

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

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CRABAPPLE CORP., ZHU QING, MENGSHA	:
CHEN, RUIZHEN WANG, HONG GE, QIN SI,	:
YANG ZHANG, ZHE FANG, HONGXING LIU,	: Index No. 650492/2015
and XU NING,	:
	:
	:

Plaintiffs,

-against-

**VERIFIED**  
**AMENDED COMPLAINT**

ROYAL ONE REAL ESTATE LLC, ROYAL LIC	:
REAL ESTATE MANAGEMENT LLC, ROYAL	:
REAL ESTATE MANAGEMENT LLC, RUBEN	:
ELBERG, ROYAL CP HOTEL HOLDINGS LP,	:
and ROYAL HI HOTEL HOLDINGS LP,	:
	:
	:

Defendants.

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Plaintiffs Crabapple Corp. (“Crabapple”), Zhu Qing, Mengsha Chen, Ruizhen Wang, Hong Ge, Qin Si, Yang Zhang, Zhe Fang, Hongxing Liu, and Xu Ning, by and through their undersigned attorneys, as and for their Verified Amended Complaint against Defendants Royal One Real Estate LLC (“RORE”), Royal LIC Real Estate Management LLC (“RLIC”), Royal Real Estate Management LLC (“RREM”), Ruben Elberg, Royal CP Hotel Holdings, L.P., and Royal HI Hotel Holdings Group, L.P., allege as follows:

**NATURE OF THE CASE**

1. Plaintiffs and Defendants are all of the partners in two New York limited partnerships (the “Limited Partnerships”) that were organized for the purpose of developing hotel properties on certain parcels of land in Long Island City, New York.

2. The first Limited Partnership, known as Royal CP Hotel Holdings, L.P. (“Royal CP”) was organized for the purpose of developing a Crowne Plaza hotel property at 25-10 42nd Road in Long Island City (the “Crowne Plaza Hotel Project”).

3. The second Limited Partnership, known as Royal HI Hotel Holdings Group, L.P. (“Royal HI”) was organized for the purpose of developing a Hotel Indigo hotel property at 42-59 Crescent Street in Long Island City (the “Hotel Indigo Project”).

4. This is an action brought by the Class A and Class B limited partners of Royal CP and Royal HI for: (a) breach of the respective limited partnership agreements for each of the two Hotel Projects; and (b) for breach of fiduciary duty by the General Partners of each of the two Limited Partnerships. Plaintiffs also assert claims for damages against the two Limited Partnerships based on their failure to pay preferred returns to Plaintiffs.

5. Pursuant to the limited partnership agreements, Defendants RORE and RREM are each obligated to make capital contributions of all of their interests in the real property upon which the two Hotel Projects are to be developed. RORE and RREM have each breached their contractual obligations under the limited partnership agreements by failing to make these capital contributions.

6. Defendant RORE and RLIC, as the General Partners in the respective Limited Partnerships, have also breached their contractual obligations and fiduciary duties to the limited partners of each Limited Partnership by failing to complete—or even commence—the development of the respective Hotel Projects. Work on the Hotel Projects was supposed to have begun in September 2013 and the Hotel Projects are now more than sixteen months behind schedule. The franchise licensor for the Hotel Projects has recently indicated that it may terminate its license to use the respective brand names for the Hotel Projects.

7. RORE's and RLIC's continued delay in commencing the Hotel Projects will cause irreparable harm to each of the Class A limited partners in each of the Limited Partnerships. Each of the Class A limited partners is a foreign national who, under relevant federal law, is at risk of failing to obtain and maintain his or her permanent residency as an investor in the Hotel Projects.

8. Specifically, each of the Class A limited partners' investments is intended to be a Qualifying Investment under the Immigrant Investor Program ("EB-5 Program") administered by the United States Citizenship and Immigration Services.<sup>1</sup> Under the EB-5 Program, foreign investors are approved for conditional permanent residence for a two-year period, but must petition to have the conditions removed within two years after the initial petition is approved. Among other things, a petitioner must demonstrate that, through his investment, he has created or will create within a reasonable time 10 full-time jobs for qualifying employees.<sup>2</sup> Given RORE's and RLIC's delay in the development of the Hotel Projects, the Class A limited partners are each at risk of being unable to meet this requirement.

9. Royal CP and the limited partners in Royal CP will also suffer irreparable harm as a result of a foreclosure action that has been commenced against the real property upon which the Crowne Plaza Hotel Project is to be built. RORE, as the General Partner in Royal CP, has further breached its contractual obligations and fiduciary duties to the limited partners by failing

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<sup>1</sup> The EB-5 Program provides visas and conditional permanent residency to foreign investors who, under certain terms and conditions, create full-time employment in the United States. *See* <http://www.uscis.gov/eb-5> (site visited February 11, 2015); 8 U.S.C. § 1153(b)(5).

<sup>2</sup> *See* <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-process> (site visited February 11, 2015).

to make payments on the mortgage encumbering the property and allowing a foreclosure action to be commenced, thereby jeopardizing the entire Crowne Hotel Plaza Project.

### THE PARTIES

10. Plaintiff Crabapple is a business corporation incorporated under the laws of the State of New York, with its principal place of business located in New York, New York.

Crabapple is the Class B limited partner in each of the two Limited Partnerships.

11. Plaintiffs Zhu Qing, Mengsha Chen, Ruizhen Wang, and Hong Ge (the “Royal CP Investors”) are each citizens and residents of the People’s Republic of China. Each of the four Royal CP Investors is a Class A limited partner in Royal CP. The investments made by each of the Royal CP Investors are intended to be Qualifying Investments under the EB-5 Program.

12. Plaintiffs Qin Si, Yang Zhang, Zhe Fang, Hongxing Liu, and Xu Ning (the “Royal HI Investors”) are each citizens and residents of the People’s Republic of China. Each of the five Royal HI Investors is a Class A limited partner in Royal HI. The investments made by each of the Royal HI Investors are intended to be Qualifying Investments under the EB-5 Program.

13. Defendant RORE, upon information and belief, is a limited liability company organized under the laws of the State of New York. Upon information and belief, Jacob Elberg, who is now deceased, was the Manager and a member of RORE. RORE is the General Partner in Royal CP. RORE is also a Class C limited partner in each of the two Limited Partnerships.

14. Defendant RLIC, upon information and belief, is a limited liability company organized under the laws of the State of New York. Upon information and belief, Jacob Elberg, who is now deceased, was the Manager and a member of RLIC. RLIC is the General Partner in Royal HI.

15. Defendant RREM, upon information and belief is, a limited liability company organized under the laws of the State of New York. Upon information and belief, Jacob Elberg, who is now deceased, was the Manager and a member of RREM. RREM is a Class C limited partner in Royal CP.

16. Defendant Ruben Elberg is a natural person and, upon information and belief, a resident of Kings County, New York. Ruben Elberg is the son of Jacob Elberg and, upon information and belief, one two co-executors of the Estate of Jacob Elberg. Ruben Elberg is the Class D limited partner in each of the two Limited Partnerships.

17. Defendant Royal CP is a limited partnership organized under the laws of the State of New York, with a principal place of business in Queens County, New York. Defendant RORE is the General Partner and manager of Royal CP.

18. Defendant Royal HI is a limited partnership organized under the laws of the State of New York, with a principal place of business in Queens County, New York. Defendant RORE is the General Partner and manager of Royal HI.

### **FACTUAL BACKGROUND**

#### ***The Royal CP Limited Partnership Agreement***

19. Crabapple, each of the Royal CP Investors, RORE, RREM, and Ruben Elberg are each a party to the Limited Partnership Agreement of Royal CP Hotel Holdings, L.P., dated November 30, 2012 (the “Royal CP Agreement”). A true and correct copy of the Royal CP Agreement is annexed hereto as Exhibit A.

20. RORE’s and RREM’s obligations to contribute the real property to the Limited Partnership are contemplated by Recital Paragraph B of the Royal CP Agreement, as follows:

RORE and RREM each own parcels of land (the “**Land**”), and each of them desire to contribute their parcels of Land to the

Partnership for the purpose of developing, constructing, owning and operating a hotel, to be located at 25-10 42nd Road, Long Island City, New York. ...

Exh. A at Recital ¶ B. The parcels of land identified in the Royal CP Agreement are more particularly described as Block 430, Lots 7, 8, 10, 11, 12, 14, and 18 on the tax map of the County of Queens, City and State of New York.

21. Section 2.1 of the Royal CP Agreement sets forth the initial capital contributions to be made by each of the four classes of limited partners. The Royal CP Agreement does not specify the number of Class A limited partners who will be admitted to the Limited Partnership, nor does it require the Class A limited partners to make aggregate capital contributions in a specified amount. Each Class A limited partnership interest represents an initial Capital Contribution of \$500,000 in Royal CP. Exh. A § 2.1.1. The Royal CP Agreement expressly recognizes that “[t]he Partnership intends that the investment by each of the Class A Limited Partners shall be a Qualifying Investment under the EB-5 Pilot Program.” Exh. A at Recital ¶ C.

22. Pursuant to Section 2.1.5 of the agreement, RORE and RREM are obligated to contribute all of their interest in the real property on which the Crowne Plaza Hotel Project is to be developed, as follows:

On or before the Investment Date, the Class C Limited Partners shall each contribute to the Partnership 100% of the interests each of them currently owns in the Land...

Exh. A § 2.1.5.

23. The “Investment Date” referenced in Section 2.1.5 is defined in the agreement as “the date that the Partnership makes the investment of the Class A Limited Partners’ Capital Contributions into the Project, as provided for in Section 2.1.3.” Exh. A at p. 4. Pursuant to Section 2.1.3 of the agreement, the Investment Date would not be later than January 31, 2013, except by agreement of RORE and Crabapple:

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...The Partnership shall hold all funds [invested by the Class A limited partners] in the Contribution Account until the Capital Contributions of the Class A Limited Partners then held in the Contribution Account are at least \$5,500,000. Promptly following the date that this condition is met, the Partnership shall commence to use all but \$1,000,000 of the funds then held in the Contribution Account for the purpose of funding the costs of the Project. The date of such contribution shall be referred to as the “**Investment Date.**” The Investment Date shall occur on or before January 30, 2013, which date may be extended by agreement of the General Partner and the Class B Limited Partner...

Exh. A § 2.1.3.

24. Under the Royal CP Agreement, RORE—as the General Partner—is responsible for developing the Crowne Plaza Hotel Project. Section 4.1 states, in relevant part, that “[t]he business and affairs shall be conducted and all powers of the Partnership shall be exercised exclusively by the General Partner, subject to the limitations provided in Section 4.3.” Exh. A § 4.1. Section 4.2 authorizes the General Partner to do all of the things and make all of the decisions necessary to carry out and complete the development of the Project. *See id.* § 4.2.

25. The Royal CP Agreement restricts the limited partners’ role in management of the Limited Partnership to: (a) exercising the voting and consent rights provided in the Royal CP Agreement; and (b) advising the General Partner regarding investment decisions and policy. *See* Exh. A § 4.3. Section 4.3 of the Royal CP Agreement provides that “no Limited Partner otherwise shall take part in the management or control of the Partnership’s investment or other activities, transact any business in the Partnership’s name or have the power to sign documents for or otherwise bind the Partnership.” *Id.*

26. Each of the Class A and Class B limited partners are entitled to a preferred return on their respective Capital Contributions under the Royal CP Agreement. *See* Exh. A at p. 3.

27. The “Class A Preferred Return” is defined in relevant part as “an amount equal to one half of one percent (0.5%) per annum on the total unreturned Capital Contributions of the {883067.1}

Class A Limited Partners, commencing on the date that the Class A Limited Partners have contributed a total of five and one-half million dollars (\$5,500,000) to the capital of the Partnership.” *See id.*

28. The “Class B Preferred Return” is presently 4% of the unreturned Class A and Class B Capital Contributions per annum and is defined in relevant part as follows:

an amount equal to the applicable of the following rates, commencing on the date that the Class A Limited Partners have contributed a total of five and one-half million dollars (\$5,500,000) to the capital of the Partnership: (a) four percent (4.0%) per annum on the total unreturned Capital Contributions of the Class A and Class B Limited Partners until the earlier of (i) the date that the Partnership repays a land loan for the Property, or (ii) the date that the Partnership has received additional funds of at least \$28,1000 in the form of a loan made by an entity formed and sponsored by a USCIS approved Regional Center (the “**Regional Center Funding Date**”).”

Exh. A at p. 3.

29. Section 12.15 of the Royal CP Agreement provides for the recovery of plaintiffs’ attorneys’ fees and expenses in this action, as follows: “In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to recover all attorneys’ fees and expenses incurred.” Exh. A § 12.15.

***The Royal HI Limited Partnership Agreement***

30. Crabapple, each of the Royal HI Investors, RORE, RLIC, and Ruben Elberg are each a party to the Limited Partnership Agreement of Royal HI Hotel Holdings, L.P., dated November 30, 2012 (the “Royal HI Agreement”). A true and correct copy of the Royal HI Agreement is annexed hereto as Exhibit B.

31. RORE’s obligation to contribute the real property to the Limited Partnership is contemplated by Recital Paragraph B of the Royal HI Agreement, as follows:



The Class C Limited Partner owns a parcel of land located at 42-59 Crescent Street, Long Island City, New York, which the Class C Limited Partner desires to contribute to the Partnership for the purpose of developing, constructing, owning and operating a hotel...

Exh. B at Recital ¶ B. The parcel of land identified in the Royal HI Agreement is more particularly described as Block 430, Lots 37 and 38 on the tax map of the County of Queens, City and State of New York.

32. Section 2.1 of the Royal HI Agreement sets forth the initial capital contributions to be made by each of the four classes of limited partners. The Royal HI Agreement does not specify the number of Class A limited partners who will be admitted to the Limited Partnership, nor does it require the Class A limited partners to make aggregate capital contributions in a specified amount. Each Class A limited partnership interest represents an initial Capital Contribution of \$500,000 in Royal HI. Exh. B § 2.1.1. The Royal HI Agreement expressly recognizes that “[t]he Partnership intends that the investment by each of the Class A Limited Partners shall be a Qualifying Investment under the EB-5 Pilot Program.” Exh. B at Recital ¶ C.

33. Pursuant to Section 2.1.5 of the agreement, RORE is obligated to contribute all of its interest in the real property on which the Hotel Indigo Project is to be developed, as follows:

On or before the Investment Date, the Class C Limited Partner shall contribute to the Partnership 100% of the interest it currently owns in the Land...

Exh. B § 2.1.5.

34. The “Investment Date” referenced in Section 2.1.5 of the Royal HI Agreement is defined in the agreement as “the date that the Partnership makes the investment of the Class A Limited Partners’ Capital Contributions into the Project, as provided for in Section 2.1.3.” Exh. B at p. 5. Pursuant to Section 2.1.3 of the agreement, the Investment Date would not be later than January 31, 2013, except by agreement of RLIC and Crabapple:

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...The Partnership shall hold all funds [invested by the Class A limited partners] in the Contribution Account until the Capital Contributions of the Class A Limited Partners then held in the Contribution Account are at least \$1,500,000. Promptly following the date that this condition is met, the Partnership shall commence to use all but \$500,000 of the funds then held in the Contribution Account for the purpose of funding the costs of the Project. The date of such contribution shall be referred to as the “**Investment Date.**” The Investment Date shall occur on or before January 30, 2013, which date may be extended by agreement of the General Partner and the Class B Limited Partner...

Exh. B § 2.1.3.

35. Under the Royal HI Agreement, RLIC—as the General Partner—is responsible for developing the Hotel Indigo Project. Section 4.1 of the Royal HI Agreement states, in relevant part, that “[t]he business and affairs shall be conducted and all powers of the Partnership shall be exercised exclusively by the General Partner, subject to the limitations provided in Section 4.3.” Exh. B § 4.1. Section 4.2 authorizes the General Partner to do all of the things and make all of the decisions necessary to carry out and complete the development of the Project.

*See id.* § 4.2.

36. The Royal HI Agreement restricts the limited partners’ role in management of the Limited Partnership to: (a) exercising the voting and consent rights provided in the Royal HI Agreement; and (b) advising the General Partner regarding investment decisions and policy. *See* Exh. B § 4.3. Section 4.3 of the Royal HI Agreement provides that “no Limited Partner otherwise shall take part in the management or control of the Partnership’s investment or other activities, transact any business in the Partnership’s name or have the power to sign documents for or otherwise bind the Partnership.” *Id.*

37. Each of the Class A and Class B limited partners are entitled to a preferred return on their respective Capital Contributions under the Royal HI Agreement. *See* Exh. B at p. 3.

38. The “Class A Preferred Return” is defined in relevant part as “an amount equal to one half of one percent (0.5%) per annum on the total unreturned Capital Contributions of the Class A Limited Partners, commencing on the date that the Class A Limited Partners have contributed a total of one and one-half million dollars (\$1,500,000) to the capital of the Partnership.” *See id.*

39. The “Class B Preferred Return” is presently 4% of the unreturned Class A and Class B Capital Contributions per annum and is defined in relevant part as follows:

an amount equal to the applicable of the following rates, commencing on the date that the Class A Limited Partners have contributed a total of one and one-half million dollars (\$1,500,000) to the capital of the Partnership: (a) four percent (4.0%) per annum on the total unreturned Capital Contributions of the Class A and Class B Limited Partners until date that the Partnership has received additional funds of at least \$8,000,000 in the form of a loan (the “**Loan Funding Date**”)

Exh. B at p. 3

40. Section 12.15 of the Royal HI Agreement provides for the recovery of plaintiffs’ attorneys’ fees and expenses in this action, as follows: “In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to recover all attorneys’ fees and expenses incurred.” Exh. B § 12.15.

***RORE and RREM Have Failed to Make Their Capital Contributions to Royal CP***

41. Pursuant to Section 2.1.5 of the Royal CP Agreement, RORE and RREM are each obligated to “contribute to the Partnership 100% of the interests each of them currently owns in the Land” on or before January 31, 2013.

42. RORE and RREM failed to make their required capital contributions of their interests in the real property by January 31, 2013. As of the date of this Amended Complaint, title to the real property is still held by RORE and RREM.

***RORE Has Failed to Make Its Capital Contributions to Royal HI***

43. The Capital Contributions of the Class A limited partners in Royal HI (i.e., the Royal HI Investors) met or exceeded \$1,500,000 as of October 9, 2012. This date constitutes the “Investment Date” for purposes of the Royal HI Agreement.

44. Pursuant to Section 2.1.5 of the Royal HI Agreement, RORE is obligated to “contribute to the Partnership 100% of the interest it currently owns in the Land” on or before the Investment Date of October 9, 2012.

45. RORE failed to make its required capital contribution of its interests in the real property by the Investment Date. As of the date of this Amended Complaint, title to the real property is still held by RORE.

***RORE and RLIC Have Done Nothing to Develop the Hotel Projects***

46. RORE and RLIC—as the General Partners in each of the respective Limited Partnerships—have the power and authority, as well as the responsibility, to manage the Limited Partnerships and oversee the development of the Hotel Projects.

47. In breach of their contractual obligations and fiduciary duties to the limited partners in each Limited Partnership, RORE and RLIC have done nothing since the respective Investment Dates to complete or even commence the development of the Hotel Projects.

48. On February 13 and February 16, 2015, the franchise licensor for the two Hotel Projects notified Ruben Elberg of its desire to terminate the licensing agreements for each of the Hotel Projects, which would effectively deprive the Hotel Projects of the valuable Crowne Plaza and Hotel Indigo brand names.

***RORE Has Allowed the Land for the Crowne Plaza Hotel Project to Go into Foreclosure***

49. RORE—as the General Partner in Royal CP—has the power and authority, as well as the responsibility, to manage the Limited Partnership and to safeguard the real property

which constitutes the principal asset of the Limited Partnership as well as the land upon which the Crowne Plaza Hotel Project is to be developed.

50. In breach of its contractual obligations and fiduciary duties to the limited partners in Royal CP, RORE has failed to make mortgage payments on a mortgage encumbering the real property on which the Crowne Plaza Hotel Project is to be developed. On or about December 16, 2014, the holder of the mortgage commenced an action in the Supreme Court of the State of New York to foreclose the mortgage, thereby jeopardizing the entire Crowne Plaza Hotel Project. A true and correct copy of the complaint in the foreclosure action, without its annexed exhibits, is annexed hereto as Exhibit C.

***The Limited Partnerships Have Failed to Pay the Preferred Returns***

51. Royal CP has breached the Royal CP Agreement by failing to pay the Royal CP Investors and Crabapple their respective Preferred Returns.

52. As the General Partner of Royal CP, RORE has the power and authority, as well as the responsibility, to manage Royal CP.

53. RORE has breached the Royal CP Agreement, and its fiduciary duties to the limited partners, by failing to cause Royal CP to pay the Preferred Returns to the Class A and Class B limited partners in Royal CP.

54. Royal HI has breached the Royal HI Agreement by failing to pay the Royal HI Investors and Crabapple their respective Preferred Returns.

55. As the General Partner of Royal HI, RLIC has the power and authority, as well as the responsibility, to manage Royal HI.

56. RLIC has breached the Royal HI Agreement, and its fiduciary duties to the limited partners, by failing to cause Royal HI to pay the Preferred Returns to the Class A and Class B limited partners in Royal HI.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract – Failure to Make Capital Contributions to Royal CP)**

57. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 56 of this Amended Complaint as if fully set forth herein.

58. Crabapple, each of the Royal CP Investors, RORE, RREM, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal CP Agreement.

59. Crabapple and each of the Royal CP Investors have fulfilled all of their obligations under the Royal CP Agreement.

60. Pursuant to Section 2.1 of the Royal CP Agreement, RORE and RREM were obligated to make capital contributions of all their interest in the real property on or before January 30, 2013.

61. RORE and RREM have each willfully breached the Royal CP Agreement by failing to make their required capital contributions of the real property on or before the Investment Date.

62. As a result of RORE's and RREM's willful breaches of their obligations under the Royal CP Agreement, Crabapple and each of the Royal CP Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract – Failure to Make Capital Contributions to Royal HI)**

63. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 62 of this Amended Complaint as if fully set forth herein.

64. Crabapple, each of the Royal HI Investors, RORE, RLIC, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal HI Agreement.

65. Crabapple and each of the Royal HI Investors have fulfilled all of their obligations under the Royal HI Agreement.

66. Pursuant to Section 2.1 of the Royal HI Agreement, RORE was obligated to make a capital contribution of all of its interest in the real property on or before the Investment Date, and no later than January 31, 2013.

67. RORE has willfully breached the Royal HI Agreement by failing to make its required capital contribution of the real property on or before the Investment Date.

68. As a result of RORE's willful breach of its obligations under the Royal HI Agreement, Crabapple and each of the Royal HI Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Breach of Contract – Failure to Develop the Royal CP Project)**

69. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 68 of this Amended Complaint as if fully set forth herein.

70. Crabapple, each of the Royal CP Investors, RORE, RREM, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal CP Agreement.

71. Crabapple and each of the Royal CP Investors have fulfilled all of their obligations under the Royal CP Agreement.

72. Pursuant to Article 4 of the Royal CP Agreement, RORE has the exclusive authority to manage the Limited Partnership and develop the Crowne Plaza Hotel Project.

73. Pursuant to the covenant of good faith and fair dealing implicit in the Royal CP Agreement, RORE has the obligation to act in good faith and make best efforts to complete the development of the Crowne Plaza Hotel Project.

74. RORE has willfully breached the Royal CP Agreement by failing to take any steps in furtherance of the development of the Crowne Plaza Hotel Project.

75. As a result of RORE's willful breach of its obligations under the Royal CP Agreement, Crabapple and each of the Royal CP Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Breach of Contract – Failure to Develop the Royal HI Project)**

76. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 75 of this Amended Complaint as if fully set forth herein.

77. Crabapple, each of the Royal HI Investors, RORE, RLIC, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal HI Agreement.

78. Crabapple and each of the Royal HI Investors have fulfilled all of their obligations under the Royal HI Agreement.

79. Pursuant to Article 4 of the Royal HI Agreement, RLIC has the exclusive authority to manage the Limited Partnership and develop the Hotel Indigo Project.

80. Pursuant to the covenant of good faith and fair dealing implicit in the Royal HI Agreement, RLIC has the obligation to act in good faith and make best efforts to complete the development of the Hotel Indigo Project.

81. RLIC has willfully breached the Royal HI Agreement by failing to take any steps in furtherance of the development of the Hotel Indigo Project.



82. As a result of RLIC's willful breach of its obligations under the Royal HI Agreement, Crabapple and each of the Royal HI Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A FIFTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty – Failure to Develop the Royal CP Project)**

83. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 82 of this Amended Complaint as if fully set forth herein.

84. As the General Partner of Royal CP, RORE owes fiduciary duties to each of the limited partners, including Crabapple and each of the Royal CP Investors.

85. RORE has willfully breached its fiduciary duties to the limited partners of Royal CP by, among other things, failing to make its capital contribution of the real property needed to develop the Crowne Plaza Hotel Project, failing to ensure that RREM makes its capital contribution of the real property needed to develop the Crowne Plaza Hotel Project, failing to take any action in furtherance of the development of the Crowne Plaza Hotel Project, failing to make required mortgage payments on the mortgage encumbering the real property on which the Crowne Plaza Hotel Project is to be developed, and allowing a foreclosure action to be commenced.

86. As a direct and proximate result of RORE's willful breach of its fiduciary duties to the limited partners, Crabapple and each of the Royal CP Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A SIXTH CAUSE OF ACTION**  
**(Breach of Fiduciary Duty – Failure to Develop the Royal HI Project)**

87. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 86 of this Amended Complaint as if fully set forth herein.

88. As the General Partner of Royal HI, RLIC owes fiduciary duties to the limited partners, including Crabapple and each of the Royal HI Investors.

89. RLIC has willfully breached its fiduciary duties to the limited partners of Royal HI by, among other things, failing to ensure that RORE makes its capital contribution of the real property needed to develop the Hotel Indigo Project and failing to take any action in furtherance of the development of the Hotel Indigo Project.

90. As a direct and proximate result of RLIC's willful breach of its fiduciary duties to the limited partners, Crabapple and each of the Royal HI Investors have suffered injury and have no adequate remedy at law.

**AS AND FOR A SEVENTH CAUSE OF ACTION**  
**(Failure to Pay Royal CP Preferred Returns)**

91. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 90 of this Amended Complaint as if fully set forth herein.

92. Crabapple, each of the Royal CP Investors, RORE, RREM, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal CP Agreement.

93. Crabapple and each of the Royal CP Investors have fulfilled all of their obligations under the Royal CP Agreement.

94. Royal CP has willfully breached the Royal CP Agreement by failing to pay the Royal CP Investors and Crabapple their respective Preferred Returns.

95. Pursuant to Article 4 of the Royal CP Agreement, RORE has the exclusive authority to manage Royal CP.

96. As the General Partner of Royal CP, RORE owes fiduciary duties to each of the limited partners, including Crabapple and each of the Royal CP Investors.

97. RORE has willfully breached its contractual and fiduciary duties to the limited partners of Royal CP by failing to cause Royal CP to pay the Preferred Returns to the Royal CP Investors and Crabapple.

98. As a result of Royal CP's willful breach of its obligations under the Royal CP Agreement, Crabapple and each of the Royal CP Investors have suffered damages in an amount to be determined at trial.

99. As a result of RORE's willful breach of its contractual and fiduciary obligations under the Royal CP Agreement, Crabapple and each of the Royal CP Investors have suffered damages in an amount to be determined at trial.

**AS AND FOR AN EIGHTH CAUSE OF ACTION**  
**(Failure to Pay Royal HI Preferred Returns)**

100. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 99 of this Amended Complaint as if fully set forth herein.

101. Crabapple, each of the Royal HI Investors, RORE, RLIC, RREM, and Ruben Elberg are each a party to a valid and enforceable agreement, the Royal CP Agreement.

102. Crabapple and each of the Royal HI Investors have fulfilled all of their obligations under the Royal HI Agreement.

103. Royal HI has willfully breached the Royal HI Agreement by failing to pay the Royal HI Investors and Crabapple their respective Preferred Returns.

104. Pursuant to Article 4 of the Royal HI Agreement, RLIC has the exclusive authority to manage Royal HI.

105. As the General Partner of Royal HI, RLIC owes fiduciary duties to each of the limited partners, including Crabapple and each of the Royal HI Investors

106. RLIC has willfully breached the Royal HI Agreement by failing to cause Royal HI to pay preferred returns to the Royal HI Investors and Crabapple.

107. As a result of Royal HI's willful breach of its obligations under the Royal HI Agreement, Crabapple and each of the Royal HI Investors have suffered damages in an amount to be determined at trial.

108. As a result of RLIC's willful breach of its contractual and fiduciary obligations under the Royal HI Agreement, Crabapple and each of the Royal HI Investors have suffered damages in an amount to be determined at trial.

**WHEREFORE**, Plaintiffs demand judgment against Defendants RORE, RLIC, RREM, Royal CP, and Royal HI on each of the foregoing eight causes of action awarding Plaintiffs:

- A. Specific performance of RORE and RREM's obligations to make their respective capital contributions to Royal CP;
- B. Specific performance of RORE's obligation to make its required capital contribution to Royal HI;
- C. Removal of RORE as the General Partner in Royal CP and the appointment of Crabapple or Crabapple's designee in its stead;
- D. Removal of RLIC as the General Partner in Royal HI and the appointment of Crabapple or Crabapple's designee in its stead;
- E. Damages to Crabapple and the Royal CP Investors in an amount to be determined at trial;
- F. Damages to Crabapple and the Royal HI Investors in an amount to be determined at trial;

G. Recovery of Plaintiffs' attorney's fees and expenses incurred in connection with this action; and

H. Such additional and further relief as the Court may deem just, equitable, and proper.

Dated: New York, New York  
April 13, 2015

WARSHAW BURSTEIN, LLP



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Grant R. Cornehlis  
555 Fifth Avenue  
New York, New York 10017  
(212) 984-7819  
Attorneys for Plaintiffs

**VERIFICATION**

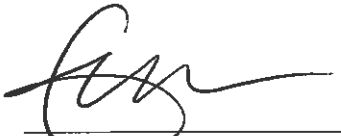
STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK )

**PETER T. JENSEN**, being duly sworn, deposes and says:

I am an attorney admitted to practice in the State of New York and the Chief Executive Officer of Plaintiff Crabapple Corp. ("Crabapple"). I have read the foregoing Verified *Amended* Complaint and believe the factual matters alleged therein to be true to the best of my knowledge, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

  
\_\_\_\_\_  
Peter T. Jensen

Subscribed and sworn to before me  
on this 13<sup>th</sup> day of April 2015.

  
\_\_\_\_\_  
Notary Public in and for  
the State of New York

**GRANT R. CORNEHLS**  
Notary Public, State Of New York  
No.02CO6077809  
Qualified In New York County  
Commission Expires July 15, ~~2008~~  
*2018*