

APPROVED:

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CHRISTIAN R. EVERDELL

Assistant United States Attorney

BEFORE: THE HONORABLE HENRY B. PITMAN
United States Magistrate Judge
Southern District of New York

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SEALED COMPLAINT

UNITED STATES OF AMERICA :

-v.- :

CARLTON P. CABOT, :
TIMOTHY J. KROLL, :

Defendants. :

Violations of
15 U.S.C. §§ 78j(b), 78ff;
17 C.F.R. § 240.10b-5;
18 U.S.C. §§ 371, 1343, 1349,
1956, 1957, and 2

COUNTY OF OFFENSES:
NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

VIRGINIA COLOMBO, being duly sworn, deposes and says
that she is a Postal Inspector with the United States Postal
Inspection Service ("USPIS"), and charges as follows:

COUNT ONE

(Conspiracy to Commit Securities Fraud)

1. From at least in or about 2008, through at least
in or about 2012, in the Southern District of New York and
elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the
defendants, and others known and unknown, willfully and
knowingly, did combine, conspire, confederate and agree together
and with each other to commit an offense against the United
States, to wit, securities fraud, in violation of Title 15,
United States Code, Sections 78j(b) and 78ff and Title 17, Code
of Federal Regulations, Section 240.10b-5.

2. It was a part and an object of the conspiracy
that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and
others known and unknown, willfully and knowingly, directly and
indirectly, by use of the means and instrumentalities of

interstate commerce, and of the mails, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

3. In furtherance of the conspiracy and to effect its illegal object, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. Between in or about January 2011, and in or about March 2012, approximately \$41,867 of funds belonging to various tenants-in-common ("TIC") investments sponsored by Cabot Investment Properties ("CIP") (collectively, the "TIC Investments") was transferred from a CIP bank account controlled by CABOT and KROLL ("CIP Operating Account 1") to a private college located in Connecticut to pay for the college tuition of one of CABOT's children.

b. From in or about March 2010, through in or about January 2011, approximately \$50,035 of funds belonging to the TIC Investments was transferred from CIP Operating Account 1 to pay for KROLL's rental apartment at a luxury apartment building in Manhattan, New York.

c. On or about February 11, 2011, approximately \$75,000 was transferred out of a bank account belonging to a CIP-sponsored TIC investment into a CIP bank account controlled by CABOT and KROLL ("CIP Operating Account 2"). On the same day, approximately \$75,000 was transferred out of CIP Operating Account 2 into a bank account belonging to a different CIP-sponsored TIC investment, in contravention of written and oral representations about how the revenue from the TIC Investments

would be distributed and without the knowledge or consent of the investors (the "TIC Investors").

d. In or about 2010, KROLL created a balance sheet for a particular CIP-sponsored TIC Investment to be included in a quarterly investor report for the period ending March 31, 2010, which KROLL had manipulated to fraudulently eliminate a debt owed by CIP to the TIC investment.

e. In or about 2011, KROLL created a balance sheet for a particular CIP-sponsored TIC Investment to be included in a quarterly investor report for the period ending March 31, 2011, which KROLL had manipulated to fraudulently eliminate a debt owed by CIP to the TIC investment.

f. In or about 2011, KROLL falsely told a TIC Investor that the funds belonging to the particular TIC Investment had not been comingled with funds from other TIC Investments.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Commit Wire Fraud)

4. From at least in or about 2008, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, wire fraud, in violation of Title 18, United States Code, Section 1343.

5. It was a part and an object of the conspiracy that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for

the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

6. In furtherance of the conspiracy and to effect its illegal object, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, committed the overt acts set forth in Paragraph 3 of this Complaint, among others, which are fully incorporated by reference herein, in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 1349.)

COUNT THREE

(Conspiracy to Commit Money Laundering)

7. From at least in or about 2008, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 1957.

8. It was a part and an object of the conspiracy that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, in an offense involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, willfully and knowingly would and did conduct and cause to be conducted such financial transactions which in fact involved the proceeds of specified unlawful activity, with the intent to promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i).

9. It was further a part and an object of the conspiracy that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and others known and unknown, in an offense involving and affecting interstate and foreign commerce, willfully and knowingly would and did engage in and cause others

to engage in a monetary transaction, as that term is defined in Title 18, United States Code, Section 1957(f)(1), in criminally derived property that was of a value greater than \$10,000, in violation of Title 18, United States Code, Section 1957.

Overt Acts

10. In furtherance of the conspiracy and to effect its illegal objects, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, committed the overt acts set forth in Paragraph 3 of this Complaint, among others, which are fully incorporated by reference herein, in the Southern District of New York and elsewhere.

(Title 18, United States Code, Section 1956(h).)

COUNT FOUR

(Securities Fraud)

11. From at least in or about 2010, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit, CABOT and KROLL provided false and misleading financial reports and made other false and misleading statements to the TIC Investors in order to conceal their misappropriation of funds from the TIC Investments.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5; and
Title 18, United States Code, Section 2.)

COUNT FIVE

(Wire Fraud)

12. From at least in or about 2010, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, CABOT and KROLL engaged in a scheme to defraud the TIC Investors by providing false and misleading financial reports and other false and misleading information to the TIC Investors in order to conceal their misappropriation of funds from the TIC Investments, and in connection therewith and in furtherance thereof, CABOT and KROLL sent emails, engaged in telephone calls, and caused wire transfers of funds to be sent in interstate commerce.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT SIX

(Money Laundering)

13. From at least in or about 2010, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, in an offense involving and affecting interstate and foreign commerce, knowing that the property involved in certain financial transactions represented the proceeds of some form of unlawful activity, willfully and knowingly would and did conduct and cause to be conducted such financial transactions which in fact involved the proceeds of specified unlawful activity, with the intent to promote the carrying on of specified unlawful activity, to wit, CABOT and KROLL facilitated the fraud scheme charged in Counts One, Two, Four, and Five by transferring funds into and out of bank accounts belonging to the TIC Investments, via CIP Operating Account 1 and CIP Operating Account 2 (collectively, "the CIP Operating Accounts"), in order to keep

failing TIC Investments financially solvent.

(Title 18, United States Code, Sections 1956(a)(1)(A)(i) and 2.)

COUNT SEVEN

(Illegal Monetary Transactions)

14. From at least in or about 2010, through at least in or about 2012, in the Southern District of New York and elsewhere, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, in an offense involving and affecting interstate and foreign commerce, willfully and knowingly would and did engage in and cause others to engage in a monetary transaction, as that term is defined in Title 18, United States Code, Section 1957(f)(1), in criminally derived property that was of a value greater than \$10,000, to wit, CABOT and KROLL, among other things, caused wire transfers of over \$10,000 each to be sent from the CIP Operating Accounts to pay for personal and business expenses, knowing that the funds transferred represented the proceeds of the fraud scheme charged in Counts One, Two, Four, and Five against the TIC Investors.

(Title 18, United States Code, Sections 1957 and 2.)

The bases for my knowledge and the foregoing charges are, in part, as follows:

15. I am a Postal Inspector with the USPIS, and have been in that position for over two years. Before that, I was an intelligence analyst for the Nassau County Police Department for over two years. I have personally participated in the investigation of this matter along with Special Agents from the Internal Revenue Service ("IRS") and other Criminal Investigators from the United States Attorney's Office for the Southern District of New York ("USAO-SDNY") (collectively, the "Investigative Team"). While with the USPIS, I have participated in numerous investigations of fraud and money laundering offenses, among other crimes.

16. I am familiar with the facts and circumstances set forth below from my participation in the investigation of this matter, from my personal knowledge, and from my conversations with members of the Investigative Team and others, and have examined documents and other records. Where the

contents of documents and the actions, statements and conversations of others are reported herein, they are reported in sum and substance, except where otherwise indicated. Moreover, because this affidavit is submitted for the limited purpose of establishing probable cause supporting the arrests of the defendants, I have not set forth each and every fact learned during the course of this investigation.

BACKGROUND

The Relevant Parties

17. From my discussions with former employees of CIP and its affiliated companies, and other individuals who had business dealings with CIP and its executives and employees, and my review of documents and materials gathered during the course of this investigation, I have learned, in substance and in part, the following:

a. CIP is a privately-held real estate investment management company that was incorporated in Massachusetts in or about 1998. During the relevant time period, CIP maintained an office at different locations in Manhattan, New York, which served as its primary place of business. CIP specialized in commercial real estate investments, including so-called TIC securities offerings (described further below). From in or about 2003 through in or about 2012, CIP sponsored and oversaw approximately 18 separate TIC securities offerings to investors located all over the United States, and helped manage these investments. During the relevant time period, CIP was wholly-owned and controlled by CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants.

b. CABOT was the founder, President and Chief Executive Officer of CIP. Among other things, CABOT helped create the TIC Investments and was primarily responsible for finding investors and overseeing the management of the TIC Investments in general. CABOT was also one of only three people who had the authority to approve wire transfers from bank accounts belonging to the TIC Investments (the "TIC Bank Accounts") to the CIP Operating Accounts, and vice versa. During the relevant time period, CABOT held at least a 51% ownership interest of CIP and its subsidiaries and affiliated entities.

c. KROLL was the Chief Operating Officer of CIP. Among other things, KROLL helped create the TIC Investments and was primarily responsible for managing the finances of the TIC Investments and reporting the quarterly financial results to the TIC Investors. KROLL was also one of only three people who had the authority to approve wire transfers from the TIC Bank Accounts to the CIP Operating Accounts, and vice versa. From in or about 2009 through in or about 2012, KROLL held a 49% ownership interest of CIP and its subsidiaries and affiliated entities.

CIP's Tenants-in Common ("TIC") Investments

18. From my review of publicly available documents and other documents gathered during the course of this investigation, I have learned the following:

a. A TIC investment is a real estate investment in commercial real estate projects, such as apartment houses, shopping centers, office buildings, etc. By owning an interest in the TIC investment, TIC investors are entitled to receive a portion of the rental income generated from the business tenants after the mortgage payments and operating expenses for the property have been paid.

b. TIC investments typically are usually structured and sold as securities. The entity offering the TIC investment, called the "sponsor," identifies a particular parcel of commercial real estate that will form the basis for the TIC investment. The sponsor then solicits investments from TIC investors. The sponsor finances the purchase of the real estate through the capital raised from the TIC investors and debt issued from mortgage banks.

c. TIC investments offer several potential benefits. First, if the properties are successful and generate a steady stream of rental income, the TIC investors will receive regular disbursements from the operating profits of the property without having to assume the responsibilities of managing the property itself. Second, TIC investments offer certain tax advantages for TIC investors who recently sold a piece of real estate. Under Section 1031 of the Internal Revenue Code, TIC investors may be able to defer paying taxes on the capital gains from the previous real estate sale if they invest the proceeds

from that sale in a TIC investment.

19. From my review of publicly available documents and Private Placement Memoranda ("PPMs") for the TIC investments sponsored by CIP, as well as other documents gathered during the course of this investigation, I have learned, in substance and in part, the following:

a. From in or about 2003 through in or about 2007, CIP sponsored the following 18 TIC investments (the "TIC Investments"), which were based on commercial properties located in Florida, Ohio, Wisconsin, Indiana, Connecticut, Kentucky, Georgia, and North Carolina.

- Cabot 20 North Orange
- Cabot 465 Cleveland Avenue
- Cabot 550 Polaris Parkway
- Cabot 570 Polaris Parkway
- Cabot Addison
- Cabot Ashtabula
- Cabot BB&T Financial Center
- Cabot Creekside Mall
- Cabot Cypress Creek Tower
- Cabot Dadeland Towers North
- Cabot East Broward
- Cabot East Town
- Cabot Golf
- Cabot Northpark/Southland
- Cabot North University Drive
- Cabot Oak Grove Plaza
- Cabot Trafalgar/Avion
- Cabot Turfway Ridge

b. CIP structured and marketed the TIC Investments as securities. For each of the TIC Investments, CIP solicited investors by issuing a Private Placement Memorandum ("PPM") describing the particular TIC Investment. The PPMs were, in turn, disseminated and marketed to the investors by broker-dealers.

c. For each of the TIC Investments, CIP formed a wholly-owned subsidiary that purchased the subject property

and offered tenant-in-common interests in the property to the TIC Investors (the "Acquisition Subsidiary"). For example, the Acquisition Subsidiary for Cabot East Town was called "Cabot East Town Acquisition LLC." The TIC Investors purchased their shares in the particular TIC Investment from the Acquisition Subsidiary for that TIC Investment.

d. For each of the TIC Investments, CIP formed another wholly-owned subsidiary that was responsible for operating the property (the "Master Lessee Subsidiary"). For example, the Master Lessee Subsidiary for Cabot East Town was called "Cabot East Town LeaseCo LLC." After the TIC Investors purchased their shares in the TIC Investment from the Acquisition Subsidiary, the TIC Investors then leased the property to the Master Lessee Subsidiary pursuant to a Master Lease Agreement, which outlined the various duties and responsibilities of the Master Lessee Subsidiary.¹

e. Under the terms of the Master Lease Agreement, as summarized in the PPMs, the Master Lessee Subsidiary was responsible for paying the costs of managing and maintaining the property and making the mortgage payments on the property. The Master Lessee Subsidiary was also responsible for paying regular disbursements to the TIC Investors from the operating profits of the property. According to the PPMs, CIP estimated that the annual payment to the TIC Investors would total approximately 8.5% of their equity investment in the first three years of the investment and would increase steadily thereafter up to approximately 12%.

f. According to the PPMs, the Master Lessee Subsidiary was entitled to retain any excess profits from the property's rental income, but only after it had paid the operating expenses of the property and the disbursements due to the TIC Investors. By the same token, the Master Lessee

¹ Some of the TIC Investments used different terms for these entities and agreements. For example, for Cabot 465 Cleveland Avenue, the CIP subsidiary that was responsible for operating the property was called "Cabot 465 Cleveland Avenue Asset Manager LLC," and the agreement between the TIC Investors and the CIP subsidiary was called an "Asset Management Agreement," as opposed to a Master Lease Agreement.

Subsidiary was responsible for any cash shortfalls if it could not cover the operating expenses and disbursements to the TIC Investors.

g. According to the PPMs, the Master Lessee Subsidiary was also entitled to receive a fee for managing the day-to-day operations of the TIC Investment properties. With the exception of Cabot Addison, which a CIP affiliate managed directly, CIP sub-contracted these responsibilities to independent property management companies (the "Property Managers"), pursuant to Property Management Agreements. Under the terms of the Property Management Agreements, the Property Managers were responsible for, among other things, collecting rent from tenants, paying bills, maintaining accurate financial books and records, and providing monthly financial statements to CIP. For performing these services, a Property Manager typically received fees of up to 4% of the gross revenue of the particular property. CIP sometimes retained a small asset management fee to assist the Property Managers with their responsibilities.

h. According to the PPMs, the Acquisition Subsidiary was entitled to receive certain one-time fees related to acquiring the property and offering the TIC investment. These fees included an "Acquisition Fee" of approximately 9% of the gross proceeds of the offering for negotiating the purchase of the property from the seller.

i. From in or about 2003 through in or about 2007, CIP raised a total of approximately \$240 million in capital from the TIC Investors to fund the 18 TIC Investments. Many of the TIC Investors were elderly retirees who invested a large portion of their overall net worth in the TIC Investments and who planned to rely on the disbursements from the TIC Investments as a significant source of income for retirement.

OVERVIEW OF THE SCHEME

20. The collapse of the commercial real estate market that began in or about 2007, and the economic recession that followed, had a sharply negative effect on the profitability of commercial real estate investments, including the TIC Investments sponsored by CIP. Beginning in or about 2008, many of the TIC Investment properties were not generating enough

rental income to cover their operating expenses or the disbursements to the TIC Investors. As a result, CIP's own expected income from the TIC Investments was sharply reduced because there were no excess profits for CIP to collect from the existing TIC Investments and no opportunities for additional property acquisitions. Because these excess profits and property acquisition fees represented CIP's principal sources of income, CIP began losing money precipitously. For example, in 2008, CIP lost approximately \$7.7 million, and in 2009, CIP lost approximately \$7.2 million.

21. As a result, as described in more detail below, from in or about 2008 through in or about 2012, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, engaged in a scheme to defraud the TIC Investors by misappropriating funds belonging to the TIC Investments to pay for personal and business expenses, and to keep failing TIC Investments financially solvent, and then concealing their misappropriations by providing false and misleading financial reports and other information to the TIC Investors.

22. According to the representations in the PPMs, CIP was only allowed to collect "excess" rental income from the TIC Investments - i.e., any additional money left over after the TIC Investments had paid the operating expenses for the properties and the disbursements due to the TIC Investors. Despite these representations, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, repeatedly transferred money out of the TIC Bank Accounts and into the CIP Operating Accounts, before the TIC Investments could use the funds to pay for operating expenses and disbursements to the TIC Investors. CABOT and KROLL then used these funds to pay for the following three unauthorized purposes, without the knowledge or authorization of the TIC Investors:

a. First, CABOT and KROLL caused millions of dollars to be transferred from the CIP Operating Accounts to the bank accounts of TIC Investments that had no available funds to cover their operating expenses and investor distributions. In this way, CABOT and KROLL were able to perpetuate the fraud scheme by propping up failing TIC Investments using funds belonging to other TIC Investments.

b. Second, CABOT and KROLL used the funds in the CIP Operating Accounts belonging to the TIC Investments to pay for millions of dollars of personal expenses, including expensive cars and rental apartments and private school tuitions.

c. Third, CABOT and KROLL used the funds in the CIP Operating Accounts belonging to the TIC Investments to pay for CIP business expenses, including an approximately \$1,125,651 civil settlement to certain TIC Investors who had sued CABOT, KROLL, CIP, and a CIP subsidiary.

23. To conceal their misappropriation of TIC Investment funds from the TIC Investors, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, provided false and misleading financial reports to the TIC Investors which intentionally hid the fact that CIP owed large sums of money to the TIC Investments.

24. CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, also gave false and misleading information to the TIC Investors about how the TIC Investment funds were managed in order to prevent the TIC Investors from learning the true financial status of their investment. For example, on one occasion in or about 2011, in response to a question from a TIC Investor, KROLL falsely told the TIC Investor that the funds belonging to the particular TIC Investment had not been comingled with funds from other TIC Investments.

25. In or about the end of 2012, CIP disbanded and effectively went out of business. By that point, CIP and its principals - CARLTON CABOT and TIMOTHY KROLL, the defendants - owed approximately \$17 million to the TIC Investments, which has never been repaid.

FRAUDULENT MISAPPROPRIATION OF FUNDS

The Money Flow

26. During the course of the investigation, I have participated in interviews of several former CIP employees who had accounting and financial reporting responsibilities, and who were familiar with the transfers of TIC Investment funds into and out of the CIP Operating Accounts.

27. Based on the interviews of one CIP employee ("CIP Employee 1"), who worked for CIP from in or about 2006 through in or about 2010, I have learned, in substance and in part, the following:

a. Each of the 18 TIC Investments maintained a bank account that contained the operating revenue for the particular TIC Investment. As a general rule, the operating revenue was deposited in a "lockbox" account from which the mortgage payments were automatically deducted. The remaining funds were supposed to be used to pay investor distributions and operating expenses for the property. As stated above, only after these payments had been deducted, could any excess profit left in the account be transferred to the CIP Operating Accounts. Only CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and a third individual who did accounting work for CIP (the "Accountant") had the authority to make wire transfers into and out of the CIP Operating Accounts.

b. Beginning in or about 2008, many of the TIC Investments started experiencing financial trouble and could not cover operating expenses or investor distributions. During that same time period, CABOT and KROLL changed the existing policy that gave the individual Property Managers discretion to decide which bills to pay and when to pay them. Following the change, CABOT or KROLL had to approve all vendor payments for the TIC Investment properties before they could be paid out.

c. During that same time period, CIP Employee 1 observed money being transferred out of the TIC Bank Accounts and into CIP Operating Account 1 approximately every month. KROLL would frequently ask CIP Employee 1 how much money was in the various TIC Bank Accounts. Once CIP Employee 1 had identified a TIC Bank Account with available funds and provided the amount to KROLL, that approximate amount would be withdrawn from the TIC Bank Account and deposited into CIP Operating Account 1 shortly thereafter.

d. These withdrawals caused problems for the Property Managers. On several occasions, individual Property Managers called CIP Employee 1 to complain that they had no funds available to cover the operating expenses of the property and to inquire about where the money in the accounts had gone.

e. On several occasions from in or about 2008 through in or about November 2010, when CIP Employee 1 left CIP, KROLL directed CIP Employee 1 to transfer funds from CIP Operating Account 1 to personal bank accounts belonging to CABOT and KROLL. For some of the transfers to CABOT's account, KROLL indicated to CIP Employee 1 that CABOT had requested the transfers. CIP Employee 1 also overheard numerous phone calls between KROLL and CABOT, after which KROLL would transfer money from CIP Operating Account 1 to pay for CABOT's personal expenses. According to CIP Employee 1, these phone calls happened frequently during the last few weeks of 2010, and usually occurred between the 10th and the 15th of the month, when the TIC Bank Accounts had cash available after the property tenants had paid their rents. CIP Employee 1 recalled a specific phone call during which KROLL informed CABOT, in sum and substance, that he (KROLL) could not complete the funds transfer because the money from the TIC properties had not come in yet to the CIP Operating Accounts.

f. Around this same time period, on several occasions, CIP Employee 1 observed KROLL reallocate funds from individual TIC property accounts to other TIC properties that were struggling to meet expenses. The reallocations occurred before the property with available funds could pay its own operating expenses and investor disbursements.

g. CIP Employee 1 confronted KROLL about these transfers on more than one occasion. When CIP Employee 1 asked KROLL why he was taking money from the TIC Investments, KROLL responded, in substance and in part, that he needed the money to cover payroll for the CIP employees, as well as the operating expenses and investor distributions for other TIC Investments.

h. CIP Employee 1 resigned from CIP in or about November 2010, because, among other reasons, CIP Employee 1 was uncomfortable with how CABOT and KROLL were managing the TIC Investments. When CIP Employee 1 resigned, CIP Employee 1 had a conversation with KROLL in KROLL's office. During that conversation, KROLL told CIP Employee 1, in sum and substance, "I can't believe I got myself into this situation." CIP Employee 1 understood KROLL to mean that KROLL had gotten himself into a bad situation by misappropriating money from the TIC Investments.

28. I also participated in the interview of another former CIP employee ("CIP Employee 2"), who corroborated certain information provided by CIP Employee 1. For example, based on the interview of CIP Employee 2, who worked at CIP from in or about 2007 through in or about 2012, I have learned, in substance and in part, the following:

a. CABOT, KROLL, and the Accountant were the only people who had the authority to approve wire transfers into and out of the CIP Operating Accounts. Most of the wire transfers were approved by KROLL.

b. KROLL would instruct CIP Employee 2 on which bills needed to be paid and when. On several occasions, KROLL also instructed CIP Employee 2 to pay certain TIC Investors who called to complain about not receiving their disbursements.

c. On several occasions, KROLL instructed CIP Employee 2 to withdraw funds from particular TIC Bank Accounts and deposit them in the accounts of other TIC properties.

d. On several occasions, CABOT and KROLL received money from CIP Operating Account 1 to pay for personal living expenses. The expenses were either paid directly out of CIP Operating Account 1 or the funds were transferred to the personal accounts of CABOT and KROLL. CABOT and KROLL received these funds at a time when the TIC Investments were losing money and could not cover their operating expenses and investor disbursements.

29. During the course of the investigation, I have also participated in interviews of Property Managers who oversaw the day-to-day operation of ten of the TIC Investment properties, and who maintained general ledgers for the TIC properties and kept track of, among other things, withdrawals and deposits to and from the TIC Bank Accounts.

30. Based on the interviews of one of the Property Managers who managed three of the TIC Investment properties ("Property Manager 1"), and my review of general ledgers and other financial and accounting documents provided by Property Manager 1, I have learned, in substance and in part, the following:

a. Beginning in or about 2008, CABOT and KROLL withdrew funds on multiple occasions from the accounts of the TIC properties that Property Manager 1 managed for CIP.

b. On more than one occasion, Property Manager 1 sent CABOT and KROLL an email detailing the amount of money that had been deposited in the property account and the specific bills that Property Manager 1 intended to pay. After sending the emails, the money was withdrawn from the property account shortly thereafter.

c. In one specific example, on or about April 18, 2012, an associate of Property Manager 1 informed KROLL that one of the TIC property accounts had approximately \$27,000 in available funds. KROLL gave permission to use the funds to pay bills for the property. A few hours later, however, approximately \$27,000 was withdrawn from the property account.

d. Property Manager 1 kept track of these withdrawals by assigning them to a third party receivable account on the general ledgers that Property Manager 1 maintained. Occasionally, CABOT and KROLL reimbursed some of the withdrawn money, but the balances kept growing. Property Manager 1 estimated that by in or about October 2012, CABOT and KROLL owed a total of approximately \$290,252 to Cabot 465 Cleveland Avenue, \$226,784 to Cabot 570 Polaris Parkway, and \$624,765 to Cabot 550 Polaris Parkway.

e. Property Manager 1 recalled receiving an email from CIP in or about November 2009 attaching what appeared to be a schedule of withdrawals and deposits. Under the heading "Funds Into CIP," the schedule showed approximately \$115,000 coming from the three TIC Investments that Property Manager 1 managed. Under the heading "Funds Out of CIP," the schedule showed approximately \$115,000 going to three unrelated TIC Investments. Property Manager 1 was told to delete the email shortly after receiving it. It was at that point that Property Manager 1 realized that CABOT and KROLL were taking money from the TIC properties that Property Manager 1 managed and sending it to other TIC properties.

f. Property Manager 1 contacted the Property Manager for Cabot BB&T Financial Center - one of the other TIC properties that, according to the schedule, had received some of

the funds. The Property Manager for Cabot BB&T Financial Center indicated that he, too, was having trouble paying the operating expenses of the property he managed, despite the property being fully leased.

31. I also participated in the interview of another Property Manager who managed several CIP Investment properties ("Property Manager 2"). Property Manager 2 corroborated the pattern of withdrawals from the TIC property accounts to the CIP Operating Accounts that Property Manager 1 described. Furthermore, based on the interview of Property Manager 2, and my review of general ledgers and other financial and accounting documents provided by Property Manager 2, I have learned, in substance and in part, that by in or about 2012, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, owed a total of approximately \$2,504,006 to Cabot 20 North Orange, \$2,042,807 to Cabot East Broward, \$777,811 to Cabot Oak Grove Plaza, and \$1,015,818 to Cabot Trafalgar/Avion.

The Bank Records

32. During the course of the investigation, I have reviewed bank records from the CIP Operating Accounts and the TIC Bank Accounts, as well as the general ledgers and other financial and accounting documents maintained by the Property Managers. These records corroborate the flow of money described above by the CIP Employees and the Property Managers and provide specific examples of the three types of unauthorized wire transfers of funds belonging to the TIC Investments. For example:

Transfers to Cover Expenses of Struggling TIC Investments

a. On or about October 28, 2010, approximately \$31,500 was transferred out of the Cabot Oak Grove Plaza property account into CIP Operating Account 2. On the same day, approximately \$31,500 was transferred out of CIP Operating Account 2 into the Cabot Addison property account.

b. On or about February 11, 2011, approximately \$75,000 was transferred out of the Cabot Ashtabula property account into CIP Operating Account 2. On the same day, approximately \$75,000 was transferred out of CIP Operating Account 2 into the Cabot Oak Grove Plaza property account.

Transfers to Cover Personal Expenses of CABOT and KROLL

c. From in or about 2009, through in or about 2013, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, caused funds belonging to the TIC Investments to be transferred from the CIP Operating Accounts to pay for millions of dollars of personal expenses. For example:

i. Between on or about April 1, 2010, and on or about April 30, 2010, approximately \$27,500 was transferred from the CIP Operating Accounts to one of CABOT's personal bank accounts. During that same month, a check totaling approximately \$9,500 was drawn on CABOT's personal account to pay for an apartment rental in Miami, Florida. In addition, throughout that same month, a total of approximately \$18,085 was withdrawn from CABOT's personal account to pay for daily living expenses.

ii. Between in or about January 2011, and in or about March 2012, approximately \$41,867 was transferred from CIP Operating Account 1 to a private college located in Connecticut to pay for the college tuition of one of CABOT's children.

iii. On or about August 28, 2012, a wire transfer of approximately \$12,790 was sent from CIP Operating Account 1 to a private university located in Pennsylvania to pay for the college tuition of one of CABOT's children.

iv. From in or about March 2010, through in or about January 2011, approximately \$50,035 was transferred from CIP Operating Account 1 to pay for KROLL's rental apartment at a luxury apartment building located in Manhattan, New York.

v. On or about March 31, 2010, approximately \$40,000 was transferred from CIP Operating Account 2 to KROLL's personal bank account. On or about April 2, 2010, KROLL made a mortgage payment of approximately \$8,715 from his personal bank account. On or about April 5, 2010, KROLL made a payment of approximately \$30,000 to American Express from his personal bank account.

vi. On or about January 21, 2012, KROLL

purchased a 2012 BMW 650XI, with a manufacturer's suggested retail price of approximately \$105,476. Between on or about January 21, 2012, and on or about August 20, 2012, approximately \$22,500 was debited from KROLL's personal bank account to BMW Financial Services and BMW Sales.

Transfers to Cover CIP Business Expenses

d. I know from publicly filed documents and my discussions with a former attorney at a law firm based in Arizona (the "Law Firm") that the Law Firm brought a law suit against CABOT, KROLL, CIP, and a CIP subsidiary on behalf of the Cabot Creekside TIC Investors, and negotiated a settlement for damages. The financial records reflect that the settlement was paid out of the CIP Operating Accounts using funds withdrawn from the TIC Bank Accounts. For example:

i. On or about July 15, 2011, multiple wire transfers totaling approximately \$230,000 were sent to CIP Operating Account 2 from the bank accounts of the following TIC Investments: Cabot 465 Cleveland Avenue, Cabot East Town, Cabot North University Drive, Cabot Trafalgar/Avion, and Cabot Turfway Ridge. On the same day, a payment of approximately \$216,500 was made from CIP Operating Account 2 to the Law Firm.

ii. On or about October 14, 2011, multiple wire transfers totaling approximately \$247,000 were sent to CIP Operating Account 2 from the bank accounts of the following TIC Investments: Cabot Ashtabula, Cabot BB&T Financial Center, Cabot Cypress Creek Tower, Cabot East Town, Cabot 20 North Orange, Cabot Trafalgar/Avion, and Cabot Turfway Ridge. On the same day, a payment of approximately \$216,500 was made to the Law Firm.

The Short Sale Letter

33. Based on my review of the general ledgers, tax returns, and other financial and accounting documents maintained by CIP, I know that the misappropriation of funds described above occurred at a time when CIP was suffering huge losses.

34. For example, I have reviewed a letter written by the Accountant, on behalf of CARLTON P. CABOT, the defendant, to the bank that held the mortgage on CABOT's primary residence in Massachusetts. In the letter, which is dated January 28, 2010,

CABOT asked the bank to approve a short sale of his residence as quickly as possible because he had experienced "significant business reversals which have had a profound impact on all aspects of [his] life." CABOT then described the different income sources for CIP - including "acquisition fees from new transactions," "property management fees," and "Master Lease Revenue" - and stated, in sum and substance, that none of these income sources had generated revenue for CIP since in or about early 2008. CABOT further stated that CIP lost approximately \$7.7 million in 2008 and approximately \$4.5 million in 2009.

CONCEALMENT OF MISAPPROPRIATION FROM TIC INVESTORS

Misleading Financial Reports

35. Based on my discussions with the Property Managers and CIP Employee 1, I have learned that it was the responsibility of the Property Managers to provide CIP with detailed financial reports concerning the TIC Investment properties on a monthly basis. These reports included, among other things, balance sheets, trial balances, income statements, budgets, general ledgers, bank reconciliations and bank statements.

36. According to CIP Employee 1, TIMOTHY J. KROLL, the defendant, would use the information in the monthly financial reports from the Property Managers to compile quarterly investor reports for the TIC Investors that outlined the current financial status of the TIC Investments (the "Investor Reports"). The Investor Reports were sent to the TIC Investors via email.

37. Based on my discussions with CIP Employee 1 and the Accountant,² I believe that TIMOTHY J. KROLL, the defendant, intentionally manipulated the numbers in the Investor Reports to conceal the fact that KROLL and CARLTON P. CABOT, the defendant,

² The Accountant was compelled to provide information to the Government under a grant of use immunity by a United States District Judge. The information provided by the Accountant has proven to be reliable and has been corroborated by other independent evidence in this case, including information provided by other witnesses, bank records, emails, and corporate records.

had misappropriated funds from the TIC Investment properties.

Information from CIP Employee 1

a. According to CIP Employee 1, in substance in part, KROLL asked CIP Employee 1 to become more involved in preparing the Investor Reports in or about 2008 when another CIP employee who worked on the Investor Reports left CIP.

b. CIP Employee 1 asked the Property Managers to provide their monthly financial reports to CIP in Excel format, which CIP Employee 1 then forwarded to KROLL at KROLL's request. KROLL created the Investor Reports using the information in the Excel reports provided by the Property Managers.

c. CIP Employee 1 recalled at least two occasions in or about 2010 when KROLL asked CIP Employee 1 how to conceal the money owed by CIP to the TIC Investments in the Investor Reports. For example, on one occasion, CIP Employee 1 recalled seeing a balance sheet that had been provided by one of the Property Managers, which showed a large amount owed by CIP. KROLL told CIP Employee 1, in sum and substance, "I can't show this. How can we show it differently?" CIP Employee 1 recalled feeling uncomfortable and told KROLL, in sum and substance, that the debt existed and he could not simply delete the line item from the balance sheet.

d. CIP Employee 1 also recalled an incident that occurred in KROLL's office in or about 2010. KROLL had an Excel spreadsheet from one of the TIC Investment properties on the screen of his computer. CIP Employee 1 believed that the spreadsheet was for Cabot Addison. The spreadsheet showed a large amount owed by CIP. KROLL told CIP Employee 1, in sum and substance, "I'm going to change this to say 'Due from Reserves.'" CIP Employee 1 told KROLL, in substance and in part, not to make the change, but then observed KROLL make the change in the spreadsheet.

e. CIP Employee 1 also recalled at least two occasions in which KROLL asked the Accountant, in sum and substance, how he (KROLL) could manipulate the Investor Reports to hide the amounts owed by CIP to the TIC Investment properties.

Information from the Accountant

f. The Accountant was not an employee of CIP, but worked as a consultant preparing tax returns and providing certain financial accounting services to CIP from in or about 2003 through in or about 2012. As part of these responsibilities, the Accountant played a limited role in reviewing the Investor Reports before they were sent to the TIC Investors.

g. The Accountant recalled having discussions with KROLL in which the Accountant, in substance and in part, expressed concerns about how KROLL was accounting for the amounts that CIP owed to the TIC Investment properties in the Investor Reports.

h. For example, the Accountant recalled approaching KROLL after reviewing a draft balance sheet for Cabot Oak Grove Plaza as of September 30, 2009 that was supposed to be included in the quarterly Investor Report. The draft balance sheet, which the Accountant kept and which I have reviewed, showed numerous hand-written edits made by KROLL. Among the edits, KROLL crossed out two line items that reflected amounts owed by CIP to Cabot Oak Grove Plaza with the notation "delete." The Accountant recalled asking KROLL why he had indicated that these line items should be deleted. KROLL responded, in sum and substance, that the balance sheet could not reflect the amounts owed by CIP to Cabot Oak Grove Plaza.

i. The Accountant also recalled KROLL making similar adjustments in the Investor Reports for Cabot Addison.

Comparison of the Investor Reports to the General Ledgers

38. During the course of this investigation, I have obtained and reviewed approximately twenty Investor Reports covering nine different TIC Investment properties. Based on my review, I have determined that these Investor Reports were false and misleading and concealed the funds that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, misappropriated from the TIC Investment properties. I further believe that these Investor Reports were manipulated in the same manner that CIP Employee 1 and the Accountant described - namely, KROLL eliminated the line

items that reflected amounts owed by CIP to the TIC Investments and altered the amounts of other line items in the balance sheet to account for the difference. For example:

a. In or about April 2011, Property Manager 1 provided KROLL with financial statements for the period ending March 31, 2011 for the Cabot 550 Polaris Parkway TIC Investment property. The balance sheet contained approximately \$212,400 in an account titled "Accounts Rec.-Related Party," which represented the funds that CABOT and KROLL had transferred from the property and owed to Cabot 550 Polaris Parkway.

b. In the Investor Report created by KROLL for the same property, the \$212,400 amount did not appear in any of the financial statements, nor was there any indication that CIP owed this money to Cabot 550 Polaris Parkway. Instead, the \$212,400 amount was hidden in the balance sheet by increasing "Account Receivable" by \$71,000, increasing "Security Deposit Escrow" by \$15,000 and reducing "Accounts Payable-Trade" by \$126,400, thereby making the balance sheet balance. The other line items in the Investor Report balance sheet matched the line items in Property Manager 1's general ledger.

c. Similarly, I have reviewed the financial statements that the Property Manager for Cabot Addison provided to KROLL for the period ending March 31, 2010. The balance sheet contained approximately \$3,304,053 in an account titled "Payable to/from Cabot Investment Properties," which represented monies that CABOT and KROLL had transferred from the property and owed to Cabot Addison.

d. In the Investor Report created by KROLL for the same property, the \$3,304,053 amount did not appear in any of the financial statements, nor was there any indication that CIP owed this money to Cabot Addison. Instead, the \$3,304,053 amount was hidden in the balance sheet by increasing a reserve account called "Lender Tenant Imp/Leasing Escrow" by \$2,844,886, by creating another reserve account called "Other Reserve" with an amount of \$412,391, and by decreasing "Accrued Expenses" by \$46,776, thereby making the balance sheet balance. The other line items in the Investor Report balance sheet matched the line items in the Cabot Addison general ledger. This is consistent with the recollections of CIP Employee 1 and the Accountant, both of whom recalled KROLL manipulating the balance sheets for

Cabot Addison.

e. The other eighteen Investor Reports that I reviewed and analyzed reflect similar manipulations to hide the funds that CABOT and KROLL transferred out of TIC Investment property accounts.

False Statements to TIC Investors

39. During the course of this investigation, I have participated in interviews of several TIC Investors. Based on these discussions, I have learned, in substance and in part, that TIMOTHY J. KROLL, the defendant, made false and misleading statements to the TIC Investors about how the funds belonging to the TIC Investments were being handled and the overall financial status of the TIC Investments.

40. According to the TIC Investors, TIMOTHY J. KROLL, the defendant, held quarterly conference calls to discuss the Investor Reports and the TIC property operations. The conference calls became less frequent over time and ultimately stopped. By late 2011 the TIC Investors were not getting their Investor Reports in a timely manner, if at all. The investor distributions also decreased significantly and became more erratic.

41. When the TIC Investors inquired about the decreased distributions, TIMOTHY J. KROLL, the defendant, made false and misleading statements to the TIC Investors that the investor distributions had been reduced because of, among other things, operational issues and capital improvements to the properties. In truth and in fact, the investor distributions had been reduced, at least in part, because CARLTON P. CABOT, the defendant, and KROLL had been withdrawing funds belonging to the TIC Investments and using them to pay for personal and business expenses, as well as the expenses of unrelated TIC Investments.

42. Based on the interview of one TIC Investor ("TIC Investor 1"), I learned, in substance and in part, the following:

a. In or about 2011, TIC Investor 1 became concerned about the erratic investor distributions from CIP,

CIP's failure to provide regular Investor Reports, and the lawsuit that CIP was defending related to other TIC Investments. CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, were not responsive to TIC Investor 1's initial inquiries and, as a result, he contacted the broker-dealer who marketed the TIC Investment to set up a conference call with KROLL.

b. On the conference call in or about 2011, KROLL falsely assured TIC Investor 1, in sum and substance, that CIP was financially healthy and would begin issuing investor distributions soon. KROLL also falsely told TIC Investor 1, in sum and substance, that all of the TIC Investments were separate entities and that the funds belonging to the individual investments were not comingled.

43. Based on my discussions with another TIC Investor ("TIC Investor 2") I learned, in substance and in part, the following:

a. In or about June 2012, TIC Investor 2 was on a conference call with TIMOTHY J. KROLL, the defendant, and others. On the call, KROLL admitted that he took \$2.3 million out of the Cabot Ashtabula property account, but stated that he removed the money from the account to obtain bargaining power with the mortgage bank to refinance the property. KROLL also promised that he would repay the funds. Based on KROLL's representations, TIC Investor 2 understood that the funds had been withdrawn in one lump sum.

b. Based on my review of the bank records, I have learned that from in or about November 2010, through in or about November 2011, there were approximately fifty-seven separate wire transfers from the Cabot Ashtabula property account to CIP Operating Account 1 totaling approximately \$2,511,572.

c. According to TIC Investor 2, the property was never refinanced and these funds were never repaid to Cabot Ashtabula.

LOSS TO TIC INVESTORS

44. Based on my review of an internal CIP balance sheet, dated September 27, 2012, I believe that, as of that

date, CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, owed approximately \$17 million to the TIC Investments, as reflected in the table below:

<u>PROPERTY</u>	<u>AMOUNT OWED BY CIP</u>
Cabot 20 North Orange	\$2,480,394.49
Cabot 465 Cleveland Avenue	\$312,137.38
Cabot 570 Polaris Parkway	\$403,715.08
Cabot 550 Polaris Parkway	\$707,675.83
Cabot Addison	\$3,825,731.56
Cabot Ashtabula	\$3,092,038.00
Cabot BB&T Financial Center	\$225,189.11
Cabot East Broward	\$3,001,883.69
Cabot East Town Mall	\$439,384.29
Cabot Oak Grove Plaza	\$1,484,695.66
Cabot Trafalgar/Avion	\$936,635.62
TOTAL	\$16,909,480.71

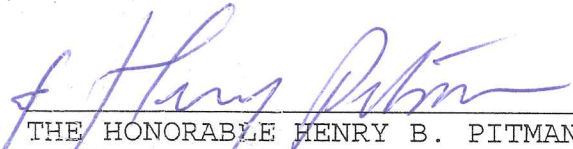
45. In addition to the approximately \$17 million that CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, misappropriated from the TIC Investments, the TIC Investors also lost approximately \$240 million that they invested as principal in the TIC Investments.

WHEREFORE, the deponent respectfully requests that arrest warrants be issued for CARLTON P. CABOT and TIMOTHY J. KROLL, the defendants, and that they be arrested and imprisoned, or bailed, as the case may be.



VIRGINIA COLOMBO
Postal Inspector
U.S. Postal Inspections Service

Sworn to before me this
1st day of June, 2015



THE HONORABLE HENRY B. PITMAN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK