest control of the management of the Property – including its Hotel and Condominium components – from Respondents and their Affiliates via an improper and unlawful takeover of Unit Owner organizations relating to the Property, including Claimant.

177. These predicate acts of racketeering had the same or similar participants, victims, methods of commission and results and were not related or isolated events.

Continuity

178. The pattern of racketeering activity set forth herein extended over a substantial period of time, beginning as early as 2010 and continuing to this day.

179. The RICO Respondents intend to continue the fraudulent scheme indefinitely. Indeed, the pattern of racketeering activity was designed to oust Respondents, which Claimant (now under the control and influence of the RICO Enterprise) is purporting to do by proceeding

with termination of the HMA despite submitting a dispute concerning default under the HMA for resolution in this proceeding.

180. The RICO Respondents participation in the fraudulent scheme became a regular way of conducting affairs and will continue absent intervention.

The RICO Enterprise Directly Caused Injury to Respondents

181. Respondents are limited liability companies organized in the United States and based in New York, New York. The RICO Enterprises interactions with Respondents, including the fraudulent misrepresentations and omissions, occurred in or were directed to the United States.

182. Respondents have been injured as a direct and proximate result of the RICO Enterprise's violations, described above, of 18 U.S.C. § 1962(c), including injury by reason of the predicate acts constituting the pattern of racketeering activity.

183. Respondents injuries are clear and definite and include, among other injuries, (i) the loss of revenue by virtue of the RICO Enterprise's actions to terminate the HMA; (ii) reputational damage to Respondents' brand as a result of the RICO Enterprise's actions; and (3) being compelled to incur direct and indirect losses and liabilities as a result of the RICO Enterprise's actions.

184. Respondents became aware of their RICO-related injuries caused by members of the RICO Enterprise on or about October 14, 2017, after Fintiklis purported to install himself on the board of Claimant, by and through the aiding and abetting of Lundgren and the RICO Respondents.

Respondents' Entitlement to Treble Damages

185. As a result of the violations of 18 U.S.C. § 1962(c) by the RICO Enterprise, Respondents have suffered substantial damages in an amount to be proved at the hearing in this

proceeding, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

186. The RICO Respondents are jointly and severally liable for the acts of one another and for the acts of the other members of the RICO Enterprise.

187. Pursuant to 18 U.S.C. § 1964(c), Respondents are entitled to recover treble their damages to $150,000,000 [One Hundred and Fifty Million U.S. Dollars] plus interest, costs, and attorneys' fees incurred by reason of the RICO Respondents' violations of 18 U.S.C. § 1962(c).

SECOND THIRD-PARTY CLAIM
CONSPIRACY TO VIOLATE RICO, 18 U.S.C. § 1962(d)
(against Ithaca I, Ithaca II, Fintiklis, Lundgren and Morgan & Morgan)

188. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

189. In violation of 18 U.S.C. § 1962(d), the RICO Respondents knowingly conspired with each other to violate 18 U.S.C. § 1962(c).

190. The object of the conspiracy included, but was not limited to, unlawfully wresting control of the management of the Property – including its Hotel and Condominium components – from Respondents and their affiliates via an improper takeover of Unit Owner organizations relating to the Property, including Claimant.

191. At all relevant times, Fintiklis, individually and through his agents, employees and/or representatives, including but not limited to Ithaca I and Ithaca II, together with Lundgren, individually and through his agents, employees and/or representatives, and Morgan & Morgan, along with John Does 1-10 and other known and unknown Unit owners and entities relating to the Property, combined and agreed to perform a criminal or unlawful act, or a lawful act by criminal or unlawful means.

192. The RICO Respondents, individual and through their agents, employees and or representatives, objectively manifested agreement to the commission of substantive RICO violations and to the commission of two or more predicate acts of racketeering through participation in the conduct and affairs of the RICO Enterprise.

193. The RICO Respondents' agreement to engage in a pattern of racketeering activity is manifested by the racketeering offenses committed by them as alleged above.

194. The RICO Respondents committed overt acts to achieve the purpose of the conspiracy, including, but not limited to, (1) making fraudulent misrepresentations and omissions to Respondents; (2) purporting to call a meeting of Hotel Foundation, Inc. and Claimant under false pretenses; and (3) causing Claimant to take action to terminate the HMA without lawful grounds.

195. As described above, by committing numerous acts of wire fraud and mail fraud in furtherance of the RICO Enterprise, the RICO Respondents engaged in a "pattern of racketeering activity" within the meaning of 18 U.S.C. §§ 1961(5) and 1962(c).

196. The RICO Respondents knew that their acts in furtherance of the conspiracy were part of a pattern of fraudulent activity.

197. As a direct and proximate result of the RICO Respondents' participation in a conspiracy to violate 18 U.S.C. § 1962(c), Respondents have suffered substantial damages in an amount to be proven at the hearing in this matter, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

198. As described above, Respondents suffered domestic U.S. injuries.

199. The RICO Respondents are jointly and severally liable for the acts of one another and for the acts of the other members of the RICO Enterprise.

200. Pursuant to 18 U.S.C. § 1964(c), Respondents are entitled to recover treble their damages, $150,000,000 [One Hundred and Fifty Million U.S. Dollars] plus interests, costs, and attorneys' fees incurred by reason of the RICO Respondents' violations of 18 U.S.C. § 1962(d).

THIRD THIRD-PARTY CLAIM
FRAUD
(against Fintiklis, Ithaca I and Ithaca II)

201. Respondents repeat and reallege the foregoing as if set forth at length herein.

202. Ithaca I and Ithaca II are parties to the Consent to Bulk Sale Agreement, along with Respondents. Fintiklis so dominates and controls Ithaca I and II such that they are his alter egos and he is personally, jointly and severally liable for their wrongs.

203. In the Consent to Bulk Sale Agreement, as well as discussions leading up to it, Ithaca I and Ithaca II made statements, by and through Fintiklis, that they would take no actions adverse to the interests of Respondents in operating the Hotel.

204. Indeed, in Section 3(D) of the Consent to Bulk Sale Agreement, Ithaca I and Ithaca II (by and through Fintiklis), as Purchaser, agreed:

> Purchaser shall not, directly or indirectly through any Affiliates or otherwise: (w) take (or refrain from taking) any action (including any legal action) that would interfere with or undermine the rights or obligations of Operator under and in respect of any of the Hotel Agreements, (x) exercise its vote with respect to any of the Hotel Units in any Owners Meeting or other constituent body of the P.H. TOC (or any of its components), including without limitation, Hotel TOC Inc., in any manner which is adverse to the interests of Operator and/or its Affiliates under and in respect of any of the Hotel Agreements, (y) take (or refrain from taking) any action (including any legal action) that could materially damage the relationship between Operator, its Affiliates and any other Person or (z) make, issue, solicit or endorse any statement that would damage or undermine the reputation of Operator or any of its Affiliates.

205. At the time of those statements were made, and prior to those statements being made, Fintiklis, and Ithaca I and II intended to, and did, take actions directly adverse to the interests of Respondents in operating the Hotel, rendering such statements false at the time they were made.

206. Indeed, Fintiklis subsequently caused Ithaca I and Ithaca II to vote its Units to terminate the HMA, as part of a fraud and RICO scheme and conspiracy to, *inter alia*, wrest control of the management of the Hotel.

207. At the time Fintiklis made those statements on behalf of Ithaca I and Ithaca II they were knowingly false and made with an intent to deceive and defraud Respondents such that they would rely upon them to their detriment, which they did.

208. Respondents reasonably relied on those knowingly false statements to their detriment and substantial damages resulted therefrom.

209. Accordingly, Respondents are entitled to an award of damages in an amount to be proven at the hearing in this proceeding and in no event less than but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

FOURTH THIRD-PARTY CLAIM
FRAUD
(against Fintiklis, Ithaca I and Ithaca II)

210. Respondents repeat and reallege the foregoing as if set forth at length herein.

211. The facts set forth above at paragraphs 66 through 119 above set forth numerous knowingly false statements of facts and material omissions of material fact which Fintiklis, Ithaca I and Ithaca II made and/or omitted concerning Respondents and which they intended for Respondents to rely upon to their detriment and which Respondents did.

212. Without limitation thereof, Fintiklis and Ithaca I and II were fully aware of their promises under Section 3(d) of the Consent to Bulk Sale Agreement, promises which they made before and after the execution of the Agreement. Thereafter, on October 3, 2017, Fintiklis emailed all Hotel Unit Owners requesting their attendance "at a meeting of the beneficiaries of Hotel

Foundation, Inc. on 14 October 2017," declaring that it was an opportunity to meet as many Hotel Owners as possible and "hear [Hotel Unit Owners'] thoughts and ideas."

213. In response to Fintiklis's email, Respondents contacted Fintiklis directly to remind him of his obligations under the Consent to Bulk Sale Agreement—specifically the covenants and acknowledgements as laid out in Section 3, quoting subsections (D)–(E). Respondents further requested that its General Manager of the Hotel attend the meeting, and that Fintiklis notify Respondents of any future plans to convene Hotel Unit Owners.

214. Fintiklis responded to Respondents, hoping to lull and defraud Respondents with false comforting statements allegedly confirming that he was well aware of the provisions quoted, and falsely representing that the meeting was an merely "an informal lunch" that he put together because he was being approached by Hotel Unit Owners and thought that a "lunch meeting" would be a good way to meet everyone. Fintiklis even falsely stated that he agreed to have the Operator's representative and General Manager in attendance.

215. Fintiklis made knowingly false representations and material omissions of material fact because, *inter alia*, the "lunch meeting" was not intended to "meet everyone," but rather to part of a fraud and RICO scheme designed to usurp unlawful control of Hotel Foundation, Inc. and Claimant by holding bogus meetings for unlawful exercise of votes intended to harm Respondents and cause Claimant to terminate the HMA.

216. The subject of any prospective meeting of Claimant or Hotel Foundation, Inc. is plainly material to Respondents, who operate the Hotel.

217. Fintiklis made knowing false statements and knowing material omissions of material facts with an intent that Respondents would reasonably rely thereon to their detriment.

218. Respondents reasonably relied on Fintiklis's statements by, among other things, not taking immediate action to protect their rights under the Consent to Bulk Sale Agreement and HMA.

219. As a result of Fintiklis's fraud, Respondents have been damaged in an amount to be proven at the hearing, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

FIFTH THIRD-PARTY CLAIM
FRAUDULENT INDUCEMENT
(against Fintiklis, Ithaca I and Ithaca II)

220. Respondents repeat and reallege the foregoing as if set forth at length herein.

221. Ithaca I and Ithaca II are parties to the Consent to Bulk Sale Agreement, along with Respondents.

222. In the discussions leading up to the Consent to Bulk Sale Agreement, including in an earlier version of the agreement, Ithaca I and Ithaca II made knowingly false statements promises and representations, by and through Fintiklis, that they would take no actions, including the exercise of voting rights and even legal actions, which were or could be in any manner adverse to the interests of Respondents under the HMA in their operation of the Hotel.

223. At the time those knowingly false statements and representations were made, and even before they were made, Fintiklis – and, by virtue of his domination and control over his alter egos – Ithaca I and Ithaca II, intended to and did take actions directly adverse to the interests of Respondents under the HMA and in the operation of the Hotel and in direct contradiction to the promises, statements and representations they made.

224. Indeed, Fintiklis unlawfully and in breach caused Ithaca I and Ithaca II to vote its Units to terminate the HMA.

225. Fintiklis knowingly made those false statements on behalf of Ithaca I and Ithaca II with an intent to deceive Respondents and with the intent that Respondents would reasonably rely upon them to their detriment, and specifically to induce Respondents into granting their consent to the sale of 215 Units in the Hotel to Ithaca I and Ithaca II and to enter into the Consent to Bulk Sale Agreement.

226. Respondents reasonably relied on those statements to their detriment and substantial damages resulted therefrom.

227. Accordingly, Respondents are entitled to an award of damages in an amount to be proven at the hearing in this proceeding but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

SIXTH THIRD-PARTY CLAIM
FRAUDULENT CONCEALMENT
(against Fintiklis, Ithaca I and Ithaca II)

228. Respondents repeat and reallege the foregoing as if set forth at length herein.

229. On October 3, 2017, Fintiklis emailed all Hotel Unit Owners requesting their attendance "at a meeting of the beneficiaries of Hotel TOC Foundation on 14 October 2017," declaring that it was an opportunity to meet as many Hotel Owners as possible and "hear [Hotel Unit Owners'] thoughts and ideas."

230. Fintiklis acts for a beneficiary of Hotel TOC Foundation by virtue of his interests in Ithaca I and Ithaca II, which own Units in the Hotel. Upon information and belief, Fintiklis has dominated and controlled Ithaca I and Ithaca II at all relevant times. Ithaca I and Ithaca II are mere devices for Fintiklis to further his own personal business. Specifically, Fintiklis used Ithaca I and Ithaca II in furtherance of his fraudulent scheme to take control of Hotel TOC, Inc. and Hotel TOC Foundation.

231. In response to Fintiklis's email, Respondents contacted Fintiklis directly to remind him of his obligations under the Consent to Bulk Sale Agreement—specifically the covenants and acknowledgements as laid out in Section 3, quoting subsections (D)–(E). Respondents further requested that its General Manager of the Hotel attend the meeting, and that Fintiklis notify Respondents of any future plans to convene Hotel Unit Owners.

232. Under the Consent to Bulk Sale Agreement, Fintiklis, as the authorized representative of Ithaca I and Ithaca II, had a contractual duty to not take actions adversely affecting the interests of Respondents in operating the Hotel.

233. In abrogation of that duty, however, Fintiklis concealed his true purpose in calling the October 14 meetings, stating instead that the meeting was an informal lunch that he put together because he was being approached by Hotel Unit Owners and thought that a "lunch meeting" would be a good way to meet everyone. Fintiklis agreed to have the General Manager in attendance.

234. Fintiklis's concealment of his true purpose was a material omission to Respondents in violation of his duties under the Consent to Bulk Sale Agreement.

235. Respondents reasonably relied on Fintiklis's omissions and false statement by, among other things, not taking immediate action to protect their rights under the Consent to Bulk Sale Agreement and HMA.

236. As a result of Fintiklis's fraudulent concealment, Respondents have been damaged in an amount to be proven at the hearing, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

SEVENTH THIRD-PARTY CLAIM
BREACH OF THE HMA
(against Ithaca II and Fintiklis)

237. Ithaca II, as the alleged "successor" to Newland International Properties Corp., along with Claimant and Respondents, are party to the HMA, which has an initial term of 20 years. Absent an Event of Default or performance-related issues under Section 5.3 (not raised by Claimant in its Notice of Default), the HMA may not be terminated.

238. No such Event of Default exists. Accordingly, Claimant's service of Notice of Default breaches the HMA.

239. Despite the absence of an Event of Default, Ithaca II, as part of the unlawful fraud and RICO scheme of Fintikilis, Lundgren and Third-Party Respondents, unlawfully voted its Units to purportedly replace the board of Claimant and cause Claimant to issue the Notice of Default.

240. Moreover, subsequent to commencing this arbitration, Claimant -- under the unlawful control and domination of Fintiklis and Third-Party Respondents – notified Respondents of its intention to terminate Respondents as Hotel Operator and remove Respondents from the Hotel property. Such threats and repudiations of obligations blatantly violates the HMA and Operator's rights thereunder.

241. Specifically, Section 5.2.4 of the HMA provides:

> Any termination notice given pursuant to Section 5.2.2, 5.3 or 5.4 **shall not result in the termination of this Agreement if a bona fide dispute with respect to any alleged Event of Default** or other event entitling a party to terminate this Agreement **has arisen between the parties and such dispute has been submitted to resolution pursuant to Section 9.1**.

242. A bona fide dispute clearly exists between Claimant and Respondents concerning the existence of an Event of Default (*see, e.g.,* ¶¶ *146* - 150 *supra*) as well as the authority of those

purporting to act on Claimant's behalf and such disputes have been submitted for resolution in this proceeding.

243. Accordingly, Claimant's persistence – by and through Fintiklis and his alter egos Ithaca I and Ithaca II – in proceeding to terminate Respondents is a material and unequivocal repudiation and breach of the HMA including, but not limited to, Section 5.2.4.

244. But for Ithaca II's actions in violation of its obligations under the HMA and the consent to Bulk Sale Agreement, Claimant would not have breached the HMA, causing Respondents to suffer damages in an amount to be proven at the hearing in this proceeding, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

245. Fintiklis has dominated and controlled Ithaca II at all relevant times. Ithaca II is a mere alter ego device for Fintiklis to further his own personal business and interests. Specifically, Fintiklis used Ithaca II in furtherance of a fraud and RICO scheme to take control of Hotel TOC, Inc. and Hotel Foundation, Inc., resulting in Claimant's breach of the HMA. Ithaca II and Fintiklis are jointly and severally liable to Respondent for breach of the HMA.

EIGHTH THIRD-PARTY CLAIM
TORTIOUS INTERFERENCE WITH THE HMA
(against Ithaca I, Ithaca II, Lundgren and Fintiklis)

246. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

247. Respondents, along with Ithaca II, are parties to the HMA.

248. Ithaca I, Ithaca II, Lundgren and Fintiklis are aware and have knowledge of the HMA and its terms. Indeed, Fintiklis, Ithaca I and Ithaca II are party to the Consent to Bulk Sale Agreement, which explicitly incorporates the HMA by reference. Moreover, Lundgren, by virtue of the Lundgren Settlement Agreement has full knowledge of the HMA and all Hotel-related agreements and is charged with knowledge of all of the terms therein.

249. Through their wrongful conduct, Ithaca I, Ithaca II, Lundgren and Fintiklis intentionally interfered with Respondents' rights under the HMA, including by unlawfully causing Claimant to serve a sham Notice of Default and take steps to terminate the HMA.

250. Claimant's Notice of Default and steps to terminate the HMA are a material breach of the terms of the HMA.

251. Claimant's breach of the HMA was caused by the intentional interference of Ithaca I, Ithaca II, Lundgren and Fintiklis.

252. Lundgren, Fintiklis and Ithaca I and II agreed and conspired to oust Respondents as Hotel Operator by any means necessary, including those tortious or otherwise illegal. Lundgren and Fintiklis and their alter ego entities, through the unlawful voting of their entities' respective Hotel Units, took overt action in furtherance of their agreement and conspiracy. Accordingly, Lundgren, Fintiklis, Ithaca I and Ithaca II are jointly and severally liable for their tortious conduct with respect to the HMA.

253. Respondents have been damaged by the tortious interference of Ithaca I, Ithaca II, Lundgren and Fintiklis, which precipitated the material breach of the HMA, in an amount to be determined at the hearing in this matter, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

NINTH THIRD-PARTY CLAIM
BREACH OF CONSENT TO BULK SALE AGREEMENT
(against Ithaca I, Ithaca II and Fintiklis)

254. Respondents repeat and reallege each and every allegation as if fully set forth at length herein.

255. The Consent to Bulk Sale Agreement was executed on February 15, 2017, by Respondent Trump Panama Hotel Management LLC and the alter egos of Fintiklis, Ithaca I, and

Ithaca II with Fintiklis acting as sole signatory for Ithaca I and Ithaca II, the alter egos which he dominates and controls.

256. The Consent to Bulk Sale Agreement, and the promises made therein by Ithaca I and II and their alter ego Fintiklis, were reasonably relied upon by Respondents to their detriment, and are enforceable promises under law.

257. Operator performed all of its obligations and duties under the Consent to Bulk Sale Agreement.

258. Ithaca I and Ithaca II, as controlled and dominated by Fintiklis, failed to deliver the central material consideration they promised to Respondents under the Consent to Bulk Sale Agreement. Specifically, in material breach of paragraph 3(D), Ithaca I and Ithaca II (by and through Fintiklis's actions) willfully, completely and materially interfered with and undermined Operator's and Respondents' rights under the HMA by – without limitation of the facts set both above – fraudulently purporting to usurp control of the Claimant's board, and materially interfering with Respondents' rights as Hotel Operator.

259. In addition, Ithaca I and II and Fintiklis breached paragraph 3(F) through Fintiklis' actions in seeking and purportedly accepting appointment to the Foundation Council and the Hotel TOC, Inc. BOD.

260. Through these actions, Ithaca I and Ithaca II and Fintiklis breached its covenants in paragraph 3, which were material terms of the Consent to Bulk Sale Agreement.

261. Fintiklis has dominated and controlled Ithaca I and Ithaca II at all relevant times. Ithaca I and Ithaca II are alter ego vehicles through which Fintiklis advances his personal interests. Fintiklis used Ithaca I and Ithaca II in furtherance of his fraudulent scheme to take control of Hotel

TOC, Inc. and Hotel Foundation, Inc. Accordingly, Fintiklis is jointly and severally liable with Ithaca I and Ithaca II for breach of the Consent to Bulk Sale Agreement.

262. Respondents have been damaged by the breach of the Consent to Bulk Sale Agreement in an amount to be determined at the hearing in this matter, but not less than $50,000,000 [Fifty Million Dollars exclusive of interests and attorneys' fees, and the Third-Party Respondents Ithaca I, Ithaca II and Fintikilis are jointly and severally liable therefor.

TENTH THIRD-PARTY CLAIM
TORTIOUS INTERFERENCE WITH THE CONSENT TO BULK SALE AGREEMENT
(against Lundgren)

263. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

264. Respondents, along with Ithaca I and Ithaca II, are parties to the Consent to Bulk Sale Agreement.

265. Upon information and belief, Lundgren knew of the Consent to Bulk Sale Agreement, such agreement being an instrumentality of the fraud and unlawful RICO scheme enacted by Lundgren, Fintikilis and the Third-Party Respondents to improperly wrest control of the management of the Hotel and violate Operator's rights.

266. Through wrongful conduct, Lundgren intentionally interfered with Respondents' rights under the Consent to Bulk Sale Agreement, including by causing and inducing, and conspiring with Fintikilis, Ithaca I and Ithaca II, to violate the covenant of non-interference under the Consent to Bulk Sale Agreement and otherwise cause the breach of the Consent to Bulk Sale Agreement.

267. The tortious acts of Fintikilis, Ithaca I and Ithaca II's – including the votes of their Units at the two sham "informal lunch" meetings on October 14, 2017 – are material breaches of the Consent to Bulk Sale Agreement.

268. The breach by Fintikilis, Ithaca I and Ithaca II of the Consent to Bulk Sale Agreement was aided, abetted and caused by the intentional interference of, and conspiracy with Lundgren.

269. Respondents have been damaged by the tortious interference of Lundgren, which precipitated the material breach of the Consent to Bulk Sale Agreement, in an amount to be determined at the hearing in this matter, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

ELEVENTH THIRD-PARTY CLAIM
BREACH OF THE LUNDGREN SETTLEMENT AGREEMENT
(against Owners Meeting and Lundgren)

270. Respondents repeat and reallege each and every allegation as if fully set forth at length herein.

271. The Lundgren Settlement Agreement is a binding contract between the Owners Meeting, the Board of Directors of the Owners Meeting, and Trump Panama Condominium Management LLC, an Affiliate of Respondents.

272. The Lundgren Settlement Agreement expressly "inures to the benefit of and is binding upon each of the Parties hereto and their respective agents, representatives, executors, administrators, trustees, personal representatives, partners, directors, officers, shareholders, agents, attorneys, insurers, employees, representatives, predecessors, successors, heirs and assigns." (Lundgren Settlement Agreement, ¶ 11.)

273. The Lundgren Settlement Agreement is binding upon Lundgren both individually and as a then-director of Owners Meeting. In fact, Lundgren was a signatory of the Lundgren Settlement Agreement, and the Lundgren Settlement Agreement specifically addressed his conduct both "as a director or individually."

274. The Hotel Operator is specifically referenced in the Lundgren Settlement Agreement \ as a party for whose benefit paragraph 6 – set forth below exists; Operator is an intended third-party beneficiary of the Lundgren Settlement Agreement.

275. Owners Meeting and Lundgren have breached their obligations under the Lundgren Settlement Agreement. Specifically, Owners Meeting and Lundgren breached paragraph 6 of the Lundgren Settlement Agreement, whereby they promised that:

> neither the P.H. TOC nor any current or future Board of Directors nor any current or future member of the Board of Directors (including, without limitation, **Mr. Lundgren**, Ms. Perez, Mr. Fraser, Mr. Soloway and Mr. McGowan), **whether acting in their capacity as a director or individually**, shall, at any time, directly or indirectly, take any action (including, without limitation, exercising any voting rights as members of the Board of Directors) **which could reasonably be expected to interfere or compete with the duties, services, functions, management responsibilities . . ., rights and responsibilities of Hotel Operator,** whether under the Hotel Management Agreement or otherwise, or which could reasonably be expected to damage the relationship between Hotel Operator and any parties with an interest in the Building.

Lundgren Settlement Agreement, ¶ 6 (emphases added)

276. Owners Meeting and Lundgren breached paragraph 6 of the Lundgren Settlement Agreement through, without limiting the allegations above, Lundgren's actions and conduct on October 14, 2017 and by aiding and abetting, and conspiring with Fintiklis and the Third Party Respondents to take unlawful control of the Board of Directors of Claimant and Hotel Foundation, including, but not limited to, Lundgren unlawfully voting his alleged Hotel Units to support the efforts of Fintiklis and the Third Party Respondents to injure Operators rights and terminate the HMA in breach of contract and violation of law.

277. Respondents have been damaged by the Owners Meeting's and Lundgren's material breach of the Lundgren Settlement Agreement in an amount to be determined at the hearing in this

matter, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

TWELFTH THIRD-PARTY CLAIM
TORTIOUS INTERFERENCE WITH THE LUNDGREN SETTLEMENT AGREEMENT
(against Fintiklis, Ithaca I and Ithaca II)

278. Respondents repeat and reallege the foregoing as if fully set forth at length herein.

279. The Lundgren Settlement Agreement is a binding contract between the Owners Meeting, the Board of Directors of the Owners Meeting, and Trump Panama Condominium Management LLC, and Affiliate of Respondents.

280. The Lundgren Settlement Agreement "inure[d] to the benefit of and [was] binding upon each of the Parties hereto and their respective agents, representatives, executors, administrators, trustees, personal representatives, partners, directors, officers, shareholders, agents, attorneys, insurers, employees, representatives, predecessors, successors, heirs and assigns." (Lundgren Settlement Agreement, ¶ 11.)

281. Respondents, as the Hotel Operator is specifically referenced in the Lundgren Settlement Agreement in paragraph 6 thereof and are intended third party beneficiaries of the Lundgren Settlement Agreement.

282. Fintiklis, Ithaca I and Ithaca II are aware and have knowledge of the Lundgren Settlement Agreement, a breach of such agreement being an instrumentality of the fraud and unlawful RICO scheme and conspiracy enacted by Lundgren, Fintikilis and the Third-Party Respondents to improperly wrest control of the management of the Hotel.

283. Through their wrongful conduct, Ithaca I, Ithaca II and Fintiklis intentionally interfered with Respondents' rights under the Lundgren Settlement Agreement, including by

causing and inducing Lundgren to violate and breach the covenant of non-interference under the Lundgren Settlement Agreement.

284. Lundgren's actions, including the vote of his alleged Units (all of which he obtained in violation of Operator's rights and for which Operator sues herein below) on October 14, 2017, are a material breach of the Lundgren Settlement Agreement.

285. Lundgren's breach of the Lundgren Settlement Agreement was caused by the intentional interference of Ithaca I, Ithaca II and Fintiklis.

286. Respondents have been damaged by the tortious interference of Ithaca I, Ithaca II and Fintiklis, which precipitated the material breach of the Lundgren Settlement Agreement, in an amount to be determined at the hearing in this matter, but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

THIRTEENTH THIRD-PARTY CLAIM
DECLARATORY JUDGMENT
(against Hotel Foundation)

287. Respondents repeat and reallege the foregoing as if set forth at length herein.

288. Hotel Foundation is the sole shareholder of Claimant.

289. As discussed above, some meeting of Hotel Foundation was purportedly called by Fintiklis and/or his alter egos or one or more of the Third-Party Respondents for October 14, 2017. The notice of the October 14, 2017 meeting was not sent to members of the Council of the Hotel Foundation, Inc. as required by its charter.

290. Rather, Fintiklis proceeded with an alleged meeting without the Council, and without its President and Legal Representative, and instead Fintiklis falsely assumed the role of purported President and Secretary.

291. During this purported meeting of Hotel Foundation, the composition of the Council was purportedly changed by removing certain members and installing Fintiklis and others under his control, in order to permit Fintiklis to purport to install himself on the board and "authorized representative" of Claimant.

292. Fintiklis's subsequent self-installation on the Board of Claimant was simultaneous with the Notice of Default and the commencement of this proceeding which he and the Third-Party Respondents orchestrated.

293. Thus, Respondents have an actual controversy with Hotel Foundation that is ripe for adjudication.

294. Specifically, the purported October 14, 2017 meeting of Hotel Foundation violated law, and the acts that occurred therein should be declared null and void and of no effect. The October 14, 2017 meeting of the Hotel Foundation violated its Articles of Incorporation by failing to provide notice to all Beneficiaries and failing to achieve at least 75% participation of Beneficiaries for the decisions undertaken. Because of this failure, Hotel Foundation's actions with respect to the composition of the Board of Claimant are null and void, and Claimant's subsequent actions are *ultra vires*. Even assuming *arguendo*, that meeting had been called on proper Notice and even assuming 75% of those beneficiaries with valid ownership and valid voting rights had been exercised – which neither fact exists or occurred – Third Party Respondents Ithaca I and II, and Fintiklis and Lundgren and the Lundgren-related affiliates and entities had zero right to vote or cause to be voted upon any matters undermining the Operator or averse to Operator's interests under the Consent to Bulk Sale Agreement and the Lundgren Settlement Agreement .

295. For the reasons set forth above, Respondents are entitled to a declaration that the events purporting to take place at the improperly-noticed October 14, 2017 meeting of Hotel Foundation are null and void.

FOURTH COUNTERCLAIM/FOURTEENTH THIRD-PARTY CLAIM
DECLARATORY JUDGMENT & PERMANENT INJUNCTION
(against Claimant, Hotel TOC Foundation, Fintiklis, Ithaca I, Ithaca II and Lundgren)

296. Respondents repeat and reallege the foregoing as if set forth at length herein.

297. Fintiklis, by and through Ithaca I and Ithaca I, and in concert with Lundgren, purport to act on behalf of Claimant and Hotel TOC Foundation as a result of actions taken at an improperly-called meetings of Claimant and Hotel TOC Foundation on October 14, 2017.

298. The actions taken at the improperly-called meetings by Fintiklis, Ithaca I, Ithaca II and Lundgren violate agreements that those Third-Party respondents had concerning the Operator. Specifically, actions taken by Fintiklis, Ithaca I and Ithaca II violate the Consent to Bulk Sale Agreement (*see* ¶¶ 263 - 269), while those taken by Lundgren violate the Lundgren Settlement Agreement (*see* ¶¶ 270 - 277).

299. As discussed above, the actions purportedly taken at the October 14, 2017 meetings of Claimant and Hotel TOC Foundationare *ultra vires* and contrary to law.

300. Thus, a real and live controversy exists between Respondents and Claimant, Hotel TOC Foundation, Fintiklis, Ithaca I, Ithaca II and Lundgren that is ripe for adjudication.

301. Specifically, the purported October 14, 2017 meeting of Hotel TOC Foundation violated law, and the acts that occurred therein should be declared null and void and of no effect. First, because the actions that took place at the October 14, 2017 meeting of Claimant are predicated on the improper meeting of Hotel TOC Foundation, which, as described above, was ineffective. (¶¶ 287 – 295). Moreover, the voting of Units owned by Ithaca I and Ithaca II for the actions taken at the October 14, 2017 meetings of Claimant and Hotel TOC Foundation violate the

Consent to Bulk Sale Agreement and are void. The voting of Units owned by Lundgren violate the Lundgren Settlement Agreement, as well as the Co-Ownership Regulations and the HMA, by virtue of the lack of Operator consent given to Lundgren's holding of more than 10 Units at the Hotel.

302. For the reasons set forth above, Respondents are entitled to a declaration that:

a. the actions taken by Fintiklis, Ithaca I and Ithaca II at the October 14, 2017 meetings violate the Consent to Bulk Sale Agreement;

b. the actions taken by Lundgren at the October 14, 2017 meetings violate the Lundgren Settlement Agreement;

c. Lundgren's ownership of more than 10 Units violates the Co-Ownership Regulations and HMA;

d. The Notice of Default issued by Fintiklis as the "authorized representative" of Claimant and Hotel TOC Foundation is null and void, as Fintiklis is not the authorized representative of Claimant or Hotel TOC Foundation; and

e. There has been no termination of the HMA, as any actions purporting to terminate it have been *ultra vires* and/or unauthorized.

303. The actions of Fintiklis, Ithaca I, Ithaca II and Lundgren demonstrate gross disregard for contractual obligations and the rule of law. As such, Respondents are additionally entitled to and hereby request the entry of a permanent injunction enjoining Claimant, Hotel TOC Foundation, Fintiklis, Ithaca I, Ithaca II and Lundgren from:

a. taking any further action on the basis of the authority to act on behalf of Claimant and/or Hotel TOC Foundation based on the October 14, 2017 meetings of Claimant and Hotel TOC Foundation;

b. taking any actions, including the vote of any Units, contrary to the interests of Operator in its maintenance of the Hotel, consistent with pre-existing contractual obligations; and

c. pursuing or taking any action to pursue the termination of the HMA on the basis of the actions at the October 14, 2017 meetings of Claimant or Hotel TOC Foundation.

FIFTEENTH THIRD-PARTY CLAIM
BREACH OF THE HMA/CO-OWNERSHIP REGULATIONS
(against Lundgren)

304. Respondents repeat and reallege the foregoing as if set forth at length herein.

305. Lundgren, by and through 35 distinct entities, is the alleged owner 50 Hotel Units pursuant to, inter alia, the Co-Ownership Regulations.

306. Article 75(D)(4) of the Co-Ownership Regulations provides:

> No **OWNER** of a **HOTEL UNIT** may subdivide his / her **HOTEL UNIT**; no **OWNER** may purchase, possess or control, directly or indirectly through affiliates, related parties or in any other way, more than ten (10) **HOTEL UNITS**. For these effects, ownership or control of a **HOTEL UNIT** shall be considered to exist if said **HOTEL UNIT** belongs, directly or indirectly to the **OWNER**, a family member of the **OWNER**, any entity where the **OWNER** or the **OWNERS** family members may have an interest or are partners, or any partner, affiliate, controlling company or affiliate of any of the above.

307. The Co-Ownership Regulations further provide, in Article 1(C) that when the "**CO-OWNERSHIP REGULATIONS** or the law, do not expressly provide an applicable provision to a particular or specific case that is intended to be analyzed, the following principles shall apply . . . The terms and conditions of the **LICENSE AGREEMENT**, the **HOTEL MANAGEMENT AGREEMENT** and the **MANAGEMENT AGREEMENT OF P.H. TOC**."

308. Respondents, as Hotel Operator and Licensor, are intended third-party beneficiaries of the Co-Ownership Regulations and therefore have standing to pursue claims relating thereto.

309. Respondents, as Hotel Operator, have never given written consent to Lundgren's ownership of more than 10 Hotel Units as limited by the Co-Ownership Regulations.

310. Accordingly, Lundgren, by owning, directly or indirectly, more than 10 Hotel Units, is in breach of his obligations under the Co-Ownership Regulations and HMA; moreover, any votes which Lundgren purports to have exercised, directly or indirectly, in excess of 10 -- even assuming *arguendo* that a lawful Shareholder meeting had been lawfully called and proper

notice given and that Lundgren had not been a RICO Respondent involved in a fraud and RICO scheme (which is not the case) -- are null and void and Respondents are entitled to a Declaratory Judgment to that effect.

311. Lundgren's breach of the Co-Ownership Regulations/HMA have caused Respondents substantial damage in an amount to be proven at the hearing in this proceeding but not less than $50,000,000 [Fifty Million U.S. Dollars], exclusive of interest and attorneys' fees.

RESERVATION OF RIGHTS

Respondents reserve their due process and lawful rights to amend this pleading to assert any additional Counterclaims or Third-Party Claims, and add additional new parties, that may become apparent through discovery or otherwise.

WHEREFORE, Respondents seek an award:

(i) dismissing of all claims asserted by Claimant with prejudice;

(ii) of damages against Claimant on the First Counterclaim in an amount to be established at the hearing of this matter, but no less than $50,000,000.00 [Fifty Million U.S. Dollars];

(iii) against Claimant on the Second Counterclaim, declaring:

a. the removals and appointments purportedly made to the Foundation Council and Hotel TOC, Inc. BOD on October 14, 2017 are null and void;

b. Fintiklis, is not an authorized representative of Claimant, had no authority to issue the Notice of Default, and consequently, the Notice of Default is null and void;

c. any termination of the HMA authorized by Fintiklis or other persons purportedly appointed to the Foundation Council and the Hotel TOC, Inc. BOD during the October 14, 2017 Meeting is null and void;

d. the claims fraudulently asserted by Claimant in this Arbitration Proceeding are *ultra vires* and null and void.

(iv) against Claimant on the Third Counterclaim, declaring:

a. no Event of Default exists under the HMA;

b. Claimant's Notice of Default is improper and ineffective under the HMA; and

c. the claims fraudulently asserted by Claimant in this Arbitration Proceeding are ultra vires and null and void.

(v) of damages against Third-Party Respondents on its third-party claims in an amount to be established at the hearing of this matter, but no less than $50,000,000.00 [Fifty Million U.S. Dollars];

(vi) of treble damages on the First and Second Third-Party Claims pursuant to 18 U.S.C. § 1964(c);

(vii) of attorneys' fees and disbursements that Respondents have incurred in connection with this proceeding, including those available under 18 U.S.C. § 1964(c);

(viii) against Hotel TOC Foundation on the Thirteenth Third-Party Claim, declaring that the events purporting to take place at the improperly-noticed October 14, 2017 meeting are null and void;

(ix) against Claimant on the Fourth Counterclaim and against Hotel TOC Foundation, Fintiklis, Ithaca I, Ithaca II and Lundgren on the Fourteenth Third-Party Claim, declaring:

a. the actions taken by Fintiklis, Ithaca I and Ithaca II at the October 14, 2017 meetings violate the Consent to Bulk Sale Agreement;

b. the actions taken by Lundgren at the October 14, 2017 meetings violate the Lundgren Settlement Agreement;

c. Lundgren's ownership of more than 10 Units violates the Co-Ownership Regulations and HMA;

d. The Notice of Default issued by Fintiklis as the "authorized representative" of Claimant and Hotel TOC Foundation is null and void, as Fintiklis is not the authorized representative of Claimant or Hotel TOC Foundation; and

e. There has been no termination of the HMA, as any actions purporting to terminate it have been ultra vires and/or unauthorized.

(x) against Claimant on the Fourth Counterclaim and against Hotel TOC Foundation, Fintiklis, Ithaca I, Ithaca II and Lundgren on the Fourteenth Third-Party Claim, permanently enjoining them from:

a. taking any further action on the basis of the authority to act on behalf of Claimant and/or Hotel TOC Foundation based on the October 14, 2017 meetings of Claimant and Hotel TOC Foundation;

b. taking any actions, including the vote of any Units, contrary to the interests of Operator in its maintenance of the Hotel, consistent with pre-existing contractual obligations; and

c. pursuing or taking any action to pursue the termination of the HMA on the basis of the actions at the October 14, 2017 meetings of Claimant or Hotel TOC Foundation.

(xi) of costs of this proceeding, including the fees of the arbitration panel, against Claimant and Third-Party Respondents; and

(xii) such other and further relief as the arbitrator deems appropriate.

Dated: New York, New York
December 4, 2017

PRYOR CASHMAN LLP

By: _____

Todd E. Soloway
Perry M. Amsellem
Bryan T. Mohler
Marion R. Harris
7 Times Square
New York, New York 10036
(212) 421-4100

Attorneys for Respondents, Counterclaimants and Third-Party Claimants