EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TOM MILLIKEN, derivatively on behalf of HOSPITALITY INVESTORS TRUST, INC., Plaintiff, v. AMERICAN REALTY CAPITAL HOSPITALITY ADVISORS, LLC, AMERICAN REALTY CAPITAL HOSPITALITY PROPERTIES, LLC, AMERICAN REALTY CAPITAL HOSPITALITY GRACE PORTFOLIO, LLC, AR CAPITAL, LLC, AR GLOBAL INVESTMENTS, LLC, NICHOLAS S. SCHORSCH, WILLIAM M. KAHANE, PETER M. BUDKO, EDWARD M. WEIL, BRIAN S. BLOCK, JONATHAN P. MEHLMAN, EDWARD T. HOGANSON, STANLEY R. PERLA, ABBY M. WENZEL, AND ROBERT H. BURNS, Defendants, -and- HOSPITALITY INVESTORS TRUST, INC., Nominal Defendant.	**No. 18-CV-1757 (VEC)** **JURY TRIAL DEMANDED**

VERIFIED AMENDED SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiff Tom Milliken ("Plaintiff"), derivatively on behalf of Hospitality Investors Trust, Inc. ("HIT" or the "Company"), by and through his undersigned counsel, upon knowledge as to himself, and as to all other matters upon information and belief and investigation of counsel, alleges as follows:

OVERVIEW OF CLAIMS AND PROCEDURAL HISTORY

1. The Company's primary business purpose is to invest in lodging properties within the real estate hospitality sector; as of March 31, 2018, the Company had acquired or had an interest in 144 hotel properties. The Company operates as a public, non-traded real estate investment trust ("REIT"), meaning that the REIT is: "public" because it is registered with the Securities and Exchange Commission ("SEC"), sold its stock to the investing public rather than only to qualified investors, and is required to file reports with the SEC; and "non-traded" because its common stock is not listed on any national securities exchange and there is no public market for it.

2. HIT was formed in July 2013 as "American Realty Capital Hospitality Trust, Inc." by its sponsor American Realty Capital IX, LLC (the "Sponsor"). The Sponsor is owned by Defendant AR Capital, LLC and/or its successor, Defendant AR Global, Investments LLC. (AR Capital, LLC and AR Global Investments, LLC are referred to collectively as "AR Capital.") AR Capital was formed in 2007 by Defendants Nicholas S. Schorsch ("Schorsch") and William H. Kahane ("Kahane") and is majority-owned by Defendant Schorsch and his wife Shelley Schorsch. Its remaining ownership interests are held by Defendants Kahane, Peter M. Budko ("Budko"), Edward M. Weil ("Weil"), and Brian S. Block ("Block"). Certain of these individuals also acted as the Company's executive officers, as well as directors of the Company ("Directors") at various relevant times.

3. Until March 2017, the Company had no employees; rather, its day-to-day affairs were managed by its external advisor, American Realty Capital Hospitality Advisors, LLC (the "Advisor"). In addition to owning the Sponsor, AR Capital also ultimately owns the Advisor and the Company's former real estate property managers, Defendants American Realty Capital

Hospitality Properties, LLC and American Realty Capital Hospitality Grace Portfolio, LLC (collectively the "Property Managers").

4. The Company's management structure resulted in inherent conflicts of interest between the Company (on the one hand) and the Advisor, the Property Managers, AR Capital, and AR Capital's owners (on the other hand). For example, as set forth in detail *infra*, the Advisor received acquisition fees on the Company's acquisition of properties; Defendants caused the Company to pursue a reckless property acquisition campaign in order to maximize these acquisition fees. Further, Defendants caused the Company to enter into long term property management agreements with the Property Managers requiring the Company to pay real estate property management fees at rates that were grossly uncompetitive and unfair for the Company.

5. Between 2007 and 2014, AR Capital and its affiliates were prolific players in the non-traded REIT industry: they sponsored and provided management services to numerous other non-traded REITs and direct investment programs. Through a securities broker-dealer firm that AR Capital owned, Realty Capital Securities, LLC ("RCS"), which contracted with other securities broker-dealer firms to distribute the securities, AR Capital raised over $20 billion from investors for AR Capital-sponsored REITs and direct investment programs. RCS was the broker-dealer for HIT.

6. In October 2014, AR Capital and its affiliates became engulfed in an accounting fraud scandal that affected various AR Capital-sponsored entities' ability to raise capital:

(a) In October 2014, American Realty Capital Properties, Inc. ("ARCP"), an AR Capital-sponsored REIT, which at that time was listed on the NASDAQ Global Select Market ("NASDAQ"), disclosed in an SEC filing that its prior-filed financial statements "should no longer be relied upon" based upon findings by Ernst & Young which had been

hired in September 2014 to conduct an internal investigation. Ernst & Young's investigation revealed that ARCP executives had engaged in fraud in the calculation of adjusted funds from operations ("AFFO"), a critical measure of REIT operating performance, and had caused ARCP to misrepresent AFFO in SEC filings. In June 2017, Defendant Block, who was also an ARCP executive, was found guilty of securities fraud and sentenced to 18 months in prison. Another ARCP executive pled guilty to securities fraud and made a sworn statement that Defendant Schorsch had directed the fraud.

(b) By November 2014, 68 securities broker-dealer firms suspended their selling agreements with RCS, thereby suspending their sales of all AR Capital-sponsored products.

(c) On December 18, 2014, a former ARCP employee filed a complaint in New York State court against ARCP, Schorsch and others, detailing the above misconduct.

(d) In December 2014, Schorsch resigned from the boards of directors of RCS, ARCP and other AR Capital-sponsored entities including HIT.

(e) On December 15, 2014 ARCP publicly announced through an 8-K filing its "unwinding [of all] of its relationships with entities in which Mr. Schorsch maintains an executive or director-level role or is a significant stockholder" in an effort to "demonstrate the conviction of the [ARCP] independent board members to reset its senior leadership and governance, [and] increase transparency."

7. Schorsch resigned from the Company's Board of Directors ("Board") on December 29, 2014. Despite Schorsch's resignation, the Company has remained under the control of entities and individuals affiliated with AR Capital including the Advisor. Defendant Kahane, one of AR Capital's owners, was in fact appointed as chairman of HIT's Board on December 29, 2014 to

take Schorsch's place.

8. More negative information concerning ARCP and AR Capital affiliates came to light in 2015:

(a) On March 2, 2015, ARCP announced: (i) the completion of its audit committee's investigation which included addressing issues relating to payments to, and transactions with, AR Capital affiliates and certain equity awards to certain officers and directors; and (ii) that the audit committee investigation had revealed material weaknesses in ARCP's internal control over financial reporting, and its disclosure controls and procedures.

(b) On March 31, 2015, HIT filed its 2014 Form 10-K which revealed that: (i) "*Disclosures made by [ARCP] an entity previously sponsored by the parent of our Sponsor may adversely affect our ability to raise substantial funds"*; and (ii) "*Since the initial announcement in October*, a number of participating broker-dealers *temporarily suspended their participation in the distribution of our Offering*. Although certain of these broker-dealers have reinstated their participation, we cannot predict the length of time *the remaining temporary suspensions will continue* or whether all participating broker-dealers will reinstate their participation in the distribution of our Offering. As a result, our ability to raise substantial funds may be adversely impacted." (Emphasis added.)

(c) In November 2015, the Massachusetts Secretary of State Securities Division ("Mass SOS") filed an administrative complaint against RCS seeking to suspend RCS's broker-dealer license on the basis of its finding that that RCS had engaged in proxy fraud. AR Capital's members had attempted to sell a 60% stake in AR Capital to a private investment fund for approximately $900 million earlier in 2015. The deal was contingent upon the amendment of agreements that existed between AR Capital-sponsored investment

programs and their AR Capital-owned external advisors. The advisory agreements could not be amended without charter amendments which required shareholder approval; RCS engaged in proxy fraud in an attempt to secure the vote. An internal investigation revealed that AR Capital had directed RCS to engage in the misconduct constituting proxy fraud.

(d) On November 8, 2015, AR Capital's attempt to sell a 60% stake in itself to a private investment fund was abandoned.

9. The scandals relating to ARCP's accounting fraud and RCS's proxy fraud made it impossible for AR Capital-sponsored entities to continue raising investor capital. In November 2015, the Company was forced to discontinue its initial public offering ("IPO").

10. Immediately before the Company discontinued its IPO and in the context of the foregoing events, the Advisor proposed an amendment to its Advisory Agreement with the Company that would require the Company to pay asset management fees to the Advisor in cash or shares of Company common stock, with the form of the Company's payment to be determined in the sole discretion of the Advisor.

11. Prior to the amendment, the Advisory Agreement required the Company to pay asset management fees in the form of Class B Units in the Company's Operating Partnership (defined below). These Class B Units were subordinated, resulting in value to the Advisor only upon a liquidity event or upon the termination of the Advisory Agreement, and then only if the Company's stockholders had received their entire capital contribution back plus a 6% cumulative, pre-tax, non-compounded annual return on their contribution.

12. Rather than undertaking any deliberation, the so-called "Independent Directors" (defined below) rubber stamped the Advisor's proposal to amend the Advisory Agreement on the basis of the Advisor's representation that the IPO had been a success and that other AR Capital-

sponsored entities paid advisory fees in cash. The Independent Directors failed to consider the Company's existing financial obligations and ability to pay cash asset management fees. In addition, the Independent Directors failed to consider whether asset management fees payable in cash or shares of Company common stock were within the limits prescribed by the Charter despite that the Charter specifically required the Independent Directors to make such determination. The Charter in fact prohibited the Company's payment of asset management fees in the form of cash or shares of Company common stock. HIT subsequently paid over $26 million in cash asset management fees.

13. Despite the Independent Directors' dereliction of their duties to ensure that the compensation that the Company paid to the Advisor was within the limits prescribed by the Charter, the Company's April 29, 2016 proxy statement ("April 2016 Proxy Statement") soliciting the reelection of Directors contained the false representation that: "either the independent directors or the [Board's] conflicts committee has determined that all <u>our transactions and relationships with our Sponsor, Advisor and their respective affiliates</u> during the year ended December 31, 2015 were fair and <u>were approved in accordance with the applicable Company policies</u>." (Emphasis added.) The Directors were reelected on the basis of this false representation. Any reasonable stockholder would have found it material in deciding how to vote that the Independent Directors were not discharging their duties to ensure that the Company's entry into compensation arrangements with the Advisor, and payments of compensation to the Advisor, were in accordance with applicable Company policies. (The claims relating to the Company's payment of cash asset management fees, and claims relating to the April 2016 Proxy Statement, are referred to as the "Cash Asset Management Fee Claims.")

14. The IPO had been the Company's primary source of operating capital. Further,

the Company had significant financial obligations as a result of a reckless property acquisition campaign that Defendants had caused the Company to undertake; the Company relied upon the IPO to meet these obligations. The Company had in fact agreed to close on the sale of numerous properties between December 2015 and February 2016. The impact of the IPO suspension on the Company was not immaterial or fleeting; rather, the Company was forced to forfeit a $41.1 million earnest money deposit and to seek a recapitalization. The Company's payment of cash asset management fees to the Advisor, which commenced concurrent with the suspension of its IPO, not only resulted in corporate waste but contributed substantially to the Company's liquidity problems.

15. In January 2017 the Company announced that the Brookfield Investor (defined below), a private investment fund managed by affiliates of Brookfield Asset Management ("Brookfield"), would make a $300 million preferred equity investment in the Company's Operating Partnership (defined below). As discussed in detail *infra*, the Brookfield Investor is entitled to distributions at the rate of 12.5% per annum and has been afforded substantial control over the Company; these terms are detrimental to the Company and its stockholders. The Company has suspended payments of stockholder distributions indefinitely and currently reports that the estimated value of the Company's stock is $13.87 per share, a dramatic decline from the $25.00 per share price for which the stock was sold through the IPO. On May 10, 2018, HIT made a self-tender offer to purchase its shares at a price of $7.05 per share.

16. The capital infusion from the Brookfield Investor created an opportunity for Schorsch and his affiliates to implement a lucrative exit strategy for the Advisor and Property Managers at HIT's expense. Concurrent with the acceptance of the Brookfield Investor, the Company's property management arrangements – through which the Company paid management

fees to the Property Managers at a grossly uncompetitive rate – were restructured; the restructuring of these arrangements had the effect of bringing them in line with the competitive market. As part of its agreement to make a preferred equity investment in the Company, the Brookfield Investor had in fact demanded that the Company's property management arrangements be restructured to bring them in line with the competitive market. Defendants caused the Company to enter agreements obligating the Company to pay compensation to the Advisor and Property Managers totaling approximately $37 million in consideration for the termination, amendment, and assignment of property management agreements to bring the property management arrangements in line with the competitive market. These payments have been financed in part through capital received from the Brookfield Investor. (The Company's claims arising from its entry into property management agreements with the Property Managers through which it paid property management fees at grossly uncompetitive rates, and its payment of compensation to the Advisor and Property Managers to restructure these uncompetitive arrangements are referred to as the "Property Management Arrangement Claims.")

17. Defendants also caused the Company to enter into the Mutual Waiver and Release dated March 31, 2017 ("Release Agreement"), through which HIT purportedly released the Advisor, Property Managers, AR Capital, AR Capital's members, Company officers and certain Company Directors from all claims, losses, and proceedings. The Release Agreement is void and unenforceable for lack of consideration. Defendants acted in bad faith and breached fiduciary duties when they caused the Company to enter into it. (The claims arising from this challenged conduct are referred to as the "Release Claims.")

18. Prior to filing this Action, on July 14, 2017, Plaintiff sent a demand letter (the "July 2017 Demand Letter") (Ex. A.) to the chair of the Company's Board demanding that the Board

investigate and take action with respect to certain claims belonging to the Company, including the Cash Asset Management Fee Claims. Plaintiff's counsel subsequently had an in-person meeting with the Company's counsel on August 8, 2017. Following the meeting, Plaintiff made a request to the Board for confidential documents relating to the claims identified in the July 2017 Demand Letter; the Company subsequently produced certain confidential documents subject to a confidentiality agreement. Plaintiff's counsel then had a second in-person meeting with the Company's counsel on December 9, 2017. On December 12, 2017, Plaintiff sent a second demand letter (the "December 2017 Demand") (Ex. B) demanding that the Board investigate and take action with respect to the Property Management Arrangement Claims.

19. The Board failed to take any formal action whatsoever responsive to either the July 2017 Demand or the December 2017 Demand prior to the initiation of this lawsuit. As there had been more than a reasonable amount of time to investigate and make a decision with respect to the demands, including with respect to the Cash Asset Management Fee Claims and the Property Management Arrangement Claims, and as the Board had failed to take any formal responsive action, Plaintiff has standing to pursue the claims identified in the July 2017 Demand and December 2017 derivatively. Moreover, as the Board had failed to take any action responsive to the July 2017 Demand or December 2017 Demand prior to the initiation of this lawsuit, demand should be deemed as excused with respect to the Release Claims that Plaintiff may otherwise have been required to make.

20. Accordingly, Plaintiff asserts derivative claims on behalf of HIT for Breach of Fiduciary Duty (Count I); Waste (Count II); Aiding and Abetting (Count III); Breach of Contract – Charter (Count IV); Violations of Section 14(a) of the Securities Exchange Act of 1934 (Count V); Unjust Enrichment (Count VI); and Declaratory Judgment (Count VII).

PARTIES

I. The Plaintiff

21. Plaintiff Tom Milliken ("Milliken") is an individual who is a citizen of Florida. Milliken is a current stockholder of HIT and has continuously held HIT stock since August 19, 2014. Milliken was a stockholder at the time of the transactions complained of herein. Milliken had no knowledge of the claims asserted herein prior to June 2017.

II. The Nominal Defendant

22. Nominal Defendant HIT is a Maryland corporation that was formed on or about July 25, 2013. HIT was known as American Realty Capital Hospitality Trust, Inc. from its formation until on or about March 31, 2017, when the Company filed an Articles of Amendment to its Charter through which it changed its name to Hospitality Investors Trust, Inc. Since its inception, HIT's principal executive offices have been located in New York, New York, and are currently located at 450 Park Avenue, Suite 1400, New York, New York, 10022.

III. The Fiduciary Defendants

23. Defendants American Realty Capital Hospitality Advisors, LLC (the "Advisor"), Schorsch, Kahane, Jonathan P. Mehlman ("Mehlman"), Edward T. Hoganson ("Hoganson"), Abby M. Wenzel ("Wenzel"), Stanley R. Perla ("Perla"), and Robert H. Burns ("Burns") are referred to collectively as the "Fiduciary Defendants."

24. The Advisor is a Delaware limited liability company that was formed on or about July 23, 2013. The Advisor was the Company's external Advisor from the Company's inception until the Advisory Agreement was terminated in March 2017.

25. Defendant Schorsch is an individual who is a citizen of Rhode Island. Schorsch served as a Director of the Company and as chairman of the Company's Board from its inception

until December 29, 2014. Upon information and belief, Schorsch owns a 56.2% membership interest in AR Capital and his wife, Shelly Schorsch, owns an additional 7.54% membership interest in AR Capital.

26. Defendant Kahane is an individual who is a citizen of Rhode Island. Kahane served as a Director of the Company from its inception until March 31, 2017 and as the chief executive officer and president of the Company from November 20, 2014 until March 31, 2017. Upon information and belief, Kahane owns a 13.5% membership interest in AR Capital.

27. Defendant Mehlman is an individual who is a citizen of New York. Mehlman has served as chief executive officer and president of the Company since November 20, 2014. Mehlman also served as chief executive officer and president of the Advisor and Property Managers from November 20, 2014 until March 2017. In addition, Mehlman served as executive vice president and chief investment officer of the Company, the Advisor and Property Managers from their respective formations in July 2013 until December 2014.

28. Defendant Hoganson is an individual who is a citizen of Virginia. Hoganson has served as the Company's chief financial officer, treasurer, and secretary since December 15, 2014. Hoganson also served as chief financial officer, treasurer and secretary of the Advisor and the Property Managers from December 2014 until March 2017.

29. Defendant Wenzel is an individual who is a citizen of New York. Wenzel has served as an Independent Director of the Company since September 2013.

30. Defendant Perla is an individual who is a citizen of New Jersey. Perla has served as an Independent Director of the Company since January 15, 2014.

31. Defendant Burns is an individual who upon information and belief is a United States citizen and who currently resides in Hong Kong. Burns served as an Independent Director

of the Company from September 12, 2014 until March 31, 2017.

32. By reason of their positions as officers, Directors, and/or fiduciaries of HIT, and because of their ability to control the business and corporate affairs of HIT, the Fiduciary Defendants owed HIT fiduciary obligations, and were required to use their utmost ability to control and manage HIT in a fair, just, honest, and equitable manner.

33. Further, the Fiduciary Defendants were required to act in furtherance of the best interests of HIT and in compliance with HIT's Charter, and not in furtherance of their personal interest or benefit. Each Director and officer of the Company owed to HIT the fiduciary duty to exercise good faith and due diligence in the administration of the Company's affairs, and in the use and preservation of its property and assets, as well as the highest obligations of fair dealing.

34. Through their control and authority as Directors, advisors, and/or officers of HIT, the Fiduciary Defendants directly and/or indirectly exercised control over the wrongful acts complained of herein. The Fiduciary Defendants failed to discharge their duties and failed to exercise reasonable and prudent supervision over the management, policies, practices and controls of HIT.

IV. <u>The AR Capital Defendants</u>

35. Defendants AR Capital, LLC and AR Global, LLC (collectively "AR Capital") and Defendants Budko, Weil, and Block are referred to collectively as the "AR Capital Defendants."

36. Defendant AR Capital, LLC is a Delaware limited liability company that was formed on or about December 27, 2012.

37. Defendant AR Global Investments, LLC is a Delaware limited liability company that was formed on or about August 5, 2015. AR Global Investments, LLC is the successor to AR

Capital, LLC.

38. Defendant Budko is an individual who is a citizen of North Carolina. Upon information and belief, Budko owns a 16.4% membership interest in AR Capital.

39. Defendant Weil is an individual who is a citizen of New York. Upon information and belief, Weil owns a 3.51% membership interest in AR Capital.

40. Defendant Block is an individual who is a citizen of Pennsylvania. Upon information and belief, Block owns a 3.03% membership interest in AR Capital.

V. The Property Manager Defendants

41. Defendants American Realty Capital Hospitality Properties, LLC and American Realty Capital Hospitality Grace Portfolio, LLC may be referred to collectively as either the "Property Managers" or "Property Manager Defendants."

42. Defendant American Realty Capital Hospitality Properties, LLC is a Delaware limited liability company that was formed on or about August 13, 2013.

43. Defendant American Realty Capital Hospitality Grace Portfolio, LLC is a Delaware limited liability company that was formed on or about September 11, 2014.

JURISDICTION AND VENUE

44. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a) because Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

45. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §1331 in that this Verified Amended Shareholder Derivative Complaint asserts violations of Section 14(a) of the Securities Exchange Act of 1934. This Court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. §1367(a). This action is not a collusive action

designed to confer jurisdiction on a court of the United States that it would not otherwise have.

46. The Court has jurisdiction over each Defendant named herein because each Defendant is either an entity that conducts business in and maintains operations in this District or is an individual who has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

47. Venue is proper in this District pursuant to 28 U.S.C. §1391 because a substantial portion of the transactions and wrongs complained of herein, including Defendants' participations in the wrongful acts detailed herein, occurred in this District and HIT maintains its principal executive offices in this District. Further, Defendants either reside in or maintain executive offices in this District, and/or have received substantial compensation in this District by engaging in numerous activities and conducting business here, which had an effect in this District.

SUBSTANTIVE ALLEGATIONS

I. Overview of the Company's History

A. The Company's Formation and Securities Offering

48. HIT was formed by the Sponsor on July 25, 2013. The Sponsor is a wholly-owned subsidiary of AR Capital.

49. The Company's original stated business objective was to "to acquire lodging properties in the midscale limited service, extended stay, select service, upscale select service, and upper upscale full-service segments within the hospitality sector."

50. However, the Company reports that following the suspension of its IPO in 2015, its "primary business objective has been a focus on meeting [its] capital requirements and on maximizing the value of [its] existing portfolio by continuing to invest in [its] hotels primarily

through brand-mandated property improvement plans ('PIPs'), and through intensive asset management."

51. The Company sold shares of common stock primarily to retail investors through independent securities broker-dealer firms that had entered into distribution agreements with RCS. The Company reports that there were approximately 39.5 million shares of the Company's common stock outstanding as of May 1, 2018 and that the Company had received gross proceeds of approximately $913 million through its IPO and through its distribution reinvestment program ("DRIP") net of the Company's repurchases of shares through December 31, 2016. The IPO was abruptly suspended on November 15, 2015 and was terminated on January 7, 2017. The DRIP was suspended on January 7, 2017.

B. Pertinent Statements in the Company's Offering Documents

52. The Company utilized prospectuses in connection with the IPO which were filed with the SEC on Form 424B3 on January 10, 2014 and on April 29, 2015.

53. The prospectuses set forth all of the types of compensation that the Company may pay to the Advisor or its affiliates in accordance with the Advisory Agreement (defined below), the Operating Partnership Agreement (defined below), and the Charter. The prospectuses describe that the Company would pay performance-based asset management fees to the Advisor in the form of Class B Units in the Company's Operating Partnership (defined below).

54. The prospectuses make clear that asset management fees payable in cash or shares of Company common stock are not among the types of compensation that the Company may pay to the Advisor. The prospectuses in fact explicitly state that the Advisor may not elect to have asset management fees paid in cash: "[i]n the sole discretion of our advisor, the advisor may elect to have certain fees and commissions (***not* including any asset management fees**) paid, in whole

or in part, in cash or shares of our common stock." (Emphasis added.)

55. The Company therefore sold stock through the IPO on the basis of the representation that the Advisor would receive only performance-based asset management fees. This was a primary selling point and allowed the Company to raise significant capital within a short period of time.

C. The Company's Operating Partnership and Management Structure

56. HIT is structured as an umbrella limited partnership meaning that its business is conducted through an operating partnership, Hospitality Investors Trust Operating Partnership, L.P., (the "Operating Partnership")[1], of which the Company is the general partner. The Operating Partnership was formed on July 24, 2013. HIT contributed the net proceeds of the capital raised from its stockholders to the Operating Partnership through which it made investments in real estate beginning on March 21, 2014.

57. From its inception until March 31, 2017, the Company had no employees. Instead, the Advisor managed the Company's business affairs and controlled its day-to-day operations pursuant to the Advisory Agreement by and among the Company, the Operating Partnership, and the Advisor ("Advisory Agreement"). The Advisor was controlled by the AR Capital Defendants along with Defendants Schorsch, Mehlman, and Hoganson.

58. Through an internalization agreement that became effective as of March 31, 2017, the Advisory Agreement was terminated, the Company directly hired many of the Advisor's employees, and the Company became self-managed.

[1] The Operating Partnership was known as American Realty Capital Hospitality Operating Partnership, L.P. from its inception until March 31, 2017.

D. The Company's Operative Agreements: Charter, Advisory Agreement, Operating Partnership Agreement, and Property Management Agreements

59. The Company's Charter specifies that the Directors serve, and the Advisor served, in fiduciary capacities to the Company with fiduciary duties owing to the Company's stockholders. The Charter further specifies that the Directors had a fiduciary duty to supervise the relationship between the Advisor and the Company. In addition, the Advisory Agreement specifies that the Advisor stood in a fiduciary relationship with the Company and with the Company's stockholders.

60. The Charter sets forth the categories of fees that the Company may pay to the Advisor and its affiliates. These are limited to acquisition fees on the purchase of properties, disposition fees on the sale of properties, incentive fees, and annual subordinated performance fees, the Company's payment of which is conditional upon: (i) receipt by the Company's stockholders of a 6% cumulative, pre-tax, non-compounded annual return on their contributions; and (ii) the return of the stockholders' capital contributions back to them. The Charter, however, does not permit the Company to pay any asset management fees to the Advisor or its affiliates beyond the annual subordinated performance fee.

61. The Charter specifies that the Company may pay no fees to the Advisor or its affiliates in connection with the Company's internalization of any management services provided by the Advisor.

62. The Charter specifies that the Company shall not engage in transactions with the Sponsor, Directors, or affiliates thereof unless a majority of the Directors (including a majority of Independent Directors) not interested in such transaction approve such transaction as fair and reasonable to the Company and on terms and conditions not less favorable to the Company than those available from unaffiliated third parties.

63. The Charter defines an "Independent Director" as one who has not had an

ownership interest in the Sponsor, Advisor, or their affiliates within the past two years. The Charter requires that the majority of the Board be comprised of Independent Directors from and after the commencement of the Company's IPO. The Charter further requires the Independent Directors to ensure that the fees that the Company pays to the Advisor and its affiliates are within the limits prescribed by the Charter.

64. The Charter specifies that the Company shall neither indemnify nor hold harmless an Independent Director for loss or liability suffered by the Company resulting from the Independent Director's bad faith conduct or gross negligence. Further, the Charter specifies that the Company shall neither indemnify nor hold harmless a Company officer or Director (who does not qualify as an Independent Director) for loss or liability suffered by the Company resulting from the officer or Director's bad faith conduct or negligence.

65. The Advisory Agreement required the Company to pay the Advisor acquisition fees at the rate of 1.5% of the contract purchase price of the asset. Prior to its amendment in November 2015 (*see* **Section II** *infra*), the Advisory Agreement also required the Company to pay the Advisor asset management fees in the form of subordinated profits interests in the Company's Operating Partnership pursuant to the terms of the Agreement of Limited Partnership of the Operating Partnership ("Operating Partnership Agreement").

66. Prior to its amendment in November 2015[2], the Operating Partnership Agreement specified that: (i) the Operating Partnership shall issue the Advisor Class B Units in the Operating Partnership on a quarterly basis; (ii) the Class B Units shall remain restricted until the Company's stockholders have received a 6% cumulative, pre-tax, non-compounded annual return on their

[2] The November 2015 amendment to the Operating Partnership Agreement states that the Advisor would only receive Class B Units until the end of the quarter ending September 30, 2015.

contribution and until the stockholders' capital contributions have been returned back to them (the "Economic Hurdle"), and until either a liquidity event occurs or until the Advisory Agreement is terminated concurrent with or subsequent to the Economic Hurdle having been met; and (iii) that the Class B Units shall be forfeited upon the occurrence of a liquidity event or upon the termination of the Advisory Agreement if the Economic Hurdle has not been met. The Company's payment of performance-based asset management fees to the Advisor in the form of Class B Units in the Operating Partnership, through which the Advisor would realize value only when the Economic hurdle had been met, appears to be consistent with and permissible under the Charter.

67. The Defendants caused HIT to enter into primary property management arrangements requiring HIT to pay base property management fees at the rate of 4.0% of gross revenue to one of the Property Managers. The Property Managers then paid a sub-manager a base management fee between 2.0% and 3.25% of gross revenue to a sub-manager pursuant to a sub management agreement. The sub-manager was either Crestline Hotels & Resorts, LLC ("Crestline") an affiliate of the Advisor and Property Managers owned by AR Capital, or an unaffiliated, third-party manager. Crestline received a base management fee of 3.25% of gross revenue. The unaffiliated managers typically received a base management fee of 2.0% of gross revenue. As set forth in detail in **Section IV** *infra*, these property management arrangements were grossly unfair to the Company.

E. The Fiduciary Defendants Led the Company on a Reckless Property Acquisition Campaign

68. In May 2014, the Company entered into an agreement to acquire a portfolio of 116 hotel properties (the "Grace Portfolio") from W2007 Grace Acquisition I, Inc. and completed the acquisition on February 27, 2015. The properties comprising the Grace Portfolio were limited service hotels.

69. The total purchase price of the Grace Portfolio was approximately $1.8 billion exclusive of closing costs. Through December 31, 2015, the Company had raised only approximately $375.1 million in the IPO. The purchase was funded with approximately $230 million of cash, raised through the IPO, and approximately $1.131 billion of debt, including a $102.8 million mezzanine loan with an outside maturity date of May 1, 2019. The balance was funded through the issuance of $447.1 million of preferred equity interests to the sellers which the Company must redeem in full by February 27, 2019. Pursuant to the agreement with the preferred equity investor, the Company was required to use 35% of future proceeds from the IPO to redeem the preferred equity investor. The Grace Portfolio acquisition therefore saddled the Company with extremely onerous financial obligations and put tremendous pressure on the Company to raise capital through the IPO in order to satisfy its debt obligations and obligations to the preferred equity investor.

70. In order to acquire the Grace Portfolio, the Independent Directors waived a Charter provision requiring that the Company's real estate asset portfolio leverage shall not exceed 300%. When HIT completed the Grace Portfolio acquisition on February 27, 2015, it reported that HIT's total portfolio leverage was 538%, meaning that the debt-to-equity ratio for the assets in its total real estate portfolio exceeded 5-1. The 538% calculation did not account for the fact that $447.1 of the purchase price of the Grace Portfolio was financed through the Company's issuance of preferred equity securities which the Company was required to fully redeem within four years. HIT's financing of the acquisition through these preferred equity securities imposed financial obligation upon HIT indistinguishable from unsecured debt financing as a practical matter. Taking into account the $447.1 million of financing through the issuance of preferred equity securities, the portfolio leverage was substantially greater than 538%.

71. In June 2015, HIT entered into agreements to acquire a total of 44 additional hotels from three separate sellers for a total purchase price of $739.8 million. These acquisitions are referred to in HIT's SEC filings as the "SWN Acquisitions." On October 10, 2015, HIT completed the acquisition of 10 of the hotels for a total price of $150.1 million and on November 2, 2015, completed the acquisition of two hotels for a total price of $46.8 million. HIT was unable to complete the acquisition of all of the remaining hotels and was thereby forced to forfeit a $41.1 million earnest money deposit.

72. HIT's acquisition campaign, which caused it to exceed the Charter's real estate asset portfolio leverage cap, was driven by the Advisor and AR Capital's desire to maximize acquisition fees. Through December 31, 2015, HIT reported that the amount of acquisition fees and financing coordinating fees paid to the Advisor, and the amount of acquisition costs reimbursed to the Advisor, totaled approximately $52.5 million. Through the IPO, HIT raised a total of approximately $797.9 million net of selling commissions; HIT's payment of acquisition fees through December 31, 2015 represented approximately 6.6% of the net proceeds from the IPO.

F. The Company Was Forced to Suspend Its IPO As a Result Of the ARCP Accounting Fraud Scandal and the RCS Proxy Fraud Scandal

73. On October 29, 2014, ARCP filed a Form 8-K Current Report revealing that its audit committee had hired the accounting firm of Ernst & Young to conduct an internal investigation. ARCP further reported that based upon the investigation's preliminary findings, ARCP's previously issued audited consolidated financial statements and other information contained in its December 31, 2013, March 31, 2014, and June 30, 2014 SEC filings and other communications for those periods "should no longer be relied upon."

74. Certain of ARCP's officers had caused the Company to purposefully misstate its

AFFO, a metric commonly calculated and reported by REITs as a measure of operating performance and the amount of distributions available to distribute to stockholders from funds generated through operations. AFFO is perhaps the most important indicator of a REIT's performance. Beginning in the fourth quarter of 2013, ARCP changed the methodology that it used to calculate AFFO which was reported in the company's SEC filings. Most significantly, in the case of real estate assets of which ARCP did not own entirely, ARCP began to factor in the entirety of certain costs that are excluded from AFFO rather than only its pro-rata share. This improper methodology had the effect of improperly inflating ARCP's AFFO calculations; when ARCP reported these inflated AFFO figures in its SEC filings, it overstated its operating performance and concealed its financial performance which was in fact faltering.

75. By purposefully overstating AFFO, ARCP was able to continue raising capital through the sale of its stock to finance its further acquisition of properties. ARCP's advisor – which was owned by AR Capital – received fees on ARCP's acquisitions of properties and RCS received commissions on the sale of ARCP's stock. ARCP's misstatement of AFFO was calculated to enrich AR Capital by allowing it to garner massive commissions through RCS's sale of ARCP's stock and through ARCP's continued acquisitions of properties.

76. Ernst & Young's investigation revealed that Defendant Block, ARCP's chief financial officer, and Lisa P. McAlister ("McAlister"), the chief accounting officer, played key roles in the purposeful miscalculation of AFFO and the Company's reporting of false financial information. The investigation further revealed that if ARCP had calculated AFFO properly, then ARCP's AFFO figures would have fallen short of analyst projections.

77. Block and McAlister were forced to resign from ARCP and were both ultimately indicted. On June 30, 2017, Block was found guilty of securities fraud and was subsequently

sentenced to 18 months in prison. McAlister pled guilty to securities fraud. In a defamation case that McAlister filed shortly after she was forced to resign, she asserted under oath that beginning in February 2014 she repeatedly informed Schorsch about ARCP's accounting irregularities, that Schorsch nonetheless directed ARCP to continue using improper methods, and that Schorsch took further steps to cover up the fraud in ARCP's SEC filings.

78. Following the revelation of overstated AFFO at ARCP, numerous securities broker-dealer firms suspended all sales of AR Capital-sponsored products including HIT stock. By November 24, 2014, 68 securities broker-dealer firms had suspended selling agreements with RCS.

79. In December 2014, Schorsch resigned from the boards of directors of RCS's parent company, ARCP, New York REIT, Inc. and 11 non-traded REITs and direct investment programs sponsored by AR Capital affiliates. On December 29, 2014, Schorsch resigned from the Company's Board and Defendant Kahane was appointed as executive chairman of the Board.

80. On March 2, 2015, ARCP filed amendments to its Form 10-K for the year ended December 31, 2013, and to its Form 10-Q for the quarters ended March 31, 2014 and June 30, 2014 which corrected errors relating to its calculation of AFFO and addressed issues relating to payments to, and transactions with, affiliates of the parent of its sponsor and certain equity awards to certain officer and directors. ARCP also disclosed that its audit committee investigation had uncovered weaknesses in ARCP's internal control over financial reporting and its disclosure of controls and procedures and that the SEC had commenced a formal investigation of ARCP.

81. In its 2014 10-K, filed March 31, 2015, HIT reported that ARCP's disclosures concerning its internal investigation "may adversely affect [the Company's] ability to raise substantial funds"; and that "a number of participating broker-dealers had temporarily suspended their participation in [the Company's IPO]"; that "although certain broker-dealers have reinstated

their participation…we cannot predict whether…all participating broker dealers will reinstate their participation…"; and that "[a]s a result, [the Company's] ability to raise substantial funds may be adversely affected."

82. Despite the Company's uncertain prospect of continuing to raise "substantial funds" through its IPO, and despite the fact that HIT already faced onerous financial obligations relating to its acquisition of the Grace Portfolio in February 2015, the Fiduciary Directors nevertheless forged ahead with HIT's reckless acquisition campaign, committing the Company to purchase an additional 44 hotels through the SWN Acquisitions in June 2015.

83. RCS was itself experiencing substantial difficulties as a result of suspensions of broker-dealer distribution agreements for AR Capital investment products. A special committee of RCS directors was formed in April 2015 to explore restructuring options and to begin soliciting third-party proposals for capital investments in RCS.

84. A private investment company, Apollo Global Management ("Apollo") was interested in buying a portion of AR Capital as a way to gain entry into the REIT business and to raise funds for its own sponsored investment products. On June 25, 2015, Apollo made an offer to purchase a portion of AR Capital for $100 million; a tentative agreement was subsequently reached in August 2015.

85. Beginning in June 2015, AR Capital endeavored to amend the charters of certain of the AR Capital-sponsored investment programs to facilitate the Apollo transaction. These charter amendments would increase the power of the investment fund boards, decrease the ability of shareholders to remove directors, and permit advisory agreement amendments.

86. These charter amendments required shareholder approval. To facilitate the changes, AR Capital directed RCS to aggressively obtain shareholder consents, placing

extraordinary pressure on RCS's representatives to deliver the required proxies. These employees subsequently disclosed to regulators that they were given no proxy solicitation training; rather, their superiors simply demanded that they deliver the required proxies.

87. On June 11, 2015, the Mass SOS issued a subpoena requesting documents related to proxy solicitation efforts that had been conducted out of RCS's Boston, Massachusetts office. The subpoena was based upon allegations made by a whistleblower employee who had told his supervisors of concerns about unethical behavior involving proxy solicitations by coworkers. Rather than making any appropriate response, the supervisor told the whistleblower to "suck it up" and "be a team player."

88. In October 2015, RCS hired an outside law firm to conduct an internal investigation of proxy solicitation misconduct. The investigation revealed an astonishingly pervasive pattern of misconduct.

89. On November 8, 2015, RCS and Apollo terminated the agreement whereby Apollo would have purchased a 60% stake in AR Capital's assets which included HIT's Advisor and Sponsor and RCS. AR Capital and Apollo instead agreed to a deal whereby Apollo would purchase RCS for only $6 million.

90. On November 12, 2016, the Mass SOS filed an administrative complaint to suspend RCS's business license on the basis of blatant proxy fraud by its employees in obtaining shareholder votes to allow an AR Capital-sponsored investment program to alter its advisory agreement. The complaint alleged that its representatives, "facing intense pressure from management," "thinly-veiled threats regarding continued employment," and even threats to "their own personal well-being," acted to "steamroll" shareholders into voting in favor of management, including at least two instances when representatives impersonated shareholders to vote their

shares.

91. By November 8, 2015, with the Mass SOS on the verge of filing an administrative action against RCS, with AR Capital's sale of RCS pending, and with AR Capital reeling from the ARCP accounting scandal, it was evident that the Company no longer had the ability to raise capital through the IPO.

92. On November 18, 2015, the Defendants caused the Company to suspend the IPO; it would never be recommenced.

G. Immediately Before Defendants Suspended the Company's IPO, Defendants Caused the Company to Enter into an Amendment to the Advisory Agreement Purportedly Requiring the Company to Pay Cash Asset Management Fees

93. By November 8, 2015, with AR Capital and RCS engulfed in scandal, AR Capital's owners recognized that AR Capital's capital-raising ability had been destroyed. At this juncture, they decided to take as much from the Company as they could.

94. AR Capital's owners also knew that the Company faced massive financial difficulties. The IPO had been the Company's primary source of capital. The Company had enormous financial obligations resulting from the Grace Portfolio acquisition and from the SWN Acquisitions through which it would be required to complete the purchase of 34 hotels by early 2016. AR Capital's owners further recognized that there was virtually no chance that the Company would meet the Economic Hurdle and that the Advisor would never be entitled to realize value on account of its Class B Units in the Operating Partnership.

95. On November 8, 2015 the Advisor proposed to the Independent Directors an amendment to the Advisory Agreement whereby the Company would be required to pay unconditional asset management fees to the Advisor in either cash or in shares of the Company's common stock, the form of payment to be determined in the Advisor's sole discretion. The reason

for the amendment offered by the Advisor was simply that the Company should pay unconditional cash asset management fees because the Company's offering had been a success and because other AR Capital-sponsored non-traded REITs paid cash asset management fees to their advisors. The Advisor's reasoning was plainly disingenuous in light of the then-existing facts, including that: (i) the Company had massive financial obligations; (ii) the Company was dependent upon the IPO to meet its obligations; and (iii) the Fiduciary Defendants were about to shut down the IPO.

96. Notwithstanding that the proposed Advisory Agreement amendment would fundamentally alter the Advisor's compensation structure, the Independent Directors immediately accepted the Advisor's proposal without any discussion. Pursuant to the amendment to the Advisory Agreement, and the corresponding amendment to the Operating Partnership Agreement, that the Independent Directors approved, the Company would no longer issue Class B Units in the Operating Partnership to the Advisor and would instead pay the Advisor asset management fees on a monthly basis in the form of cash, shares of Company common stock, or a combination of both, with the form of the Company's payment to be determined in the sole discretion of the Advisor. As set forth in detail in **Section II** *infra,* the Independent Directors were grossly negligent and violated the Charter when they approved the Advisory Agreement amendment.

H. With its IPO Suspended and Its Assets Highly Leveraged, HIT Faced Massive Financial Problems and Was Forced to Seek a Recapitalization

97. In December 2015 and January 2016, HIT had insufficient capital to complete the SWN Acquisitions. It was forced to terminate its agreement to purchase 24 hotel properties and forfeited a $41.1 million earnest money deposit.

98. The Company's 2015 10-K describes the massive financial problems that the Company faced:

- We suspended our initial public offering of common stock (our "IPO" or

> our "Offering") on November 15, 2015, effective as of December 31, 2015. Prior to the suspension of our IPO, we depended, and expected to continue to depend, in substantial part on proceeds from our IPO to meet our major capital requirements. Because we do not expect we will resume our IPO, <u>we will require funds in addition to operating cash flow and cash on hand to meet our capital requirements, including payments due on our outstanding indebtedness.</u> (emphasis added)

- Because our IPO has raised substantially less proceeds than expected, we will not be able to make additional investments unless we are able to identify additional debt or equity capital on favorable terms and our ability to achieve our original investment objectives has been adversely affected.

The 2015 10-K likewise describes that HIT faced the risk of defaulting on its debt obligations and obligations pursuant to the preferred equity securities issued in connection with HIT's purchase of the Grace Portfolio as the result of the suspension of the IPO.

99. HIT's 2015 10-K also announced that the Company was actively seeking liquidity: "[w]e are evaluating a variety of alternatives for obtaining additional liquidity, but there can be no assurance that we will be successful in obtaining sufficient proceeds from any of these pursuits to meet our capital requirements."

100. The Company hired Hentschell & Company ("Hentschell"), an investment banking advisory firm, to advise it in connection with strategic alternatives. The Board subsequently decided to seek a third-party preferred equity investor. Hentschell notified numerous potential investors of a potential opportunity to make a preferred equity investment in the Company.

101. It was immediately evident that the Company's grossly uncompetitive property management arrangements were impinging upon the Company's ability to attract a third-party investor. Hentschell's presentations to the Board made clear that no third-party investor would invest unless the property management arrangements were modified such that the Company would pay market competitive rates. Among Hentschell's representations were: (i) "Crestline and AR Capital as hotel manager and property manager going forward may limit investor appetite"; (ii)

that one prospective investor would require elimination of the primary agreements with the Property Managers and entry into new agreements on "negotiated market value terms" (emphasis added); and (iii) "as expected, the previous parties submitted proposals stipulating….an elimination or restructuring of the Property Manager."

I. The Brookfield Investor's Preferred Equity Investment

102. On January 13, 2017, HIT announced that it had reached an agreement, the Securities Purchase, Voting and Standstill Agreement ("SPA"), with Brookfield Strategic Real Estate Partners II Hospitality REIT II LLC and Brookfield Strategic Real Estate Partners II, LLC (collectively the "Brookfield Investor"), a private investment fund managed by affiliates of Brookfield. Pursuant to the SPA, the Brookfield Investor would make a preferred equity investment in HIT's Operating Partnership.

103. On March 31, 2017, the initial closing pursuant to the SPA occurred. HIT sold to the Brookfield Investor: (i) the Redeemable Preferred Share in HIT for a nominal purchase price; and (ii) 9,152,542.37 Class C Units in HIT's Operating Partnership for a purchase price of $14.75 per unit ($135 million in the aggregate). In addition, subject to the terms and conditions of the SPA, HIT committed to selling the Brookfield Investor additional Class C Units in an aggregate amount of up to $265 million at subsequent closings to occur through February 2019[3].

104. As the holder of the Redeemable Preferred Share, the Brookfield Investor has been afforded significant control over all aspects of HIT's business and operations. The Brookfield Investor has the right to elect two Directors (each, a "Redeemable Preferred Director"). In addition, the Brookfield Investor must approve the nomination of two additional Independent

[3] On February 27, 2018, the Company sold the Brookfield Investor an additional $25.0 million of Class C Units.

Directors (each an "Approved Independent Director") for election by HIT's stockholders at the Company's annual meeting. Also, each committee of the Board must include a Redeemable Approved Director selected by the holder of the Redeemable Preferred Share. Further, the majority of the then outstanding Class C Units, and at least one of the Redeemable Preferred Directors, must provide consent before HIT may: (i) pay dividends or other distributions to HIT's stockholders; (ii) redeem or repurchase securities; (iii) acquire property; (iv) sell or dispose of any property; (v) issue equity); or (vi) incur debt.

105. The Redeemable Preferred Directors must also approve: (i) HIT's annual business plan (*including the annual operating and capital budget*); (ii) HIT's hiring and compensation decisions related to certain key personnel (including the Company's executive officers); (iii) any increase or decrease of the authorized number of Directors on the Board; (iv) nomination or appointment of any Director (other than Redeemable Preferred Director) who is not an Independent Director (as defined in the Charter); (v) certain elections under the Maryland General Corporation Law; and (vi) the nomination and appointment of the Board's chairperson.

106. The SPA provides that the Class C Units rank senior to HIT's units of limited partnership interest in the Operating Partnership ("OP Units") in priority to both ordinary distributions and to distributions of assets in the event of liquidation, dissolution or the winding-up of the Operating Partnership. In addition, the SPA outlines the redemption rights of the Brookfield Investor which are detrimental to the interests of HIT and its stockholders for a multitude of reasons including that floors have been established for the Brookfield Investor's recovery of investment principal upon redemption regardless of HIT's performance and that the Brookfield Investor has the right to redeem at any time after March 2022. In addition, BSREP II Hospitality Special GP, OP LLC (the "Special General Partner") has been appointed as a special

general partner of HIT's Operating Partnership, with certain non-economic rights benefitting the Brookfield Investor which apply in the event that HIT is unable to redeem the Class C Units when it is required to do so.

107. With respect to ordinary distributions, the Brookfield Investor is entitled to receive, with respect to each Class C Unit, fixed, quarterly cumulative cash distributions at a rate of 7.5% per annum. HIT's failure to pay these cash distributions when due will cause the per annum rate to increase to 10% until all accrued and unpaid distributions required to be paid in cash are reduced to zero. The Brookfield Investor is also entitled to receive, with respect to each Class C Unit, a fixed, quarterly, cumulative distribution payable in Class C Units at a rate of 5% per annum ("PIK Distribution"). In addition, if HIT fails to redeem the Brookfield Investor when required, the 5% per annum PIK Distribution rate will increase to the per annum rate of 7.5% and will further increase by 1.25% per annum for the next four quarterly periods thereafter, up to a maximum per annum rate of 12.5%. Further, following the Initial Closing, the holders of Class C Units became entitled to tax distributions under certain circumstances

108. HIT has not paid distributions to stockholders since January 2017. In addition, provisions of the SPA transferred substantial control over the Company to the Brookfield Investor, including the right to reject Independent Directors elected by the stockholders, and permitting it to appoint two Redeemable Preferred Directors. This provision is in violation of Section 11.1 of the Charter governing the election of Directors by Company stockholders and Section 7.1 of the Charter permitting the Board to "take any action, that in its sole judgment and discretion, is necessary or desirable to conduct the business of the Company."

J. The Company's Internalization of the Advisor's Management Services and Restructuring of Property Management Arrangements

109. In connection with the Framework Agreement, on January 13, 2017, HIT also announced that significant changes to HIT's management structure would take place simultaneously with HIT's sale of the preferred equity investment to the Brookfield Investor.

110. These changes included the termination of the Advisory Agreement, the internalization of the Advisor's management services, the Company's hiring of the Advisor's officers and employees, and a restructuring of HIT's grossly uncompetitive property management arrangements, which brought the property management fees that the Company paid in line with the competitive market.

111. Rather than terminating for cause or demanding a renegotiation of the agreements without penalty to HIT, Defendants instead caused HIT to pay compensation of approximately $37 million to the Property Managers and Advisor to restructure the property management arrangements. (*See* **Section IV** *infra.*)

K. The Value of the Company's Common Stock Has Plummeted

112. HIT reports a NAV of $13.87 per share as of April 23, 2018. This estimate is misleading because it fails to account for: (1) the distributions to the Brookfield Investor at the annual rate of 7.5% in cash and at the annual rate of 5% in the form of HIT common stock, which distributions result in continual dilution; (2) the fact that HIT has ceased paying distributions to common stockholders; (3) the fact that the Fiduciary Defendants have handed over substantial control over the Company to the Brookfield Investor; (4) the fact that the Board may not declare distributions to common stockholders in excess of $0.525 per year without prior approval of the Brookfield Investor; and (5) the fact that the Brookfield Investor may invest another $240 million

in the Company which would accelerate the dilution process and will obligate the Company to pay substantially more in cash distributions to the Brookfield Investor.

113. On May 10, 2018, HIT made a self-tender offer to purchase shares of its common stock for only $7.05 per share, i.e., a 49.2% discount from the reported NAV and a discount of approximately 72% from the IPO price.

114. HIT's poor performance is solely attributable to the Fiduciary Defendants' reckless and willful misconduct and/or gross negligence. Most other REITs have performed well in recent years. From January 7, 2014, the date on which HIT's IPO commenced, to the present, the FTSE NAREIT Equity REITs Index – an index that includes all tax-qualified REITs with more than 50% of total assets in qualifying real estate assets other than mortgages – has increased by more than 17%.

L. The Independent Directors Lacked Independence to Make Decisions with Only the Company's Best Interest in Mind

115. Defendants Wenzel, Burns, and Perla served as "independent directors" of multiple AR Capital-sponsored non-traded REITs. Each has received substantial compensation from these entities.

116. Between 2012 and 2016, Wenzel received compensation in excess of $1.8 million as a director of HIT, Global Net Lease, Inc. (f/k/a American Realty Capital Daily Net Asset Value Trust, Inc. and American Realty Capital Global Trust, Inc.) ("Global Net Lease"), American Realty Capital Trust IV, Inc., and American Realty Capital New York City REIT, Inc. In 2015 alone, Wenzel received compensation in excess of $800,000 from AR Capital-sponsored non-traded REITs.

117. Between 2012 and 2016, Perla received compensation in excess of $1.3 million as a director of HIT, Global Net Lease, American Finance Trust, Inc. (f/k/a American Realty Capital

Trust V, Inc.) ("AFIN"), and American Realty Capital Global Trust II, Inc. ("ARC Global II"). In 2016 alone, Perla received compensation in excess of $500,000 from AR Capital-sponsored non-traded REITs.

118. Between 2008 and 2016, Burns received compensation in excess of $2.5 million as a director of HIT, AFIN, ARC Global II, American Realty Capital Trust, Inc., New York REIT, Inc. (f/k/a/ American Realty Capital New York Recovery REIT, Inc.) ("New York REIT"), American Realty Capital Healthcare Trust, Inc. ("ARC Healthcare Trust"), and American Realty Capital Trust III, Inc. ("ARC Healthcare Trust III"). In 2014 alone, Burns received compensation in excess of $756,000 from AR Capital-sponsored non-traded REITs.

119. As a result of the Independent Directors' affiliations with numerous AR Capital-sponsored non-traded REITs in addition to HIT and their receipt of massive amounts of compensation from these entities, the Independent Directors were never capable of making decisions with only HIT's best interest in mind. The Independent Directors' continued nomination for director positions at AR Capital-sponsored entities, which garnered them massive compensation, rewarded their willingness to give their approval to self-interested proposals made by HIT's management that they knew were not in HIT's best interest.

120. The compensation paid to the Independent Directors exceeded that of almost every other non-traded REIT not affiliated with AR Capital.

121. In addition, the Independent Director's receipt of compensation from HIT increased significantly as HIT's problems deepened. Defendant Wenzel received compensation from the Company of $113,625 in 2014; $95,248 in 2015; and $212,725 in 2016; Defendant Burns received compensation of $62,493 in 2014; $119,798 in 2015; and $141,177 in 2016; and Defendant Perla received compensation of $152,301 in 2014; $166,165, in 2015; and $276,125 in 2016.

II. Defendants Breached Fiduciary Duties Owed to the Company and Violated the Charter When They Caused the Company to Pay the Advisor Cash Asset Management Fees

122. Just after midnight on Sunday, November 8, 2015, the Advisor (through RCS) sent to the Company's Conflicts Committee comprised of Perla, Wenzel and Burns – the three designated "Independent Directors" – by email a draft written consent to an amendment to the Advisory Agreement ("Consent Agreement"). The Independent Directors were not the only recipients; the remaining Directors and representatives of RCS were also copied on the email.

123. Sunday, November 8 was also the date on which RCS and Apollo terminated their agreement whereby Apollo would have purchased a 60% stake in AR Capital's assets which included HIT's Advisor and Sponsor as well as RCS.

124. The email message, through which the Consent Agreement was transmitted, asked the Independent Directors to "[p]lease reply to this email message to confirm [] approval of the written consent." The fact that the Advisor instructed the Independent Directors to confirm their approval of a critically important Advisory Agreement amendment through a reply email message serves as evidence that it was the Independent Directors' practice to rubber stamp the Advisor's recommendations without discussion.

125. As discussed in Part I *supra*, under the Advisory Agreement then in effect, the Company was required to pay asset management to the Advisor in the form of Class B Units in the Operating Partnership that entitled the Advisor to realize value only if the Company had met the Economic Hurdle. However, the Consent Agreement specified that, pursuant to the proposed Advisory Agreement amendment, the Company would be required to pay asset management fees to the Advisor in the form of either cash or shares of the Company's common stock, and that payment of such fees would not be conditioned on the Company meeting the Economic Hurdle.

126. The reasons that the Advisor offered for recommending the amendment – which were set forth in a document (the "Advisor's Written Pitch") transmitted through the email message on November 8, 2015 along with the Consent Agreement – were that the Company's offering had been successful to-date and that other AR Capital-sponsored non-traded REITs paid cash asset management fees to their advisors. The Advisor's Written Pitch also suggested that the Company would be able to achieve $3 million in daily sales of its stock in 2016, and that the Company would be able to cover its cash distributions to stockholders with funds generated by its operations. The Advisor knew that the representation that the Company would achieve $3 million in sales was materially misleading; the Advisor knew that the Company would soon be forced to suspend the IPO. Further, the Advisor knew that its representations concerning projected distribution coverage in 2016 – which was intended to convey that the Company would have plenty of liquidity to pay cash asset management fees to the Advisor – was materially misleading.

127. The Advisor's Written Pitch failed to disclose: (i) that the Mass SOS was investigating RCS in connection with its alleged proxy fraud; (ii) the potential sale of RCS; (iii) the fact that many broker-dealers had terminated their participation in the distribution of the Company's offering as a result of the scandals that had engulfed AR Capital; and (iv) that the Company would soon be forced to shut down its IPO and therefore faced a crisis because it relied upon the IPO to meet its obligations.

128. Defendant Burns gave his approval to the Consent Agreement via an email message sent at 2:02 a.m. on November 8, 2015; Defendant Wenzel gave her approval via an email message sent at 8:13 a.m. on November 8; and Defendant Perla gave his approval via an email message sent at 12:15 p.m. on November 8.

129. The decision as to whether to approve the Charter amendment was a critical one

that would significantly affect the Company. However, Burns, Wenzel, and Perla failed to discuss the proposed amendment, failed to ask any questions of the Advisor or Company's officers including whether the amendment might affect the Company's ability to meet its financial obligations, and failed to consult with any independent adviser. The Independent Directors also failed to consider whether the proposed amendment was within the compensation limits prescribed by the Charter in dereliction of their fiduciary obligation pursuant to the Charter. In fact, the amendment was in violation of the Charter as discussed *supra*.

130. The Independent Directors acted on a uniformed basis when they made the decision to approve the amendment and were thereby grossly negligent; their decision was not the product of reasonable business judgment. In addition, as discussed *supra*, the Independent Directors lacked independence to make decisions with only the best interest of the Company in mind due to their receipt of massive amounts of compensation from numerous AR Capital-sponsored REITs.

131. On November 11, 2015, the Company and Advisor entered into the First Amendment to the Advisory Agreement which states that for all periods after September 30, 2015 the Company is required to pay, without condition, asset management fees to the Advisor at the rate of 0.75% of the cost of the assets owned by the Company until the Company publishes the Company's NAV and thereafter at the rate of the lower of 0.75% of cost of the assets owned by the Company or the fair market value of the Company's assets. In addition, the amendment provides that the Company may pay these asset management fees either in cash or in shares of the Company's common stock. Further, it states that the Company will not issue subordinated participation interests in the Operating Partnership to the Advisor for periods after September 30, 2015.

132. On November 12, 2015, the Mass SOS filed its administrative complaint against

RCS. Three days later, on Sunday, November 15, 2017, during a telephonic Board meeting, the Advisor recommended that the Board suspend the IPO effective December 31, 2015. The Board meeting minutes indicate that the reasons that the Advisor offered in support of the recommendation were: (i) the likely adverse effects of the valuation measures prescribed by regulation of the Financial Industry Regulatory Authority ("FINRA") upon the alternative investment industry; and (ii) the current business difficulties encountered by RCS. The minutes likewise indicate that the Advisor informed the Independent Directors that the Company faced severe financial difficulties, including forfeiture of earnest money deposits made in connection with pending property acquisitions as result of the suspension of the Company's IPO. The Board meeting lasted only 21 minutes. At the conclusion of the meeting, the Independent Directors approved the suspension of the Company's IPO effective December 31, 2015. On November 18, 2015, the Advisor caused the Company to suspend the IPO effective immediately.

133. Thus, only seven days after the Advisor secured the Independent Directors' approval of the Advisory Agreement amendment by describing that the Company would have plenty of cash available to pay cash asset management fees to the Advisor, the Advisor delivered the bad news to the Independent Directors that the Company actually faced a liquidity crisis on account of the impending shutdown of the IPO, lacking the cash necessary to meet its obligations. However, the minutes of the November 15, 2015 Board meeting indicate that the Independent Directors failed to question the Advisor as to why material facts were withheld from them – including the existence of the Mass SOS investigation of RCS, the fact that the Company would need to shut down its IPO, and the Company's liquidity problems resulting therefrom. These Board minutes likewise indicate that the Independent Directors failed to question why the Advisor had presented misleading information in support of its recommendation to amend the Advisory

Agreement, including the representation contained in the Advisor's Written Pitch that the Company was expected to raise $3 million per day through the IPO in 2016. The Independent Directors acted in bad faith and thereby breached fiduciary duties owed to the Company when they knowingly ignored the Advisor's obvious misconduct.

134. Accordingly, in violation of their fiduciary duties and the Charter, Defendants caused HIT to pay the Advisor cash asset management fees of approximately $4.6 million, $18.0 million, and $4.1 million for years 2017, 2016, and 2015 respectively[4].

III. The April 2016 Proxy Statement Contains a Material False Representation

135. On April 29, 2016, the Company filed with the SEC the definitive April 2016 Proxy Statement in advance of the 2016 annual meeting of stockholders that was scheduled for June 30, 2016. The April 2016 Proxy Statement solicited the reelection of Kahane, Burns, Perla, and Wenzel as Directors of the Company.

136. The April 2016 Proxy Statement contains the material false representation that

[4] Even if the Charter permitted the payment of cash asset management fees (which it does not), the Company's payment of cash asset management fees would still have been improper between July 1, 2016 and March 31, 2017 because these fees were calculated on the basis of an overstated fair market value of the Company's assets. On July 1, 2016, the Company published a NAV of $21.48 per share. Less than one year later, on June 19, 2017, the Company published an NAV of $13.20 per share, a decline of approximately 39%. The massive decline in the NAV is attributable to the fact that the July 1, 2016 NAV estimate was calculated on the basis of an overstated value of the Company's assets. The asset management paid between July 1, 2016 and March 31, 2017 were calculated on the basis of the same overstated value of the Company's assets. The Company's June 19, 2017 8-K announcing the $13.20 NAV states that the NAV decline relates to brand-mandated PIPs (i.e., property improvement plans) and the estimates and assumptions applied to them. This statement, however, makes little sense in light of the timing of the Company's acquisitions of assets comprising its real estate portfolio and other facts disclosed in the Company's SEC filings including: (i) a majority of the assets in HIT's portfolio are part of the Grace Portfolio, which was acquired on February 25, 2017, and for which over $70 million in required PIP reserve deposits were identified and known *at the time of the acquisition,* (prior to both NAV determinations); and (ii) since the time of the Grace Portfolio acquisition, and during the interim period between the announcements of the Company's NAV estimates, the total of the required PIP reserve deposits due has declined.

"either the independent directors or the [Board's] conflicts committee has determined that all our transactions and relationships with our Sponsor, Advisor and their respective affiliates during the year ended December 31, 2015 were fair and were approved in accordance with the applicable Company policies." (Emphasis added.)

137. Contrary to the above representations, as set forth more fully *supra*, neither the Independent Directors nor the Conflicts Committee made any effort whatsoever to ensure that the cash asset management fees that the amended Advisory Agreement purportedly required the Company to pay were within the limits prescribed by the Charter, and in fact the Company's payments of such cash fees were prohibited by the Charter. As discussed in detail *supra*, in November 2015 the Independent Directors rubber stamped the Advisor's proposal to amend the Advisory Agreement purportedly requiring the Company to pay cash asset management fees without making any determination as to whether this change comported with Company policies. Likewise, the Independent Directors failed to make any determination as to whether it was otherwise in the Company's best interest to pay cash asset management fees. Further, when confronted with the fact that the Advisor had misled them when the Advisor had solicited their approval of the amendment to the Advisory Agreement, the Independent Directors knowingly ignored the Advisor's obvious misconduct.

138. The Independent Directors' dereliction of their duties – evident from non-public documents including minutes from the November 8, 2015 telephonic Board meeting, minutes from the November 15, 2015 telephonic Board meeting, and the Advisor's Written Pitch– was concealed from Company stockholders and remains concealed from them.

139. Any reasonable investor would have found it material in deciding how to vote that the Independent Directors and/or Conflicts Committee had failed to make any determination as to

whether the Company's payment of cash asset management fees comported with the Charter and Company policies and were otherwise fair and reasonable for the Company. These facts were contrary to the representation in the April 2016 Proxy Statement.

140. On July 5, 2016, the Company filed a Form 8-K with the SEC disclosing the results of the stockholder votes solicited through the April 2016 Proxy Statement: Defendants Kahane, Burns, Perla, and Wenzel were reelected to one-year terms on the Board on that date.

141. The reelection of Kahane, Burns, Perla, and Wenzel as Company Directors was an essential cause in: (i) the continued failure of the Independent Directors during their one-year reelection terms beginning in July 2016 to ensure that the Company's payments of compensation to the Advisor and its affiliates comported with Company policies and were within the limits prescribed by the Charter; (ii) the Company's continued payment of cash asset management fees to the Advisor in violation of the Charter until the Advisory Agreement was terminated in March 2017; (iii) the Company's conversion of the Advisor's Class B Units in the Operating Partnership into shares of Company common stock in March 2017 in violation of the Charter and the Operating Partnership Agreement (as detailed in **Section IV** *infra*); and (iv) the Company's payment of compensation to the Advisor and Property Mangers as consideration for the internalization of the Advisor's management services in violation of the Charter and Operating Partnership (as detailed in **Section IV** infra). There was a direct nexus between the false representation in the April 2016 Proxy Statement that the Company's officers and Directors made and caused the Company to make, the reelection of the Directors, the Independent Directors' continued breaches of fiduciary duties, and the damages that the Company suffered resulting from the Company's continued payments of impermissible cash asset management fees, and payments of other impermissible compensation to the Advisor and its affiliates, subsequent to the Directors' reelection.

IV. Defendants Breached Their Fiduciary Duties and the Charter by Causing HIT to Enter into Uncompetitive Property Management Agreements and Then Causing HIT to Pay Compensation to the Advisor and Property Managers to Restructure These Uncompetitive Arrangements

A. The Company's Property Management Arrangements Were Grossly Uncompetitive

142. The competitive base rate of management fees for limited service hotel are between 2% and 3% of gross revenue. Property managers may also receive an incentive fee, typically in the range of 10% to 20% of operating profit above a certain performance threshold.[5] Hotel property management agreements typically have 20-year terms and cannot be terminated without significant penalty. As an example, Apple Hospitality REIT, Inc., another non-traded REIT focused on hospitality properties, pays base property management fees at the rate of 3% of gross revenue.

143. The Company's property management arrangements, however, were as follows: for each acquired property, HIT entered into a primary property management agreement with one of the Property Managers which required HIT to pay a base management fee of 4% of gross revenue plus an incentive fee of 15% of operating profits above 8.5% of HIT's investment. The primary property management agreements generally had a duration of 20 years and could not be freely terminated by HIT. The Property Manager then contracted with a sub-manager; the Property Manager paid the sub-manager a base management fee of between 2% and 3.25% of gross revenue. These arrangements required HIT to pay a base management fee substantially above the range of competitive rates.

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[5] *See e.g.* report of HVS Global Hospitality Services, a well-respected hospitality consulting firm, available at: https://www.hvs.com/content/3173.pdf; Hotel News Now article available at: http://www.hotelnewsnow.com/Articles/152652/The-growing-expense-of-hotel-management-fees.

144. When HIT acquired a hotel property that had an existing property management agreement with an unaffiliated property manager, that agreement would be assigned to the Property Manager, and the Property Manager would pay the unaffiliated sub-manager a portion of the base management fees that it received from HIT. When a property management agreement with an unaffiliated sub-manager expired, the Property Manager would enter into a sub-management agreement with Crestline, an affiliate of the Property Mangers owned by AR Capital. In some instances, the Property Manager would hire Crestline as the sub-manager immediately upon the Company's acquisition of a property.

145. Most of the agreements with the unaffiliated sub-managers required HIT to pay a base management fee at the rate of 2.0% of gross revenue, i.e., the rate that the previous owner had paid to that property manager. The sub-management agreement with Crestline required the Company to pay a base management fee at the rate of 3.25% of gross revenue.

146. The day-to-day management of the hotel properties was the responsibility of the sub-managers. In contrast, the Property Managers' responsibilities were simply the "direction and supervision of the sub-managers." In fact, the Property Managers' responsibilities fell directly within the scope of the Advisor's responsibilities for which the Advisor received separate compensation in the form of asset management fees. AR Capital and its members intended that HIT's agreements with the Property Managers would provide an additional level of fees to enrich the Property Managers and thereby AR Capital and its members, which they did.

147. AR Capital and its members also designed the property management arrangements to extract termination fees from the Company. The Charter contemplated HIT to have a duration of less than 20 years as a non-traded REIT, and required the Directors to pursue a liquidity event or to present the Company's stockholders with a proposed plan of liquidation by the sixth

anniversary of the termination of the IPO. AR Capital and its members knew that absent material modification to or termination of HIT's affiliated property management agreements, HIT's hotel properties would be unsaleable and HIT would be an undesirable merger partner.

148. The majority of HIT's properties were acquired as part of the acquisition of the Grace Portfolio on February 27, 2015. With respect to those properties, the Fiduciary Defendants caused HIT to enter into the primary property management agreements with the Property Managers at that time.

149. Upon information and belief, the Independent Directors acted on an uninformed basis when they approved the Company's property management arrangements. Further, due to their financial interest discussed *supra*, the Independent Directors lacked independence to make decisions in HIT's best interests. Had the Independent Directors complied with the Charter's provisions prohibiting them from approving transactions with affiliates of the Advisor on terms and conditions less favorable to HIT than those available from unaffiliated third parties, and exercised their fiduciary obligations in good faith, they would not have approved the uncompetitive arrangements.

150. Accordingly, Defendants caused the Company to pay property management fees to the Property Managers of approximately $50 million from inception until March 31, 2017. Had the Fiduciary Defendants caused the Company to enter property management agreements requiring the Company to pay base management fees at competitive rates (i.e., in the range of 2% to 3% of gross revenue), the Company would have paid far less in property management fees during this period.

B. The Defendants Breached Fiduciary Duties Owed to the Company and Breached the Charter When They Caused HIT to Pay the Advisor and Property Managers Compensation Totaling Approximately $37 Million in Connection With the Framework Agreement

151. The Fiduciary Defendants caused the Company to enter into the "Framework Agreement" on January 13, 2017 through which the Advisor's management functions would be internalized, many of the Advisor's employees hired directly by the Company, the Advisory Agreement terminated, and the Company's property management arrangements restructured. The Framework Agreement provided for the Company's payments of numerous categories of fees to the Advisor and to the Property Managers as consideration for the restructuring of the Company's property management arrangements.

152. Through the restructuring of the property management arrangements, the Property Managers were entirely eliminated from the management structure. In the case of each of 71 properties that were previously sub-managed by Crestline, the sub-management agreement was eliminated, the Property Manager assigned the primary management agreement to Crestline, and the base management fee was reduced from 4% to 3% of gross revenue. In the case of 70 properties managed by a third-party property manager, the primary property management agreement with the Property Manager was eliminated and the sub-manager continued to manage the property pursuant to its existing agreement through which the Company paid a base management fee of 2%. The elimination of the Property Managers from the management structure therefore had the effect of reducing the Company's base management fee from 4% to 3%, in the case of properties managed by Crestline, and from 4% to 2% in the case of properties managed by a third-party manager. These new arrangements were reasonably in line with the competitive market.

153. As consideration for the restructuring of the property management arrangements, the elimination of the Property Managers from the management structure, and the internalization

of the Advisor's management services, the Fiduciary Defendants caused the Company to pay the compensation to the Property Managers and Advisor. The compensation included:

(i) a $10 million cash payment to the Property Managers;

(ii) 12 monthly cash payments of $333,333 (i.e., approximately $4 million in total) to the Property Managers;

(iii) the issuance of 279,329 shares of common stock in the Company to the Property Managers worth $6 million based upon a $21.48 estimated per-share value of the stock at that time;

(iv) a waiver of the Advisor's obligation to repay the Company $5,821,988 in organization and offering expenses that the Company previously reimbursed to the Advisor; and

(v) the removal of all restrictions on the Advisor's 524,956 Class B Units in the Operating Partnership and the conversion of these Units to 524,956 shares of the Company's common stock.

The total value of the compensation, based upon a $21.48 estimated value of the Company's stock, was approximately $37 million.

154. The Class B Units – which had been issued to the Advisor as performance-based asset management fees pursuant to the Operating Partnership Agreement and consistent with the Charter – were ineligible for conversion to shares of the common stock because the Economic Hurdle had not been met. Instead, the Advisor was required to *forfeit* its Class B Units upon the termination of the Advisory Agreement because the Company had not met the Economic Hurdle. The Fiduciary Defendants knew that the Company had not met the Economic Hurdle and that the Advisor was therefore required to forfeit the Class B Units.

155. The Company's payment of fees to the Property Managers and Advisor to restructure grossly uncompetitive and unfair arrangements that the Fiduciary Defendants had caused the Company to enter into was unconscionable. The Fiduciary Defendants acted in bad faith when they caused the Company to pay compensation, valued at $37 million at the time, to

restructure agreements that the Fiduciary Defendants knew were uncompetitive and unfair for the Company rather than terminating the agreements for cause or demanding a renegotiation of the agreements without penalty to the Company.

156. As discussed *supra*, the Independent Directors lacked independence to make decisions in the best interests of the Company. The Independent Directors' decisions to approve the Company's payment of the compensation in connection with the restructuring of the Company's property management arrangements and to permit the conversion of the Class B Units to shares of the Company's common stock were not the products of reasonable business judgment.

157. Had the Independent Directors properly exercised their fiduciary obligations and had they complied with the Charter's provisions, the Company would not have paid the Advisor and Property Managers $37 million in compensation in connection with the Framework Agreement.

158. The Independent Directors knowingly breached Charter provisions: (i) prohibiting them from approving transactions with the Advisor, the Sponsor, or their affiliates on terms and conditions less favorable to HIT than those available from unaffiliated third parties; (ii) prohibiting them from causing the Company and the Operating Partnership to pay any compensation or remuneration to the Advisor or its Affiliates in connection with the internalization of the Advisor's management services, which is what the above payments constituted; and (iii) requiring the Advisor to forfeit its Class B Units in the Operating Partnership without value upon the termination of the Advisory Agreement when the Economic Hurdle had not been met.

V. <u>The Mutual Waiver and Release Agreement is Void and Unenforceable</u>

159. In connection with the internalization of the Advisor's management services, the Fiduciary Defendants caused the Company and Operating Partnership to enter into a "Mutual

Waiver and Release" agreement (the "Release Agreement") through which the Company purportedly released the Advisor, Property Managers, AR Capital, the Advisor's employees and officers (who included Company officers and certain Company Directors), and AR Capital's members, among other parties (the "AR Release Parties") from all claims, losses, and proceedings, and through which the AR Release Parties purportedly released the Company and Operating Partnership from all claims, losses, and proceedings. The Independent Directors are not parties to the Release Agreement. Additionally, carved out from the Release Agreement are all claims, losses, and proceedings arising out of the Framework Agreement, which include the Company's claims relating to its payment of compensation to the Advisor and Property Managers in connection with the restructuring of the property management arrangements discussed *supra*.

160. When the Release Agreement was entered into, the Company had claims against the AR Release Parties for hundreds of millions of dollars of damages on account of their bad faith conduct, gross negligence, and/or unjust enrichment. On the other hand, the AR Release Parties' release of the Company did not provide the Company with any meaningful consideration: none of the AR Release Parties had any claim against the Company with any material significance. The Release Agreement is unenforceable for lack of adequate consideration.

161. In addition, the Release Agreement is unenforceable because it is unconscionable: the AR Release Parties caused the Company to enter into the agreement in an attempt to evade liability for their own wrongdoing and unjust enrichment. Further, the Release Agreement is unenforceable as to the Company's officers and Directors on account of the Charter provisions prohibiting the Company's exculpation of bad faith conduct and negligence on the part of Company officers and Directors.

162. In the alternative, Plaintiff pleads that the Fiduciary Defendants breached fiduciary

duties owed to the Company when they caused the Company to enter into the Release Agreement. The Fiduciary Defendants, among whom were numerous AR Release Parties, acted in bad faith when they caused the Company to enter the Release Agreement in an attempt to evade liability. The Independent Directors, who lacked independence to make decisions in the Company's best interest as alleged *supra*, likewise acted in bad faith when they caused the Company to enter the Release Agreement which they knew was not in the Company's best interest.

DERIVATIVE AND DEMAND ALLEGATIONS

163. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

164. Plaintiff asserts claims derivatively in the right and for the benefit of HIT to redress Defendants' breaches of fiduciary duties, breaches of the Charter and other violations of law.

165. Plaintiff is an owner of HIT common stock and was an owner of HIT common stock at all times relevant to the Defendants' wrongful course of conduct alleged herein.

166. On July 14, 2017, Plaintiff sent the July 2017 Demand Letter to the chair of the Company's Board (Ex. A).

167. On December 12, 2017, the Plaintiff sent the December 2017 Demand Letter to counsel acting as the Board's agent (Ex. B).

168. The Board had more than a reasonable amount of time to take action responsive to the July 2017 Demand Letter and December 2017 Demand Letter prior to Plaintiff's initiation of this action on February 26, 2018. The Board took no formal responsive action whatsoever prior to the initiation of the present action, and there is no justification for the Board's failure to do so. Rather than taking action to properly address Plaintiff's demands, the Board assumed a defensive posture.

169. Further, the Company may have suffered irreparable harm if this action had not been initiated prior to February 27, 2018. Upon information and belief, certain of the property management agreements with the Property Managers were entered into when the Company acquired the Grace Portfolio on February 27, 2015. Certain of the Company's claims may have accrued at this time, and certain of these claims may be governed by a three-year statute of limitation. None of the Defendants entered into a tolling agreement with respect to any claims asserted herewith.

170. As discussed *supra*, the Release Agreement is unenforceable as a matter of law. Plaintiff pleads (in the alternative) that the Fiduciary Defendants breached fiduciary duties owed to the Company when they attempted to cause the Company to release the Advisor, the Property Managers, AR Capital, AR Capital's members, the Company's officers, and certain of the Company's Directors from all claims, losses, and proceedings, except those relating to the Framework Agreement.

171. To the extent that demand on the Board may have otherwise been required with respect to the Release Claims, demand was excused as the Board had demonstrated its inability or unwillingness to take any action responsive to Plaintiff's demands whatsoever and otherwise demonstrated a course of bad faith conduct.

172. Accordingly, Plaintiff is entitled to commence and maintain this action derivatively on behalf of HIT.

COUNT I

Derivative Claim on Behalf of HIT for Breach of Fiduciary Duty against the Fiduciary Defendants

173. Plaintiff incorporates, adopts by reference, and realleges each and every allegation set forth above as though set forth fully herein.

174. The Fiduciary Defendants owed HIT the fiduciary duties of loyalty and good faith to, among other things, act in furtherance of the best interests of the Company. The conduct alleged herein on the part of the Fiduciary Defendants with respect to the Cash Asset Management Fee Claims, the Property Management Arrangement Claims and the Release Claims, constitute breaches of fiduciary duty owed directly to the Company and indirectly to the Company's stockholders.

175. As alleged herein, the Fiduciary Defendants breached their fiduciary duties to HIT by causing the Company to enter into an amendment to the Advisory Agreement purportedly requiring the Company to pay cash asset management fees to the Advisor, and then by causing the Company to pay cash asset management fees. The Charter prohibited the Company's payment of such cash asset management fees and the Company's stock has been sold on the basis of the representation that the asset management fees would be performance-based. The Fiduciary Defendants knew or should have known that the Charter prohibited the Company's payment of cash asset management fees to the Advisor and that the Advisory Agreement amendment was not otherwise in the Company's best interest. Each of the Fiduciary Defendants thereby either acted in bad faith or was grossly negligent as alleged herein.

176. As alleged herein, as the Company's Independent Directors, Defendants Wenzel, Burns, and Perla owed the Company a fiduciary duty to ensure that the Company's payments of compensation to the Advisor were within the limits prescribed by the Charter and were otherwise in the Company's best interest. They acted with gross negligence and thereby breached fiduciary duties owed to the Company when they: (i) failed to make any determination as to whether the Company's payments of cash asset management fees to the Advisor were within the limits prescribed by the Charter; and (ii) failed to make any determination as to whether it was otherwise

in the Company's best interest to pay the Advisor cash asset management fees. In fact, as alleged further herein, when the Fiduciary Defendants caused the Company to enter into the November 2015 Advisory Agreement amendment, the Company had enormous contractual financial obligations and was facing a liquidity crisis due to the concurrent suspension of the Company's IPO necessitated by the misconduct of certain Defendants. Defendants Wenzel, Burns, and Perla acted on a wholly uninformed basis, and therefore with gross negligence, and thereby breached fiduciary duties owed to the Company, when they approved the Advisory Agreement amendment without making any investigation as to the Company's liquidity and ability to meet its financial obligations. Further, as alleged herein, Defendants Wenzel, Burns, and Perla acted in bad faith and thereby breached fiduciary duties owed to the Company when they knowingly refused to acknowledge the Advisor's misconduct after it became apparent that the Advisor had made materially misleading representations to them, and had withheld material information from them, in connection with the Advisor's solicitation of their approval of the Advisory Agreement amendment.

177. As alleged herein, the Fiduciary Defendants breached fiduciary duties owed to the Company when they caused the Company to enter into property management agreements with the Property Managers that had long durations, that could not be freely terminated, and that required the Company to pay a base management fee of 4% of gross revenue. These agreements were grossly uncompetitive and were designed by AR Capital's members for the purpose of extracting termination fees from the Company. As alleged herein and upon information and belief, the Independent Directors acted with gross negligence and thereby breached fiduciary duties owed to the Company when they failed to make any investigation as to whether the property management arrangements proposed by the Advisor and Property Managers were competitive and were fair and

reasonable for the Company and when they approved the agreements on a wholly uninformed basis.

178. As alleged herein, the Fiduciary Defendants breached fiduciary duties owed to the Company when they caused the Company to pay compensation to the Advisor and Property Managers for the termination, amendment, and assignment of property management rather than terminating the agreements for cause or demanding a restructuring of the agreements without penalty to the Company.

179. As alleged herein, the Fiduciary Defendants breached fiduciary duties owed to the Company when they caused the Company, in connection with the Framework Agreement, to convert the Advisor's Class B Units in the Operating Partnership to shares of Company common stock despite their knowledge that the Economic Hurdle had not been met and that the Advisor was required to forfeit the Class B Units.

180. As alleged herein, the Release Agreement that Defendants caused the Company to enter into purportedly providing a release to AR Capital, the Advisor, the Property Managers, and their officers and employees, is unconscionable and HIT received inadequate consideration in exchange for the Release Agreement. Therefore, the Release Agreement is void and unenforceable as a matter of law. In the alternative, as alleged herein, the Fiduciary Defendants acted in bad faith and thereby breached fiduciary duties owed to the Company when they caused the Company to enter into the Release Agreement which they knew was not in the Company's best interest.

181. As a direct and proximate result of the Fiduciary Defendants' breaches of fiduciary duties as herein alleged, the Company has sustained and will in the future sustain damages.

COUNT II

Derivative Claim on behalf of HIT for Waste of Corporate Assets against the Directors and the Advisor

182. Plaintiff incorporates, adopts by reference, and realleges each and every allegation set forth above as though set forth fully herein.

183. As alleged herein, the Fiduciary Defendants wasted the Company's assets with respect to the Cash Asset Management Fee Claims, the Property Management Arrangement Claims and the Release Claims.

184. As a direct and proximate result of Fiduciary Defendants' waste of corporate assets as herein alleged, the Company has sustained damages.

COUNT III

Derivative Claim, on Behalf of HIT, for Aiding and Abetting Against the AR Capital Defendants and Schorsch

185. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

186. Plaintiff asserts Count III against Defendant Schorsch in the alternative to Counts I and II with respect to his actions occurring after he resigned from the Company's Board.

187. The AR Capital Defendants and Defendant Schorsch knowingly and substantially assisted in the wrongful conduct set forth above with respect to the Cash Asset Management Fee Claims, the Property Management Arrangement Claims and the Release Claims, and which wrongful conduct could not, and would not, have occurred but for the alleged conduct of the AR Capital Defendants and Defendant Schorsch.

188. The AR Capital Defendants and Defendant Schorsch had knowledge of the wrongful conduct alleged in Counts I and II above and colluded in, aided and abetted, and/or

actively participated in such breaches for the purpose of advancing its own interests.

189. The AR Capital Defendants and Defendant Schorsch obtained both direct and indirect benefits from colluding in or aiding and abetting the wrongful conduct alleged in Counts I and II above.

190. As a direct and proximate result of the conduct of the AR Capital Defendants and Defendant Schorsch as herein alleged, the Company has sustained and will in the future sustain damages.

COUNT IV

Derivative Claim, on Behalf of HIT, for Breach of Contract – Charter Against Defendants Schorsch, Kahane, Wenzel, Perla, and Burns

191. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

192. HIT and the Directors are parties to the Charter.

193. As alleged more fully above, Defendants Schorsch, Kahane, Wenzel, Perla, and Burns breached the Charter with respect to their conduct in connection with the Cash Asset Management Fee Claims, the Property Management Arrangement Claims and/or the Release Claims.

194. The Company has performed all of its obligations under the Charter.

195. As a direct result of the breaches of the Charter, the Company has sustained damages.

COUNT V

Derivative claim, on behalf of HIT, for Violations of Section 14(a) of the Securities Exchange Act of 1934 Against Defendants Kahane, Mehlman, Hoganson, Wenzel, Perla, and Burns

196. Plaintiff incorporates, adopts by reference and realleges each and every allegation

set forth above as though set forth fully herein.

197. Rule 14(a)-9, promulgated pursuant to Section 14(a) of the Securities Exchange Act of 1934, provides that no proxy statement shall contain "any statement which, at the time an in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. § 240.14a-9.

198. Defendants Kahane, Mehlman, Hoganson, Wenzel, Perla, and Burns caused the Company to issue the April 2016 Proxy Statement. This proxy statement contains the false representation that the Independent Directors or Conflicts Committee had determined that the Company's transactions and relationships with the Advisor during the year ended December 31, 2015 were in accordance with Company policies. In fact, neither the Independent Directors nor Conflicts Committee had made any determination as to whether the cash asset management fees that the Company was purportedly required to pay to the Advisor pursuant to the Advisory Agreement amendment, of which the Independent Directors had given their approval in November 2015, were within the limits prescribed by the Charter, and these fees were in fact outside the Charter's prescribed limits. Further, the Independent Directors had failed to make any determination as to whether the Company's payment of cash asset management fees was otherwise in the Company's best interest.

199. In the exercise of reasonable care, Defendants Kahane, Mehlman, Hoganson, Wenzel, Perla, and Burns should have known that the statement contained within the April 2016 Proxy Statement, which they made and caused the Company to make, was false and misleading.

200. The representation set forth above in the April 2016 Proxy Statement was material to Company stockholders voting on the reelection of Company Directors solicited by this proxy

statement. The April 2016 Proxy Statement was an essential link in the accomplishment of Defendants' continued violation of fiduciary duties: the reelected Independent Directors continued to approve the Company's payments of impermissible compensation to the Advisor and its affiliates during their one-year reelection terms that began in July 2016 – which impermissible compensation included (i) the Company's payments of cash asset management fees to the Advisor until the Advisory Agreement was terminated in March 2017, (ii) the Company's conversion of the Advisor's Class B Units to shares of Company common stock in March 2017, (iii) the Company's payment of compensation to the Advisor in connection with the internalization of the Advisor's management functions in March 2017, and (iv) the Company's payment of compensation to the Property Managers in connection with the restructuring of the Company's uncompetitive property management arrangements in March 2017 – notwithstanding their obligation to ensure that the fees that the Company paid comported with Company policies and were within the limits prescribed by the Charter.

201. The Company was thereby damaged: there is a direct nexus between the material misrepresentation in the April 2016 Proxy Statement and the damages that the Company suffered resulting from its continued payments of impermissible compensation to the Advisor and its affiliates during the Independent Directors' one-year reelection terms that began in July 2016.

COUNT VI

Derivative Claim, on Behalf of HIT, for Unjust Enrichment against the AR Capital Defendants, Property Manager Defendants, Schorsch and Kahane

202. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

203. Count VI is pled in the alternative to Counts I-III.

204. Defendant AR Capital is the ultimate owner of the Advisor and Property Managers,

and Defendants Schorsch, Kahane, Budko, Weil, and Block are the owners of AR Capital.

205. As alleged more fully above, the AR Capital Defendants, Schorsch, and Kahane, received improper benefits when Defendants caused the Company to: (i) pay cash asset management fees to the Advisor in cash violation of the Charter; and (ii) convert the Advisor's Class B Units in the Operating Partnership into shares of common stock in the Company despite that the Economic Hurdle had not been met. Further, the AR Capital Defendants, Property Manager Defendants, Schorsch and Kahane received improper benefits when Defendants caused the Company to: (i) pay property management fees to the Property Managers at rates grossly uncompetitive and unfair for the Company; and (ii) pay compensation to the Advisor and Property Managers in consideration for the termination, amendment, and assignment of property management agreements that were grossly uncompetitive and unfair for the Company.

206. The AR Capital Defendants, Property Manager Defendants, Schorsch, and Kahane have unjustly benefitted from the wrongful conduct set forth above at the Company's expense.

207. It would be unjust to allow the AR Capital Defendants, Property Manager Defendants, Schorsch, and Kahane to retain the benefits that they received at the Company's expense.

208. The Company has no adequate remedy at law.

209. As a direct and proximate result of the unjust enrichment as herein alleged, the Company has sustained damages.

COUNT VII

Derivative Claim, on Behalf of HIT, for Declaratory Judgment against all Defendants

210. Plaintiff incorporates, adopts by reference and realleges each and every allegation set forth above as though set forth fully herein.

211. As alleged more fully above, the Fiduciary Defendants caused the Company to enter into the Release Agreement which is unenforceable as a matter of law, and is therefore null and void. The Fiduciary Defendants acted in bad faith when they caused the Company to enter into it, it is unsupported by adequate consideration, and it was entered into in violation of Charter provisions limiting the Company's exculpation of bad faith acts and negligence by Company Directors and officers.

212. An actual, present and justiciable controversy exists between the Plaintiff and Company (on the one hand) and Defendants (on the other hand) as to the enforceability of the Release Agreement.

213. Plaintiff seeks declaratory judgment from the Court that the Release Agreement is unenforceable as a matter of law and is therefore null and void.

PRAYER FOR RELIEF

WHEREFORE**,** Plaintiff, on behalf of the Company, prays for relief as follows as appropriate for the particular cause of action:

A. Issuing an order that Defendants have committed a gross abuse of trust and have breached their fiduciary duties owed to the Company, and or aided and abetted the breaches of fiduciary duties, when they caused the Company to: (i) enter into an amendment to the Advisory Agreement purportedly requiring the Company to pay cash asset management fees to the Advisor in violation of the Charter and that was otherwise grossly unfair for the Company; (ii) pay cash asset management fees to the Advisor in cash in violation of the Charter; (iii) enter into property management agreements with terms grossly uncompetitive and unfair for the Company; (iv) pay base property management fees to the Property Managers at the grossly uncompetitive and unfair rate of 4% of gross revenue; (v) pay compensation to the Advisor and Property Managers in

connection with the restructuring of the grossly uncompetitive property management arrangements; and (vi) convert the Advisor's Class B Units in the Operating Partnership to shares of common stock in the Company despite that the Economic Hurdle had not been met;

B. Issuing an order that Defendants Wenzel, Burns, and Perla breached fiduciary duties owed to the Company when they: (i) approved the November 2015 amendment to the Advisory Agreement amendment without ensuring that the asset management fees payable pursuant to the amendment were within the limits prescribed by the Charter in dereliction of their fiduciary obligation pursuant to the Charter, and when cash asset management fees payable by the Company were in fact were impermissible under the Charter; and (ii) failed to adequately supervise the relationship of the Company and Advisor in dereliction of their fiduciary obligation pursuant to the Charter;

C. Issuing an order that Defendants Kahane, Mehlman, Hoganson, Wenzel, Perla, and Burns violated Section 14(a) of the Securities Exchange Act of 1934 when they made, and caused the Company to make, a false statement in the April 2016 Proxy Statement;

D. Issuing an order declaring that the Release Agreement is enforceable as a matter of law and is therefore null and void;

E. An award to the Company and/or the Company's stockholders[6] of the amount of compensatory and any other damages the Company sustained as a result of Defendants' wrongful conduct as alleged herein, including pre- and post-judgment interest thereon;

F. Issuing an order requiring Defendants AR Capital, the Advisor, the Property

[6] Under Maryland law "any damages so recovered [in a derivative action] will be available for the payment of debts of the [Company], and, if any surplus remains, for distribution to the [S]tockholders in proportion to the number of shares held by each." *Waller v. Waller*, 187 Md. 185, 189-90 (1946).

Managers, Schorsch, Kahane, Budko, Weil, and Block to disgorge to the Company all of the benefits that they received resulting from the Company's payment of improper asset management fees, property management fees, and compensation in connection with the restructuring of the property management arrangements;

G. Awarding Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

H. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all claims in this Verified Amended Derivative Complaint so triable.

DATED: May 24, 2018

By: /s/ Paul D. Malmfeldt

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Attorneys for Plaintiff

VERIFICATION

I, Tom Milliken, hereby verify that I have reviewed the foregoing Verified Amended Shareholder Derivative Complaint and that the allegations as to myself and my own actions are true and correct and the other allegations upon information and belief are true and correct.

Dated: May 19, 2018

Tom Milliken

EXHIBIT A

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July 14, 2017

VIA FEDEX

Bruce G. Wiles
Chairman of the Board of Directors
Hospitality Investors Trust, Inc.
3950 University Drive
Fairfax, VA 22030

RE: Shareholder Demand

Dear Mr. Wiles:

Our firms represent Tom Milliken ("Milliken" or "Stockholder"), who has held shares of common stock of Hospitality Investors Trust, Inc. ("HIT" or the "Company") since August 19, 2014. We write on behalf of the Stockholder to demand that the Board of Directors of HIT (the "Board") take action to remedy breaches of fiduciary duties, breaches of the Articles of Amendment and Restatement for the Company ("Charter") and other violations of law by: certain current and former directors and officers of HIT; American Realty Capital Hospitality Advisors, LLC ("Advisor"); American Realty Capital Hospitality Properties, LLC and American Realty Capital Hospitality Grace Portfolio, LLC (collectively "Property Managers"); AR Capital, LLC ("AR Capital"); and Brookfield Strategic Real Estate Partners II Hospitality REIT II LLC and Brookfield Strategic Real Estate Partners II, LLC (collectively "Brookfield Investor").

Pursuant to Sections 6.5 and 8.2 of the Charter, by reason of their positions as directors of HIT and because of their ability to control the business and corporate affairs of HIT, the directors of the Company owe the Company and HIT's stockholders the fiduciary obligations of loyalty, good faith, and due care. The Stockholder believes that the following current or former directors and/or officers of HIT breached their fiduciary duties and their contractual obligations attendant to the Charter and thereby caused the Company to suffer damages: Edward T. Hoganson ("Hoganson"), William M. Kahane ("Kahane"), Stanley R. Perla ("Perla"), Abby M. Wenzel ("Wenzel"), and Robert H. Burns ("Burns"). Likewise, by reason of his position as an officer of HIT since its inception, by reason of his position as a director of HIT since March 31, 2017, and because of his ability to control the business and corporate affairs of HIT, Jonathan P. Mehlman ("Mehlman") owes fiduciary duties to the Company and to HIT's stockholders. In addition, pursuant to Section 8.3 of the Charter and because it managed the day-to-day operations of the Company pursuant to an advisory agreement (the "Advisory Agreement") until the Advisory Agreement was terminated on March 31, 2017, the Advisor owed fiduciary duties to the

Company and to HIT's stockholders. The Stockholder believes that the Advisor breached its fiduciary duty obligations and breached its contractual obligations attendant to the Advisory agreement, thereby causing the Company to suffer damages. Because they managed and exercised control over Company property pursuant to various property management agreements, the Property Managers also owed fiduciary duties to the Company. The Stockholders believes that the Property Managers breached their fiduciary duty obligations to the Company thereby causing the Company to suffer damages. Further, because at all relevant times the Advisor and the Property Managers were under common control with AR Capital, the parent of the Company's sponsor, and because AR Capital and the Brookfield Investor participated in the transactions at issue, discussed herein, AR Capital and the Brookfield Investor are liable directly and/or as aiders and abettors, for the harm and damages suffered by the Company.

I. The Company's claims against the Advisor, AR Capital, and certain current and former directors and officers of the Company relating to the Company's payment of cash asset management fees to the Advisor that were not conditional upon the Company's performance

The Charter sets forth the categories of fees that the Company may pay to the Advisor or its affiliates. These are limited to disposition fees on the sale of properties, incentive fees, and annual subordinated performance fees, the Company's payment of which is conditional upon: (i) receipt by the Company's stockholders of a 6% cumulative, pre-tax, non-compounded annual return on their contributions; and (ii) the return of the stockholders' capital contributions back to them. The Charter also permits reimbursement of the Advisor's operating expenses. The Charter, however, does not permit the Company to pay any asset management fees to the Advisor or its affiliates beyond the annual subordinated performance fee.

The Advisory Agreement between the Company and Advisor dated January 7, 2014 ("Advisory Agreement") requires the Company to issue subordinated participation interests in the Company's operating partnership, American Realty Capital Hospitality Operating Partnership, L.P ("Operating Partnership"), in connection with the Advisor's management of the Operating Partnership's assets. The Advisory Agreement does not provide for the Company's payment of unconditional asset management fees to the Advisor.

The Agreement of Limited Partnership of the Operating Partnership dated January 7, 2014 ("Operating Partnership Agreement") specifies that: (i) the Operating Partnership shall issue the Advisor Class B Units in the Operating Partnership on a quarterly basis; (ii) the Class B Units shall remain restricted until the Company's stockholders have received a 6% cumulative, pre-tax, non-compounded annual return on their contributions, until the stockholders' capital contributions have been returned back to them (the "Economic Hurdle") and until either a liquidity event occurs or until the Advisory Agreement is terminated concurrent with or subsequent to the Economic Hurdle having been met; and (iii) that the Class B Units shall be forfeited upon the occurrence of a liquidity event or upon the termination of the Advisory

Agreement if the Economic Hurdle has not been met. The Company's payment of Class B Units in the Operating Partnership to the Advisor, through which the Advisor will realize value only when the Economic Hurdle has been met, are consistent with the terms of the Advisory Agreement and Charter.

The Company's prospectuses filed with the Securities and Exchange Commission ("SEC") on Form 424B3 on January 10, 2014 and on April 29, 2015 set forth all of the types of compensation that the Company may pay to the Advisor or its affiliates in accordance with the Advisory Agreement, the Operating Partnership Agreement, and the Charter. The prospectuses make clear that these operative agreements do not permit the Company to pay unconditional cash asset management fees to the Advisor.

On November 11, 2015, the Company and Advisor entered into the First Amendment to the Advisory Agreement ("November 2015 Amendment") which states that for all periods after September 30, 2015 the Company is required to pay, without condition, an asset management fee to the Advisor at the annual rate of 0.75% of the cost of assets owned by the Company until the Company publishes the Company's net asset value, at which time the Company is required to pay asset management fees to the Advisor at the rate of 0.75% of the lower of the costs of assets owned by the Company or the fair market value of the Company's assets[1]. In addition, the November 2015 Amendment states that the Company may pay these asset management fees either in cash or in shares of the Company's common stock. Further, it states that Company will not issue subordinated participation interests in the Operating Partnership to the Advisor for periods after September 30, 2015. The November 2015 Amendment was entered into in violation of the Charter which does not permit the Company to pay unconditional asset management fees to the Advisor.

The Company paid cash asset management fees to the Advisor of approximately $4.6 million, $18.0 million and $4.1 million for years 2017, 2016 and 2015 respectively. The Advisor was never entitled to receive <u>any</u> asset management fees under the Charter because the Economic Hurdle was never met. The stockholders' contributions have not been returned to the stockholders and the stockholders have not received a 6% cumulative, non-compounded, pre-tax annual return on their contribution. In addition, the value of the Company's assets is

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[1] Prior to November 20125, the Company's sale of stock through the initial public offering was the primary source of capital upon which the Company relied to make investments in real estate assets generating cash flow, to make cash distributions to stockholders, and to meet its capital requirements. The Company's IPO was suspended in November 2015 concurrent with the Company's entry into the November 2015 Amendment. Thus, at the same time that the Company's primary source of capital was eliminated, the Advisor, AR Capital, and the Company's directors and officers caused the Company to pledge massive amounts of the Company's cash to the Advisor going forward in violation of a provision of the Charter designed in part to prevent the Company from experiencing liquidity problems.

considerably less than the stockholders' contributions, as evidenced by the current $13.20 net asset value ("NAV") per share of the Company's stock.

Even if the Charter had permitted the payment of cash asset management fees (which it does not), the Company's payments of cash asset management fees would still have been improper between July 1, 2016 and March 31, 2017 because these fees were calculated on the basis of an overstated fair market value of the Company's assets. On July 1, 2016, the Company published a NAV of $21.48 per share. Less than one year later, on June 19, 2017, the Company published an NAV of $13.20 per share, a decline of approximately 39%. The massive decline in the published NAV is attributable to the fact that the July 1, 2016 NAV estimate was calculated on the basis of an overstated value of the Company's assets[2]. The asset management fees that were paid between July 1, 2016 and March 31, 2017 were calculated on the basis of the same overstated value of the Company's assets.

Further, as Section 11.7(vi) of the Charter requires, the directors failed to fully disclose to the stockholders the "material terms, factors and circumstances" surrounding the November 2015 Amendment and the resulting dramatic change in the Advisor's compensation structure and to "examine and comment…on the fairness of [these] transactions." In addition, the directors failed to determine, pursuant to their obligations under Section 8.2 of the Charter, whether the

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[2] The Company's June 19, 2017 8-K announcing the $13.20 NAV states that the NAV decline relates to brand-mandated property improvement plans ("PIPs") and the estimates and assumptions applied to them. This statement, however, makes little sense in light of the timing of the Company's acquisitions of assets comprising its real estate portfolio and other facts disclosed in the Company's SEC filings including: (i) a majority of the assets in HIT's portfolio are part of the Grace portfolio, which was acquired on February 25, 2015, and for which over $70 million in required PIP reserve deposits were identified and known *at the time* of the acquisition (prior to both NAV determinations); (ii) since the time of the Grace portfolio acquisition, and during the interim period between the announcements of the Company's NAV estimates, the total of the required PIP reserve deposits due has declined; and, (iii) as part of the April 2017 property refinancing discussed in the Company's SEC filings, HIT established the "87-Pack PIP Reserve," which was funded with a portion of the proceeds of the "Refinanced Term Loan." Further, the June 19, 2017 8-K states that the NAV decline resulted in part from changes in assumed capitalization rates. This statement, however, makes little sense in light of the performance of the hotel and lodging sector over the same period. For example, the Dow Jones U.S. Hotel & Lodging REITs Index, the Baird/Str Hotel Stock Index and the WSJ U.S. Hotel/Lodging REITs Index each experienced an increase over this period. In sum, the explanations disclosed in the Company's SEC filings for the decrease in the NAV estimate from July 2016 to June 2017 appear to be false; rather, it appears that this decline resulted from an inflation of the fair market value of the Company's assets used in the calculation of the July 2016 NAV estimate.

November 2015 Amendment was: (i) "within the limits prescribed by the Charter"; (ii) "reasonable in light of the investment performance of the Company, its Net Asset, [or] Net Income"; and (iii) reasonable "in relation to the...performance of the Assets...[and] the success of the Advisor in generating opportunities that meet the investment objectives of the Company..."

The Stockholder contends that when the Advisor, AR Capital, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman caused the Company to enter into the November 2015 Amendment in violation of the Charter, and when they caused the Company to pay cash asset management fees to the Advisor totaling approximately $26.7 million despite that the Economic Hurdle was never met: (i) the Advisor, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman wasted corporate assets and breached their respective fiduciary duties to the Company pursuant to Maryland law and the Charter; (ii) Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman breached their contractual obligations to the Company pursuant to the Charter; (iii) the Advisor aided and abetted Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of their contractual obligations to the Company pursuant to the Charter; (iv) AR Capital aided and abetted the Advisor, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of fiduciary duties and aided and abetted Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of contractual obligations to the Company; and (v) the Advisor and AR Capital, as the ultimate owner of the Advisor, were unjustly enriched to the detriment of the Company.

II. The Company's claims against the Advisor, the Property Managers, and certain current and former directors and officers of the Company relating to the Company's payment of compensation to the Advisor and Property Managers in connection with the Company's internalization of management functions and termination of the Advisory Agreement

The Company's directors, officers, the Advisor, Property Managers, and AR Capital caused the Company to enter into the "Framework Agreement" on January 13, 2017. This agreement provides for the Company's payment of numerous categories of fees to the Advisor and to the Property Managers, which are affiliates of the Advisor, concurrent with the termination of the Advisory Agreement and the internalization of the Advisor's management functions. This compensation includes: (i) a $10 million cash payment to the Property Managers; (ii) 12 monthly cash payments of $333,333 to the Property Managers; (iii) the issuance of 279,329 shares of common stock in the Company to the Property Managers worth $6 million based upon the $21.48 per share NAV estimate reported at that time; (iv) the waiver of the Advisor's obligation to repay the Company $5,821,988 in organization and offering expenses that the Company previously reimbursed to the Advisor; and (v) the removal of all restrictions on the Advisor's 524,956 Class B Units in the Operating Partnership and the conversion of these Units to 524,956 shares of the Company's common stock. The Advisory Agreement was terminated on March 31, 2017, and the Company's payment of compensation to the Advisor and Property Managers was triggered on this date.

The Framework Agreement states that the Company would pay the compensation to the Advisor and Property Managers in consideration of the Company's entry into the "Property Management Transactions." Through these transactions, the property management agreements with the Property Managers were terminated, amended, and/or assigned in order that Crestline Hotels & Resorts, LLC ("Crestline") – another affiliate of the Advisor – would replace the Property Manager as property manager for the Company's real estate properties.

As set forth above, the Charter sets forth all of the categories of compensation that the Company may pay to the Advisor or its affiliates. The payment of compensation to the Advisor and its affiliates for the ostensible purpose of compensating them for the Company's termination and amendment of contracts, and the Company's assignment of contracts from one affiliate of the Advisor to another, is not permitted under the Charter. Also, the Charter expressly prohibits the payment of compensation or other remuneration to the Advisor or its affiliates in connection with the internalization of the Advisor's management functions. The Company's payment of this compensation was plainly made in connection with the concurrent termination of the Advisory Agreement and the internalization of the Advisor's management function and was therefore expressly prohibited by the Charter. *See* Sections 8.5 and 8.13.

Further, as set forth above, the Charter, Advisory Agreement, and Operating Partnership Agreement required immediate forfeiture of the Advisor's Class B Units without value upon termination of the Advisory Agreement because the Economic Hurdle was never met: the stockholders' contributions have not been returned to the stockholders and the stockholders have not received a 6% cumulative, non-compounded, pre-tax annual return on their contribution. In addition, the value of the Company's assets is considerably less than the stockholders' contributions. This is evidenced by the current $13.20 NAV per share of the Company's stock which is substantially less than the $25.00 original offering price.

Additionally, the directors violated Section 11.7(vi) of the Charter when they caused the Company to enter into and to consummate the Framework Agreement without providing to the stockholders "full disclosure of material terms, factors and circumstances surrounding [the transaction]" and without complying with their "duty to examine and comment…on the fairness of [the] transaction[]." The directors also violated Section 10.3 of the Charter when they caused the Company to enter into and to consummate the Framework Agreement because the attendant payout is patently unfair and unreasonable to the Company and on terms and conditions less favorable to the Company than those available from unaffiliated third parties.

The Stockholder contends that when the Advisor, AR Capital, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman caused the Company to enter the Framework Agreement purportedly requiring the Company to provide compensation to the Advisor and Property Managers totaling approximately $37 million and when they caused the Company to pay this compensation: (i) the Advisor, Property Managers, Hoganson, Kahane, Perla, Wenzel, Burns and

Mehlman wasted corporate assets and breached their respective fiduciary duties to the Company pursuant to Maryland law and/or the Charter; (ii) Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman breached their contractual obligations to the Company pursuant to the Charter; (iii) the Advisor and Property Managers aided and abetted Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of their contractual obligations to the Company; (iv) AR Capital aided and abetted the Advisor, Property Managers, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of fiduciary duties and aided and abetted Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman's breaches of their contractual obligations; and (v) the Advisor, Property Manages, and AR Capital, as the ultimate owner of the Advisor and Property Managers, were unjustly enriched to the detriment of the Company.

III. The Company's claims against the Advisor, AR Capital, the Brookfield Investor and certain current and former directors and officers of the Company relating to the Brookfield Investor's investment in the Operating Partnership

On January 12, 2017, the Company entered into the Securities Purchase, Voting and Standstill Agreement ("SPA"). On March 31, 2017, the initial closing pursuant to the SPA (the "Initial Closing") occurred. At the Initial Closing, the Company sold to the Brookfield Investor: (i) the Redeemable Preferred Share for a nominal purchase price; and (ii) 9,152,542.37 Class C Units in the Operating Partnership for a purchase price of $14.75 per Class C unit ($135.0 million in the aggregate). In addition, subject to the terms and conditions of the SPA, the Company will sell the Brookfield Investor additional Class C Units in an aggregate amount of up to $265.0 million at subsequent closings (each, a "Subsequent Closing") that will occur through February 2019.

As holder of the Redeemable Preferred Share, the Brookfield Investor has been afforded significant control over all aspects of HIT's business and operations. The Brookfield Investor has the right to elect two directors (each, a "Redeemable Preferred Director"). In addition, the Brookfield Investor must approve the nomination of two additional independent directors (each, an "Approved Independent Director") for election by the Company's stockholders at the Company's annual meeting. Also, each committee of the Board must include a Redeemable Preferred Director selected by the holder of the Redeemable Preferred Share. Further, the majority of the then outstanding Class C Units, and at least one of the Redeemable Preferred Directors, must provide consent before the Company may: (i) pay dividends or other distributions to the Company's stockholders; (ii) redeem or repurchase securities; (iii) acquire property; (iv) sell or dispose of any property; (v) issue equity; or (vi) incur debt.

The Redeemable Preferred Directors must also approve: (i) the Company's annual business plan (*including the annual operating and capital budget*) (the "Annual Business Plan"); (ii) the Company's hiring and compensation decisions related to certain key personnel (including the Company's executive officers); (iii) any increase or decrease of the authorized number of directors on the Board; (iv) nomination or appointment of any director (other than a Redeemable

Preferred Director) who is not an Independent Director (as defined in the Charter); (v) certain elections under the Maryland General Corporation Law; and (vi) the nomination and appointment of the Board's chairperson.

Further, BSREP II Hospitality II Special GP, OP LLC (the "Special General Partner") has been appointed as a special general partner of the Operating Partnership, with certain non-economic rights benefitting the Brookfield Investor which apply in the event that the Company is unable to redeem the Class C Units when required.

Evidencing the material shift in the Company's corporate governance is the following statement from the April 2017 Proxy under the Heading "CORPORATE GOVERNANCE" which states that the Company's business and affairs are managed ***subject to Brookfield's rights:***

> ***The business and affairs*** of the Company are managed under the direction of the Board of Directors, ***subject to the rights of Brookfield*** Strategic Real Estate Partners II Hospitality REIT II LLC (the "Brookfield Investor") ***in its capacity as the holder of the sole issued and outstanding Redeemable Preferred Share and all the issued and outstanding units of the limited partner interests entitled "Class C Units" (the "Class C Units") in our operating partnership, Hospitality Investors Trust Operating Partnership, L.P. (the "OP")."***

(Emphasis added)

The transfer of substantial control over the Company to the Brookfield Investor through the SPA was made in violation of numerous provisions of the Charter, including those setting forth the Board's authority to govern the Company and those setting forth the rights of the Company's stockholders to elect directors, including but not limited to Charter Sections 6.1, 6.3, 7.1, 7.2, 7.3, 7.6, 7.7, 11.1 and 11.2.

The SPA provides that the Class C Units rank senior to the Company's units of limited partnership interest in the Operating Partnership ("OP Units") in priority to both ordinary distributions and to distributions of assets in the event of liquidation, dissolution or the winding-up of the Operating Partnership. In addition, the SPA outlines the redemption rights of the Brookfield Investor which are detrimental to the interests of the Company and its stockholders for a multitude of reasons including that floors have been established for the Brookfield Investor's recovery of investment principal upon redemption regardless of the Company's performance and that the Brookfield Investor has the right to redeem at any time following the fifth anniversary of the Initial Closing. Further, the SPA establishes floors for the Brookfield Investor's recovery of its investment principal under various liquidity event scenarios regardless of the Company's performance.

With respect to ordinary distributions, the Brookfield Investor is entitled to receive, with respect to each Class C Unit, fixed, quarterly cumulative cash distributions at a rate of 7.50% per annum. The Company's failure to pay these cash distributions when due will cause the per annum rate to increase to 10% until all accrued and unpaid distributions required to be paid in cash are reduced to zero. The Brookfield Investor is also entitled to receive, with respect to each Class C Unit, a fixed, quarterly, cumulative distribution payable in Class C Units at a rate of 5% per annum ("PIK Distribution"). In addition, if the Company fails to redeem the Brookfield Investor when required, the 5% per annum PIK Distribution rate will increase to the per annum rate of 7.50%, and will further increase by 1.25% per annum for the next four quarterly periods thereafter, up to a maximum per annum rate of 12.5%. Further, following the Initial Closing, the holders of Class C Units became entitled to tax distributions under certain circumstances.

The Brookfield Investor's distribution and redemption rights, its right to exercise substantial control over the Company, and the floors for the recovery of investment principal by the Brookfield Investor upon redemption and under various liquidity event scenarios are detrimental to the interests of the Company and its stockholders and have substantially depressed the value of the Company's stock. The current NAV of $13.20 per share is overstated because it does not account for these detrimental factors; rather, with respect to the Class C Units, the NAV calculation takes into account only the amount of the Brookfield Investor's initial liquidation preference of $135 million.

Furthermore, the Board's misconduct in connection with the transactions with the Brookfield Investor is inextricably tied to the Framework Agreement through which the Board caused the Company to waste Company assets as discussed above. For example, the investment made by the Brookfield Investor provided cash to the Company with which to make payments to the Property Managers as mandated by the Framework Agreement.

The Board and Advisor's decision to sell the Class C Units to the Brookfield Investor under the terms set forth in the SPA rather than to pursue other financing alternatives or to immediately liquidate and dissolve the Company amounted to gross negligence. The Stockholder contends that when the Advisor, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman, as aided and abetted by AR Capital and the Brookfield Investor, caused the Company to enter into the transactions with the Brookfield Investor, as discussed herein, they wasted corporate assets and breached their respective fiduciary duties to the Company pursuant to Maryland law and/or the Charter.

IV. The Company's claims against the Advisor and certain current and former directors and officers of the Company relating to the Company's failure to maintain internal control over the Company's financial reporting thereby permitting a material weakness to arise

The Company's 2016 Form 10-K disclosed that a material weakness existed in the Company's internal control over financial reporting as of December 31, 2016 "relating to the monitoring and oversight of compliance with a single financial covenant included in a non-recourse carve-out guarantee entered into with respect to one of our mortgage loans." This SEC filing further disclosed that: (i) there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis; (ii) the Company's management determined that its internal control over financial reporting as of December 31, 2016 was not effective; and (iii) the internal control weakness may have prevented management from identifying certain conditions requiring material disclosures under US GAAP.

While the Company reports that management has taken steps, and intends to take further steps, to remediate the underlying causes of this material weakness, the material weakness remained as of March 31, 2017, with Company's management concluding that its disclosure controls and procedures were not effective as of this date.

The Stockholder contends that the Advisor, AR Capital, Hoganson, Kahane, Perla, Wenzel, Burns and Mehlman, have failed to ensure the Company's maintenance of adequate internal controls in breach their respective fiduciary duties to HIT pursuant to Maryland law and/or the Charter. They have thereby caused HIT to incur financial costs in connection with remediation of the material weakness in internal controls and have exposed HIT to the risk of additional losses, including those resulting from potential violations of the securities laws.

As a direct and proximate result of the foregoing misconduct, the Company has sustained damages, including but not limited to: (i) the payments of cash asset management fees to the Advisor totaling approximately $26.7 million in violation of the Charter; (ii) the payments of compensation to the Advisor and Property Managers in connection with the termination of the Advisory Agreement and internalization of the Advisor's management functions totaling approximately $37 million in violation of the Charter; and (iii) damages resulting from the Company's transactions with the Brookfield Investor, including the transfer of substantial control over the Company to the Brookfield Investor, in violation of the Charter.

On behalf of the Stockholder, we hereby demand that the Board take action against certain current and former directors and officers of HIT, the Advisor, AR Capital, and the

Brookfield Investor to recover the damages described herein for the benefit of the Company and to remedy deficiencies in the Company's internal controls that allowed the misconduct to occur.

The Stockholder reserves all of his rights to obtain book and records from the Company pursuant to the Charter, the Amended and Restated Agreement of Limited Partnership of the Operating Partnership, and Maryland law, and reserves all of his rights to pursue any direct claims, including but not limited to those relating to the events discussed herein.

Please notify us who will be assigned to investigate the claims set forth herein. We look forward to a response within 30 days.

Sincerely,

Paul D. Malmfeldt

Kimberly Donaldson Smith

EXHIBIT B

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December 12, 2017

VIA FEDEX

Peter D. Doyle, Esq.
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036

RE: Hospitality Investors Trust, Inc.

Dear Peter:

As you are aware, our firms represent Tom Milliken ("Milliken" or "Stockholder"), who has held shares of common stock of Hospitality Investors Trust, Inc. ("HIT" or the "Company") since August 19, 2014. We write on behalf of the Stockholder to supplement the demand that we sent to the Chairman of the Company's Board on July 14, 2017 (the "July 2017 Demand"). In addition, we request that you formally confirm the Board's decision to reject the July 2017 Demand and that you notify us as to when we should expect to receive a response to the supplemental demand set forth herein. In the event that no formal decision has been made with respect to the July 2017 Demand, we request that you notify us as to when we should expect to receive a formal response.

The Stockholder contends that Nicholas A. Schorsch ("Schorsch") has owed fiduciary duties to the Company from its inception to the present as a Director of the Company and/or as a result of his control of the Company through AR Capital[1], the Advisor, and the Property Managers and that he breached fiduciary duties owed to the Company through his participation in the entirety of misconduct set forth in the July 2017 Demand. Alternatively, the Stockholder contends that Schorsch aided and abetted breaches of fiduciary duties through his active and knowing participation in the entirety of misconduct set forth in the July 2017 Demand.

Subsequent to making the July 2017 Demand, the Stockholder identified claims relating to the Company's property management arrangements. The Stockholder believes that the Advisor, Property Managers, Hoganson, Mehlman, Kahane, Perla, Wenzel, Burns, and A. Sue Perrotty ("Perrotty") breached fiduciary duties owed to the Company, that Schorsch breached

[1] The Company's 2016 10-K discloses that AR Global Investments, LLC is the successor to certain of AR Capital, LLC's businesses. The term "AR Capital," in the July 2017 Demand and herein, refers to both of these entities.

fiduciary duties and/or aided and abetted the breaches, and that AR Capital aided and abetted the breaches, when they caused the Company and/or its Operating Partnership (or their subsidiaries) to enter into property management agreements with the Property Managers containing terms that were grossly unfair for the Company. These property management agreements, many of which had 20-year durations and which could not be freely terminated, required the Company to pay base property management fees at the rate of 4.0% of gross revenue which was far in excess of competitive market rates.

The Property Managers paid the sub-managers, which managed the Company's hospitality properties, base management fees between 2.0% and 3.25% of gross revenue. The responsibilities of the Property Managers – the direction and supervision of the sub-managers – fell directly within the scope of the Advisor's responsibilities for which the Advisor received separate compensation in the form of advisory fees. The Company's payment of compensation to the Property Managers was therefore made in violation of Section 8.12 of the Charter and constituted waste of Company assets.

The Stockholder believes that the Advisor, the Property Managers, AR Capital, Schorsch, Mehlman, Hoganson, and Kahane designed the Company's uncompetitive property management arrangements to extract unreasonable compensation from the Company including termination fees upon an event of liquidation. Each of them knew that the properties would be unsaleable, and that the Company would be an undesirable merger partner, unless the property management agreements were amended or terminated. The Stockholder also believes that Perla, Wenzel, Burns, and Perrotty either knew that the property management arrangements were grossly uncompetitive and unfair for the Company when they approved them or that they were grossly negligent in approving them.

The Company paid property management fees at the uncompetitive rate of 4.0% of gross revenue between 2014 and March 31, 2017 pursuant to the property management agreements. In connection with the termination, amendment, and/or assignment of the property management agreements pursuant to the Framework Agreement (which dramatically reduced the rates of property management fees that the Company paid), the Company was forced to pay consideration of approximately $36 million to the Property Managers and their affiliates. The Brookfield Investor required that the Company eliminate its grossly uncompetitive property management arrangements as a condition to it making preferred investments in the Company.

The Stockholder also believes that Schorsch, Kahane, Peter M. Budko ("Budko"), Edward Michael Weil ("Weil"), and Brian S. Block ("Block") were unjustly enriched by the Company's improper payment of fees to the Advisor and Property Managers, as described herein and in the July 2017 Demand, as a result of their ownership interests in AR Capital which ultimately owns the Advisor and Property Managers.

Sincerely,

Paul D. Malmfeldt

Kimberly Donaldson Smith