

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

AM PITT HOTEL, LLC,

Plaintiff,

-against-

400 5TH AVE., L.P.,

Defendant.

Index No.
Date Purchased:

SUMMONS

Plaintiff designates New York County as the place for trial. The basis of this designation is CPLR § 503.

To the Above-Named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service; or within thirty (30) days after completion of service made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
June 5, 2018

PRYOR CASHMAN LLP

By: 

Todd E. Soloway
Lisa M. Buckley
Jason S. Mencher

7 Times Square
New York, New York 10036-6569
(212) 421-4100
Attorneys for Plaintiff AM Pitt Hotel LLC

Defendant's Address:

400 5th Ave. L.P.
114 Chestnut Street
5th Floor
Philadelphia, Pennsylvania 19106

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COMPLAINT

Plaintiff AM Pitt Hotel, LLC, by its attorneys, Pryor Cashman LLP, as and for its Complaint against defendant 400 5th Ave., L.P., alleges upon information and belief as follows:

NATURE OF THE ACTION

1. 400 5th Ave., L.P. is the owner (“Owner” or “Defendant”) of the historic “Kaufmann’s” building (“Building”) in Pittsburgh, Pennsylvania. Core Realty, Inc. (“Core”) is the managing member of 400 5th Ave. L.P.
2. Owner is renovating the Building, and converting it to a mixed-use property to include commercial and residential tenants.
3. Core is the Owner’s construction project manager, or CPM, in charge of the renovation of the Building.
4. Pursuant to an Agreement of Sale dated November 24, 2015 (“Sale Agreement”) between Owner and AM Pitt Hotel, LLC (“AM Pitt” or “Plaintiff”) and certain amendments thereto, AM Pitt purchased condominium Unit #2 (“Hotel Unit”) in the Building, which it will turn into a boutique hotel, to be managed under the “Even” brand pursuant to a hotel management agreement (“HMA”).

5. The first floor of the Building will consist of retail tenants, and the second floor will house office tenants. Parking will be located on the third and fourth floors of the Building. AM Pitt's hotel will be located on the fifth and sixth floors, with a separate entrance on the first floor. Hotel amenities will include a pool and state-of-the-art fitness center. Floors seven through twelve of the Building will house rental apartments. A restaurant, infinity pool and tennis courts will be located on the roof of the Building.

6. Under the Sale Agreement, Core was initially required to deliver to AM Pitt a "gray shell" by the "Completion Date," August 24, 2016, at which point AM Pitt's own contractor for the interior hotel space could begin its work. Core did not come close to meeting the deadline.

7. In fact, Core's construction at the Building still is incomplete and the Owner still has not obtained a certificate of occupancy, thereby preventing AM Pitt's construction team from completing the renovation of the interior hotel space, and preventing AM Pitt from opening the hotel for business.

8. AM Pitt cannot open the hotel for business unless and until Core obtains a certificate of occupancy for Building.

9. Shortly after the execution of the Sale Agreement, it became apparent that Core lacked the experience, skill, manpower and cash flow necessary to successfully, and timely, renovate the Building in accordance with the timing set forth in the Sale Agreement.

10. Notably, on June 1, 2018, the Mayor of Pittsburgh told Pittsburgh's Action News 4 that he believes the redevelopment of the Kaufmann's Building hit early delays because of Core's approach to labor costs. Specifically, Mayor Bill Peduto is reported to have told Action News 4 that Core "tried to cut corners in some aspects by hiring the lowest paid workers that

they could. And what they find out is the work doesn't get done as well as when you hire highly skilled workers to do the job." <http://www.wtae.com/article/kaufmanns-building> (June 1, 2018).

11. To accommodate Core, AM Pitt entered into what ultimately would be three separate amendments of the Sale Agreement, each one extending the Completion Date and providing for liquidated damages applicable to specified "Delayed Items" not completed by the agreed-upon deadlines.

12. With its primary goal being to get the hotel open and operating, AM Pitt worked tirelessly to accommodate Core throughout the construction process.

13. AM Pitt also wished to maintain a good relationship with the Building's Owner since the parties would have to co-exist for at least five years in order for AM Pitt to realize certain tax credits for renovating its part of the historic Building.

14. In each amendment, AM Pitt agreed to release money to Core from the "Escrow Account" established pursuant to the Sale Agreement, notwithstanding that AM Pitt had no obligation to do so since Core had failed to achieve the requisite milestones that trigger the release of funds.

15. The deadlines established in the third (and final) amendment to the Sale Agreement have come and gone. Since at least January 2018, Core has refused to negotiate with AM Pitt at all, much less in good faith, to establish new deadlines for the completion of Core's work on the Building and Hotel Unit, leaving AM Pitt at its mercy.

16. Despite AM Pitt's accommodations, Core has never produced a credible project schedule, requested by AM Pitt on numerous occasions, or a schedule that AM Pitt's contractor and subcontractors could rely upon. Without a schedule, the work in the Building (and as a result in the Hotel Unit) lacks direction and coordination.

17. Consistent with its posture throughout the construction process, when AM Pitt sent Core a proposed fourth amendment to the Sale Agreement intended to reflect the current status of the project, after Core's continued failure to meet deadlines, and to establish a new Completion Date, Core's response, after weeks of silence, was to affirmatively state that it would not partake in any negotiation of such an amendment.

18. As a result of Core's continuous construction delays and the Owner's resulting failure to obtain a certificate of occupancy for the Building in breach of the parties' agreements, AM Pitt has suffered millions of dollars of liquidated, compensatory and consequential damages.

19. Additionally, as a result of Core's failure and refusal to agree to a fourth amendment establishing a new Completion Date, AM Pitt is suffering from the commercial uncertainty of not knowing when it can reasonably expect to open the hotel.

20. More specifically, in addition to millions of dollars of liquidated damages to which AM Pitt is entitled as a result of Core's failure to complete "Seller's Work" and the Delayed Items on time, AM Pitt has been required to continue paying interest on its loans financing the acquisition for well beyond the time anticipated under the terms of the original Sale Agreement and the first, second and third amendments, and at higher interest rates. False starts based on Core's repeated commitment to construction deadlines that it ultimately failed to meet have increased AM Pitt's pre-opening costs under the HMA. And, AM Pitt has been deprived of profits it would have earned had the hotel opened as planned.

21. Now, with no firm dates for completion of the Delayed Items and Seller's Work, AM Pitt is being held at the mercy of Owner and Core, which should be held accountable for the damages their actions have caused to AM Pitt.

THE PARTIES

22. Plaintiff AM Pitt Hotel, LLC, is a Delaware limited liability company organized under the laws of the state of Delaware with a principal place of business at 145 West 57th Street, 9th Floor, New York, New York 10019.

23. Upon information and belief, defendant 400 5th Ave., L.P. is a Pennsylvania limited partnership with a principal place of business located at 114 Chestnut Street, 5th Floor, Philadelphia, Pennsylvania 19106. Upon further information and belief, Core Realty, Inc. is the managing member of 400 5th Ave., L.P., and 400 5th Ave., L.P.'s construction manager responsible for renovating the Building.

JURISDICTION AND VENUE

24. This Court has personal jurisdiction over Defendant 400 5th Ave., L.P. because, upon information and belief, defendant regularly conducts business within the State and County of New York. Additionally, plaintiff AM Pitt negotiated the relevant agreements with Defendant from its offices in New York City, including initiating and receiving telephonic and electronic communications.

25. Venue is proper in New York County pursuant to CPLR § 503.

FACTUAL BACKGROUND

I. AM Pitt Purchases the Hotel Unit and Enters into the Sale Agreement and Development Agreement with Owner

26. 400 5th Ave. is the owner of the historic "Kaufmann's" building, which recently housed a Macy's department store, located at 400 Fifth Avenue in Pittsburgh, Pennsylvania.

27. Core is the managing member of Owner and served as the Owner's CPM in connection with Owner's renovation of the historic Building, which Owner is in the process of converting into a mixed-use development.

28. Pursuant to the Sale Agreement dated November 24, 2015 between the Owner (as Seller) and AM Pitt (as Buyer), AM Pitt became the fee owner the Hotel Unit in the Building for a total purchase price of \$8 million dollars.

29. AM Pitt acquired the Hotel Unit (the entire fifth and sixth floors of the Building) for the purpose of renovating the space and operating a boutique hotel there. Under a hotel management agreement (“HMA”) between AM Pitt and IHG Management (Maryland) LLC (“IHG”), the hotel will be managed and operated under IHG’s “Even” brand.

30. The Hotel Unit, located on levels 1, 5 and 6 of the Building, is 138,197 square feet in size. The hotel, when open for business, will consist of approximately 160 rooms, a lobby, meeting space, a fitness center, a food and beverage facility and a swimming pool.

31. The Sale Agreement specifies that the hotel will have a dedicated street level entry way and dedicated passenger elevators with access limited to the hotel floors. AM Pitt and the Manager cannot open the hotel for business unless and until Core obtains a certificate of occupancy for Building.

32. Under the Sale Agreement, AM Pitt was required to pay Owner \$3,500,000 (referred to in the Agreement as the “Purchase Price”) upon “Title Settlement,” and \$4,500,000 on the “Final Settlement Date,” defined in paragraph 6 (g) as within 5 business days following AM Pitt’s “Acceptance” of the “Seller’s Work.” The funds were held in a separate Escrow Account established by Owner.

33. The Sale Agreement also provided for a “Holdback” requiring the Title Company to retain a specified amount of funds until AM Pitt received a certificate of occupancy allowing for “revenue service” at the hotel.

34. Upon AM Pitt's receipt of its certificate of occupancy, the Holdback would be credited toward the purchase price. To date, AM Pitt has not received a certificate of occupancy as a result of Owner's delays in completing its construction at the Building.

35. Pursuant to paragraph 6 (a) of the Sale Agreement, "Seller's Work" is defined as the establishment of a "gray shell" for the Hotel Unit substantially consistent with scope of work specified on Exhibit B to the Sale Agreement.

36. Paragraph 6 (b) of the Sale Agreement provides that "Seller shall use all commercially reasonable efforts to perform and complete Seller's Work as soon as practicable following Title Settlement, but in no event later than the nine (9) month anniversary of the Title Settlement (the "Completion Date")."

37. Upon completion of Seller's Work, the Owner was required to provide AM Pitt with a written Completion Notice, after which AM Pitt would have a 10-day window to inspect the work and either confirm the completion of that work, or identify deficiencies that the Owner was required to remedy to AM Pitt's reasonable satisfaction as soon as possible thereafter. (Paragraph 6 (g)).

38. On the Final Settlement Date (defined in paragraph 6 (g) as within 5 business following Buyer's Acceptance of Seller's Work), AM Pitt "shall be deemed to have unconditionally released to Seller an amount equal to Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000) in consideration of Seller's Work," and "except for the Holdback, the Seller's Escrow shall be unconditionally released to Seller."

39. Pursuant to the Sale Agreement, the Title Settlement Date was November 24, 2015. Thus, the Completion Date was nearly two years ago – August 24, 2016.

40. Contemporaneous with the execution of the Sale Agreement, the parties entered into a Development Agreement (the "Development Agreement"), also dated November 24, 2015, providing for certain rights and remedies in the event of a default by either party prior to the Final Settlement Date.

41. Paragraph 1(b) of the Development Agreement provided:

[I]f Seller fails to complete the Seller's Work prior to the Completion Date, Seller shall be obligated to pay Buyer liquidated damages in the amount of **\$25,000 per month**, or any portion thereof, during which the Seller's Work continues beyond the Completion Date. (Emphasis added).

II. Owner Fails To Timely Deliver the Hotel Unit to AM Pitt and AM Pitt Generously Accommodates Owner's Requests for Extensions of Time

42. Core did not come close to meeting the August 24, 2016 deadline established by the Sale Agreement for delivering the gray shell to AM Pitt. The construction of the Building has been severely delayed, which, in turn, has delayed construction within the Hotel Unit and delayed the opening of the hotel.

43. Building construction is a sequenced process and, as a consequence, delays with respect to the completion of one construction item have a ripple effect, delaying other items, slowing down work, and necessitating change orders.

44. Core required multiple extensions of time in which to complete its construction work on the Building.

45. As a result, the parties entered into a series of amendments to the Sale Agreement, each one extending Core's time to complete Seller's Work.

46. Moreover, without waiving any of its rights, in each amendment, AM Pitt agreed to release to Core money from the Escrow Account, notwithstanding that AM Pitt had no

obligation to release money to Core, which had failed to achieve the milestones that would have triggered the release of funds.

47. AM Pitt released the funds to accommodate Core, which said it “needed” the money.

48. Indeed, AM Pitt bent over backwards to accommodate Core throughout the ongoing construction process because it wished to maintain a good relationship with the Owner since the parties would have to co-exist in the Building for at least five years.

49. The Building is an historic site, and, as a result of its renovation of the Hotel Unit, AM Pitt qualified for Federal Historic Tax Credits or “rehabilitation tax credits.” However, AM Pitt will not fully realize its tax credits until at least five years after the hotel opens for business.

A. The First Amendment to the Sale Agreement

50. On October 6, 2016, the parties entered into the First Amendment to the Sale Agreement (“First Amendment”) which required that Seller’s Work be completed as of the date of the First Amendment.¹ Pursuant to paragraph 1 (b) of the Development Agreement, AM Pitt already was entitled to collect \$75,000 in liquidated damages.

51. Paragraph 2 of the First Amendment provides:

Seller has advised that certain components of Seller’s Work will not be complete within the Hotel Unit when Seller would otherwise be prepared to deliver a Completion Notice. Specifically, Seller has advised that the items set forth on Appendix 1 of this Amendment will be delayed (the “Delayed Items”). The parties agree that Seller may deliver a Completion Notice even though the Delayed Items, and only the Delayed Items remain outstanding; provided that Seller shall continue to diligently pursue the completion of the Delayed Items in accordance with completion dates set forth in the attached Appendix 1.

¹ Simultaneous to entering into the First Amendment, the parties entered into the First Amendment to Development Agreement dated October 6, 2016. Indeed, the Development Agreement, like the Sale Agreement, was amended three times. Those amendments are not relevant to the dispute at issue insofar as they pertain to rights that neither party exercised.

52. The Delayed Items identified in Appendix 1 are not minor. On the contrary, they are major items – including permanent electric, gas and water power, working passenger elevators dedicated to the hotel, and fire and life safety systems – the incompleteness of which has held up the ability of AM Pitt’s construction team, Mascaro Construction, to perform certain work on the interior of the Hotel Unit, and without which the Owner cannot obtain a certificate of occupancy for the Building.

53. More specifically, the Delayed Items on Appendix 1 and corresponding extended deadlines for their completion were set out as follows:

- (1) Permanent DLCO electric service to be completed by March 1, 2017;
- (2) Hotel passenger elevators to be completed by March 1, 2017;
- (3) Hotel service elevator to be completed by April 15, 2017;
- (4) Vertical shafts to be completed by February 15, 2017;
- (5) Mechanical room to be completed by February 15, 2017;
- (6) Permanent water and gas service to be completed by March 1, 2017;
- (7) Rooftop support dunnage to be completed by March 1, 2017;
- (8) Main atrium finishes to be completed by May 1, 2017;
- (9) Temporary enclosures for main atrium door locations to be completed by December 31, 2016;
- (10) Final demising walls at hotel lobby to be completed by March 1, 2017;
- (11) Removal of storm windows to be completed by May 1, 2017;
- (12) Roofing work for building envelope and ensuring the Hotel Unit is weather-tight and water-tight to be completed by May 1, 2017;
- (13) Permanent fire and life safety systems to be completed by April 1, 2017;

(14) Coordination of fire alarm systems to be completed by May 1, 2017; and

(15) Parking garage ceiling temperature of forty degrees to be completed by May 1, 2017.

54. The First Amendment provides that if the Owner was unable to complete any of the Delayed Items on Appendix 1 on or before the corresponding completion date, Owner shall pay AM Pitt from the Holdback liquidated damages equal to \$850 per day until such Delayed Item is completed.

55. AM Pitt is also entitled to recover compensatory and/or consequential damages for the delays that are not covered by the liquidated damages provisions.

56. Under the Sale Agreement, AM Pitt had no obligation to agree to the release of funds from the Seller's Escrow because the requisite milestones had not been met.

57. Paragraph 3 of the First Amendment modified the Sale Agreement by providing that \$1.5 million dollars of the Seller's Escrow would be released to Owner upon execution of the First Amendment, and another \$1 million dollars would be released in two payments in October of 2016. Thus, under the First Amendment, \$2.5 million dollars was released to Owner by the end of October 2016, notwithstanding the number of critical Delayed Items outstanding.

58. Paragraph 4 of the First Amendment modified Paragraph 6 (j) of the Sale Agreement, and increased the amount of the Holdback by \$500,000 dollars, for a total Holdback of \$1 million dollars.

59. Pursuant to paragraph 5 of the First Amendment, the Title Company was to release half of the Holdback (\$500,000) to Owner upon receipt of joint written notice by the parties that AM Pitt had received a certificate of occupancy allowing for "revenue service" at the Hotel Unit.

60. AM Pitt cannot (and never could have) obtain a certificate of occupancy for the Hotel Unit unless and until Owner obtains a certificate of occupancy for the Building.

61. Given the nature of the Delayed Items, the Owner cannot obtain a certificate of occupancy for the Building unless and until most of the Delayed Items, *i.e.*, permanent electric, gas and water power, permanent fire and life safety systems, coordination of fire alarms, and elevators, are completed.

62. The remaining \$500,000 Holdback was to be released to the Owner upon joint written notice that Owner had completed all of the Delayed Items.

63. AM Pitt's agreement to these modifications was conditioned upon its belief at the time that Seller's Work was progressing in accordance with Core's schedule, to be shared, from time to time, with AM Pitt.

64. Core was not transparent regarding its progress on the Delayed Items, and routinely ignored AM Pitt's inquiries and requests for progress meetings.

65. When Core did share information with AM Pitt regarding the progress of the construction, Core's *modus operandi* was to blame others for its failure to timely complete its work in the Building and Hotel Unit, including the Delayed Items.

66. Paragraph 8 of the First Amendment provides that "[n]othing in this Amendment shall act to waive, disclaim or release any claim, obligation, duty or entitlement of either party which was incurred or arose prior to the date of this Amendment, including any entitlement of Buyer to liquidated damages."

67. AM Pitt's liquidated damages of \$75,000 which accrued under the Development Agreement survive the First Amendment to the Sale Agreement.

68. Core's assurance that it would "continue to diligently pursue the completion of the Delayed Items" was an empty promise.

69. Core took more than a year from the date of the First Amendment to complete many of the Delayed Items, and now, after over two years of construction, critical Delayed Items are still incomplete.

70. Neither the Building nor the Hotel Unit have received certificates of occupancy (temporary or otherwise).

71. Although Core's assurances were empty, AM Pitt remained committed to maintaining a cooperative relationship with the Owner.

72. As of May 31, 2017, 30 days later than the latest deadline by which Core was required to complete the Delayed Items, the following Delayed Items still had not been completed and were long past due:

- (1) Permanent DLCO electric service was 90 days past due;
- (2) Hotel passenger elevators were 90 days past due;
- (3) Hotel service elevator was 45 days past due;
- (4) Vertical shafts were 104 days past due;
- (5) Mechanical room was 104 days past due;
- (6) Permanent water and gas service was 90 days past due;
- (7) Rooftop support dunnage was 90 days past due;
- (8) Main atrium finishes were 30 days past due;
- (9) Final demising walls were 60 days past due;
- (10) Removal of storm windows was 30 days past due;

- (11) Roofing work for building envelope and ensuring that the Hotel Unit was weather-tight and water-tight was 30 days past due;
- (12) Permanent fire & life safety systems were 60 days past due;
- (13) Coordination of fire alarm systems was 30 days past due; and
- (14) Maintenance of the parking garage ceiling temperature at 40 degrees was 30 days past due.

73. On May 31, 2017, the parties entered into the Second Amendment to the Sale Agreement (the "Second Amendment"). By then, AM Pitt already was entitled to liquidated damages of at least \$700,000 (\$850 per item per day past the deadline pursuant to the First Amendment, plus \$75,000 that had already accrued pursuant to paragraph 1(b) of the Development Agreement).

B. The Second Amendment to the Sale Agreement

74. The Second Amendment extended the Final Settlement Date for an additional 30 days from May 31, 2017 (*i.e.*, June 30, 2017).

75. On execution of the Second Amendment, AM Pitt issued its Acceptance with respect to the items on Exhibit B to the Sale Agreement, but not with respect to the Delayed Items on the Updated Appendix 1 to the Second Amendment.

76. The Updated Appendix 1 identified the construction work that still had not been completed as of May 31, 2017, established new completion dates for that work, and delineated a new set of liquidated damages applicable if the new completion dates were not met. Specifically:

- (1) Permanent DLCO electric service had a new completion date of August 15, 2017 and liquidated damages of \$8,000 per day;

- (2) Passenger elevators had a new completion date of August 15, 2017 and liquidated damages of \$8,000 per day;
- (3) Hotel service elevator had a new completion date of September 1, 2017 and liquidated damages of \$8,000 per day;
- (4) Mechanical room had a new completion date of July 1, 2017 and liquidated damages of \$8,000 per day;
- (5) Permanent water and gas service had a new completion date of July 15, 2017 and liquidated damages of \$8,000 per day;
- (6) Removal of storm windows had a new completion date of September 15, 2017 and liquidated damages of \$8,000 per day;
- (7) Sprinkler risers had a completion date of 8 weeks after Final Settlement and liquidated damages of \$5,000 per day;
- (8) Skylight remediation had a completion date of 20 weeks from the date of the Second Amendment and liquidated damages of \$5,000 per day;
- (9) Punch windows had a new completion date of May 31, 2017 and liquidated damages of \$6,000 per day;
- (10) Horizontal plumbing DWV piping had a completion date of July 5, 2017 and liquidated damages of \$3,000 per day; and
- (11) Lead paint abatement had a completion date of May 30, 2017 and liquidated damages of \$3,000 per day.

77. Pursuant to paragraph 4 of the Second Amendment, the parties acknowledged that \$2.75 million dollars of the Seller's Escrow had been released to Core, leaving a balance of \$750,000 dollars.

78. Upon Final Settlement, a portion of the balance would be used to fund an increase in the Holdback from \$1 million dollars to \$1.25 million dollars.

79. Paragraph 5 of the Second Amendment replaced paragraph 6 (j) of the Sale Agreement relating to the Holdback.

80. Under Paragraph 5, the Title Company would retain the Holdback until receipt of joint written notice of the parties that the Skylight Remediation had been completed, at which time \$250,000 of the Holdback would be released.

81. Just as under the First Amendment, the Title Company was to release \$500,000 dollars to Core upon AM Pitt's receipt of a certificate of occupancy allowing for revenue service at the Hotel Unit, and the balance upon joint notice that the Delayed Items had been completed.

82. Paragraph 5 provides that if Core was unable to complete any Delayed Item on the Updated Appendix 1 by the corresponding completion date, the escrow agent would release to AM Pitt from the Holdback liquidated damages equal to the amounts set forth on the Updated Appendix 1 until such Delayed Item was completed, and accepted by AM Pitt.

83. If more than one Delayed Item existed at any one time, AM Pitt was entitled to receive adjusted liquidated damages in accordance with Appendix 2 to the Second Amendment.

84. Appendix 2 provides that if more than one Delayed Item exists at any one time, Owner shall be charged liquidated damages as follows:

For each day in which multiple Delayed Items remain outstanding, Seller shall be charged the total amount of all liquidated damages owed by Seller in accordance with Updated Appendix 1 or \$20,000, whichever is less, per day, for the first ten (10) days in which multiple Delayed Items remain outstanding. If multiple Delayed Items remain outstanding beyond ten (10) days, Seller shall be charged the total amount of all liquidated damages owed by Seller in accordance with Updated Appendix 1 or \$30,000, whichever is less, per day, for the next ten (10) days in which multiple Delayed Items remain outstanding. **In the event multiple Delayed Items remain outstanding beyond twenty (20) days, Seller shall be**

charged the total amount of all liquidated damages owed by Seller in accordance with Updated Appendix 1. (Emphasis added).

85. Paragraph 5 provides that, although liquidated damages shall continue to accrue and be paid to AM Pitt until Seller's Work has been accepted, "the aggregate of all liquidated damages payable hereunder by Seller for Delayed Items shall not exceed \$350,000" (the "LD Cap").

86. Although AM Pitt was opposed to any cap on liquidated damages given Core's track record of failing to meet every construction deadline established in the Sale Agreement and Development Agreement, as amended, to further accommodate Core, AM Pitt was willing to consider a cap in the seven figures, particularly insofar as its liquidated damages to date had already exceeded \$350,000 dollars.

87. Ultimately, however, AM Pitt agreed to an LD Cap of \$350,000 dollars for Delayed Items only, and even then, only if the Building construction was completed by the drop-dead date of November 30, 2017.

88. More specifically, paragraph 5 provides for liquidated damages under Appendix 3 applicable when Core's failure to meet the deadlines set forth in Updated Appendix 1 caused a delay in the commencement of revenue service beyond November 30, 2017, at which point, all bets were off:

[I]f Buyer is prepared to commence revenue service, and any delays attributable to Seller's failure to meet the deadlines set forth in Updated Appendix 1 directly and solely causes a delay in the commencement of such revenue service beyond **November 30, 2017 and Buyer is otherwise ready, willing and able to open for such revenue service in all other manner and respects as of November 30, 2017, **in addition to the above liquidated damages and any other remedies available to the Buyer, Buyer shall direct the Escrow Agent to release additional liquidated damages as set forth in Appendix 3 hereto....**" (Emphasis added).**

89. Had it not been for Core's construction delays, AM Pitt would have been ready, willing and able to commence revenue service on or before November 30, 2017.

90. Appendix 3 to the Second Amendment provides for liquidated damages of \$6,000 a day for delays between 1 to 30 days, and \$9,000 a day for delays beyond 30 days.

91. Liquidated damages payable by Seller under Appendix 3 are in addition to any liquidated damages payable by Seller pursuant to Updated Appendix 1, and in addition to other remedies available to AM Pitt.

92. Paragraph 5 provides that liquidated damages "are not intended to...serve as Buyer's sole and exclusive remedy for Seller's delay or non-performance. Buyer retains all other rights afforded to it under this [Sale] Agreement or otherwise."

93. Liquidated damages pursuant to Appendix 3 have been accruing since November 30, 2017, and continue to accrue daily. As of June 5, 2018, liquidated damages under Appendix 3 amount to at least \$1,575,000 dollars.

94. Pursuant to paragraph 10, "[n]othing in this Amendment shall act to waive, disclaim or release any claim, obligation, duty or entitlement of either party which was incurred or arose prior to the date of this Amendment, including any entitlement of Buyer to liquidated damages."

C. The Third Amendment to the Sale Agreement

95. On June 26, 2017, the parties entered into yet another amendment at the entreaty of Core – the Third Amendment to Agreement of Sale (the "Third Amendment", and collectively with the "First Amendment" and the "Second Amendment", the "Amendments") which extended the July 1, 2017 Final Settlement Date to July 14, 2017, and released to Core an additional \$375,000 dollars from Seller's Escrow.

96. Thus, by June 26, 2017, notwithstanding Core's failure to meet the milestones triggering the release of funds from the Seller's Escrow, the Title Company had released to Owner a total of \$3.125 million dollars, leaving only \$375,000 in the escrow account.

97. As with the First Amendment and Second Amendment, nothing in the Third Amendment waives, disclaims or releases any claim, obligation, duty or entitlement of either party that was incurred or arose prior to the date of the Amendment.

III. Owner's Delays Continue Despite Owner's Promises to AM Pitt of Completion, and Damages Continue to Accrue

98. As of June 5, 2018, numerous Delayed Items still have not been completed, including: (i) permanent DLCO electric service for the Building and permanent power to the 1st, 5th, 6th and 13th floors; (ii) hotel elevators; (iii) permanent water service; (iv) atrium finishes; (v) caulking and sealant for window units; (vi) ensuring the Hotel Unit and Building were weather-tight and water-tight; (vii) permanent fire and life safety system; and (viii) the atrium skylight. Based on the formula specified in Appendix 3 of the Second Amendment, liquidated damages just for these Delayed Items now total more than \$5,000,000 dollars.

99. Indeed, Core failed to issue Completion Notices for the above Delayed Items, and with respect to other Delayed Items, Core issued "non-completion" Completion Notices, acknowledging that the work had not been completed, but blaming others.

100. By way of one alleged "Completion Notice" dated July 14, 2017, Core confirmed that permanent water was not yet completed "due to utility company delay," but that Core would provide an update within three weeks. No update was provided, and to date, nearly one year later, the Building has no permanent water system.

101. On or about December 7, 2017, Core communicated to AM Pitt that Core's failure to provide permanent electric service to the Hotel Unit was allegedly the fault of

Duquesne Light Company. Permanent power, Delayed Item 1 on Updated Appendix 1 of the Delayed Items, is still outstanding. Duquesne Light Company has vigorously denied that it is to blame for the lack of permanent power in the Building. See <http://www.wtae.com/article/kaufmanns-building> (June 1, 2018) (“Duquesne Light is not responsible for the delay in the opening of this building”; “Yesterday we received notification that...Core Realty obtained conditional wiring approval from the City. Duquesne Light is now able to continue its work to energize the building. Crews were on-site last night and will continue to work through the weekend and next week in preparation to connect power once Core Realty satisfies the conditional wiring approval from the City.”).

102. After numerous statements over several months that the Hotel Unit’s elevators were to be delivered within weeks, on or about December 7, 2017, Core suddenly stated that the elevators were to be installed in ten to twelve weeks, and blamed the delay of providing elevators to the Hotel Unit on AM Pitt, claiming the delay was tied to the cab finishes selected by AM Pitt and approved by the hotel brand.

103. The absence of modular elevator cab finishes does not impact the workings of the elevator or the ability for Core’s elevator contractor to furnish and install new cabs and working gear.

104. Over five months later, AM Pitt has no sign of delivery or installation of elevators or their related systems, solely due to Core’s inept management of the project and construction. Repeated requests to obtain proof of the elevator orders and a site visit to the elevator company to view the cabs, which are claimed to have arrived, have been stonewalled for months.

105. Under the Sale Agreement, Core was required to provide AM Pitt with a dedicated construction elevator as of the date of closing.

106. Instead, Core only provided AM Pitt's contractors with a total of eight hours of elevator use per week, forcing the contractors to bring materials into the Hotel Unit through the Hotel Unit's windows on the fifth and six floors of the Building, slowing down AM Pitt's work. And, at various times during the project, the elevators were non-functional, further impeding AM Pitt's ability to perform work in the Hotel Unit.

107. The lack of a dedicated full-time elevator for AM Pitt resulted in delays to both labor and materials, including the inability to receive key shipments of materials in a timely manner and additional costs for street closure permits, overtime, and weekend crews to clear debris after hours.

108. Core's failure to provide a weather-tight and water-tight space has resulted in multiple flooding events and leaks which have plagued the work by AM Pitt in the Hotel Unit, and caused extensive damage.

109. The water infiltration has resulted in mold and fungus growth throughout the Hotel Unit.

110. It has damaged guest rooms and finishes, and has also infiltrated electrical lines servicing the Hotel Unit, delaying work and disrupting power.

111. The cost of the repairs necessary to address these damages has, to date, been borne by AM Pitt.

112. Consistent with its course of conduct throughout the construction work, Core has either delayed in fixing leaks, or not addressed them at all, leaving the Hotel Unit completely exposed to future water infiltration and damage.

113. Furthermore, as a result of Core's countless delays and missed deadlines, various change orders have been necessitated. Those change orders, attributable to the negligent actions

(and inactions) of Core, include, among other things, additional atrium work to repair drywall, ceiling work in the Hotel Unit resulting from Core's piping work in adjacent floors of the Building, and replacing an expensive electrical panel damaged by Core.

114. The change orders already amount to over \$200,000 dollars in costs to AM Pitt, and do not include the costs of additional change orders that AM Pitt is presently undertaking to repair water damage resulting from leaks resulting from Core's work, and to repair other damage caused by Core.

115. In conformity with Core's pattern of delays, the Building, and by extension, the Hotel Unit, is still without permanent power, working elevators, and a functional fire and life safety system. Moreover, Core has additional work to perform and approvals to obtain in order to obtain a certificate of occupancy for Building, and to ensure that the Building is code compliant.

116. The lack of permanent power has resulted in construction delays stemming from power overloads, and the subsequent lack of air conditioned/climate-controlled space has necessitated that many of the Hotel Unit's furnishings, fittings and technical systems cannot be delivered or installed in the space, resulting in storage costs borne by AM Pitt. It has also delayed flooring installation and interior door installation, further delaying both the hard construction schedule and the post-construction installation, testing and training periods.

117. Since the fire and life safety systems in the Building are not complete, AM Pitt has suffered rollover delays in hiring and training employees on those systems, as well as delays (and associated costs) in being unable to connect, test and obtain permits for fire life safety systems, as well as security controls and lighting systems.

118. Core refuses to establish new deadlines for the completion of Seller's Work and the Delayed Items.

119. As a result, none of the interested parties, including AM Pitt, knows when the Building will be completed and a certificate of occupancy will be obtained. This uncertainty continues to cause AM Pitt damages.

120. As of the date of this Complaint, AM Pitt is unable to make any beneficial use of the Hotel Unit as a result of Owner's constant delays, and has yet to open the hotel. Damages continue to accrue and AM Pitt's investment remains in peril.

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

121. AM Pitt repeats and realleges each of the allegations set forth in paragraphs 1 through 120 above as if fully set forth herein.

122. The Sale Agreement and Amendments constitute a valid and binding contract.

123. AM Pitt has fully performed its obligations under the Sale Agreement and Amendments, and is not in breach of any of its obligations under the Sale Agreement or Amendments.

124. The Sale Agreement and Amendments unambiguously required Owner to complete various components of Seller's Work by specified deadlines.

125. The Sale Agreement and Amendments unambiguously required Owner to deliver the Delayed Items by certain dates, or be subject to specific liquidated damages for the failure to timely deliver each Delayed Item.

126. Despite the deadlines provided for in the Sale Agreement and Amendments, and AM Pitt's agreement to extensions of the deadlines, Owner failed to meet the vast majority of those deadlines for the completion of Seller's Work and other deliverables, preventing AM Pitt from using the Hotel Unit to operate its hotel. Core's work in the Hotel Unit remains unfinished to date, delaying AM Pitt's work to develop the hotel, and the hotel is yet to open.

127. As a consequence of Defendant's breaches of the Sale Agreement and Amendments, Plaintiff is entitled to the liquidated damages as delineated in the Sale Agreement and Amendments.

128. In addition, Plaintiff has suffered and is suffering damages due to Defendant's wrongful, unjustified and inappropriate failure to finish Seller's Work, finish the Delayed Items, deliver the completed Hotel Unit, finish other concomitant work in the Building, and obtain a certificate of occupancy for the Building.

129. As a direct and proximate result of the foregoing, AM Pitt has been damaged and continues to be damaged in an amount to be determined at trial, but in no event less than \$7,000,000 dollars in liquidated damages, plus all direct, indirect, incidental and special damages, including but not limited to consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest.

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

130. AM Pitt repeats and realleges each of the allegations set forth in paragraphs 1 through 129 above as if fully set forth herein.

131. The Development Agreement constitutes a valid and binding contract.

132. AM Pitt has fully performed its obligations under the Development Agreement and is not in breach of any of its obligations under the Development Agreement.

133. The Development Agreement unambiguously required Owner to "complete Seller's Work prior to the Completion Date" of August 24, 2016.

134. Owner did not complete Seller's Work prior to August 24, 2016.

135. As a consequence of Owner's breach of the Development Agreement AM Pitt is entitled to the liquidated damages as delineated in the Development Agreement, specifically \$25,000 for each month during which Seller's Work was not completed.

136. As a direct and proximate result of the foregoing, AM Pitt is entitled to \$25,000 dollars per month in liquidated damages for the months of August, September and October 2016, totaling \$75,000 dollars, plus all direct, indirect, incidental and special damages, including but not limited to consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest.

AS AND FOR A THIRD CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing – Sale Agreement)

137. AM Pitt repeats and realleges each of the allegations set forth in paragraphs 1 through 136 above as if fully set forth herein.

138. The Sale Agreement and Amendments thereto constitute a valid and binding contract.

139. AM Pitt has fully performed its obligations under the Sale Agreement and Amendments and is not in breach thereof.

140. The Sale Agreement and Amendments unambiguously require Owner to adhere to certain deadlines in completing Seller's Work and the Delayed Items and ultimately delivering the Hotel Unit to AM Pitt.

141. Owner has breached its obligations under the Sale Agreement and Amendments by, among other things, refusing to adhere to those deadlines and by refusing to communicate to AM Pitt when the work would be completed, the nature of the delays and the status of the work.

142. As in all contracts, implicit in Sale Agreement and Amendments is a covenant of good faith and fair dealing, such that a reasonable buyer would understand that the seller

promises to adhere to deadlines in good faith and to promptly update the buyer concerning actual or anticipated delays.

143. By its bad faith acts and omissions described herein, Owner has deprived AM Pitt of the benefits of the Sale Agreement and Amendments and thereby breached the covenant of good faith and fair dealing implied therein.

144. By reason of the foregoing, AM Pitt has been damaged and continues to be damaged in an amount to be determined at trial, together with incidental damages, consequential damages, attorneys' fees, costs and interest.

145. By reason of the foregoing, AM Pitt has been damaged and continues to be damaged in an amount to be determined at trial, but in no event less than \$5,000,000 dollars, plus all direct, indirect, incidental, special and consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest.

WHEREFORE, AM Pitt requests that a judgment be issued and entered against Owner as follows:

1. On the first cause of action, damages in an amount no less than \$7,000,000 dollars in liquidated damages, plus all direct, indirect, incidental and special damages, including but not limited to consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest;

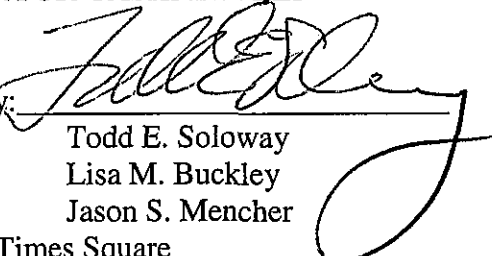
2. On the second cause of action, \$75,000 dollars, plus all direct, indirect, incidental and special damages, including but not limited to consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest;

3. On the third cause of action, damages in an amount no less than \$5,000,000, plus all direct, indirect, incidental, special and consequential damages, attorneys' fees, costs, pre-judgment interest and post-judgment interest; and

4. Such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 5, 2018

PRYOR CASHMAN LLP

By: 

Todd E. Soloway
Lisa M. Buckley
Jason S. Mencher

7 Times Square
New York, New York 10036
(212) 421-4100
Attorneys for Plaintiff AM Pitt Hotel LLC