

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

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McDONALD'S CORPORATION,

Plaintiff,

– against –

BOARD OF MANAGERS OF THE TRIBECA,
MICHAEL A. SMITH
and NATALIE A. CUCHEL,

Defendants.

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SUMMONS

Index No. _____/2024

Date Purchased: 11/___/2024

Plaintiff designates
New York County
as the place of trial pursuant to
CPLR 501, 503, 507 and 509.

TO THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer upon the plaintiff's undersigned attorneys not later than 20 days after the date of service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. 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, NY
November 26, 2024

GREENBERG TRAURIG, LLP
Attorneys for Plaintiff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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McDONALD’S CORPORATION,

COMPLAINT

Plaintiff,

Index No. _____/2024

– against –

BOARD OF MANAGERS OF THE TRIBECA,
MICHAEL A. SMITH
and NATALIE A. CUCHEL,

Defendants.

----- X

Plaintiff McDONALD’S CORPORATION (“**Plaintiff**”), by its attorneys, Greenberg Traurig, LLP, for its complaint against defendants BOARD OF MANAGERS OF THE TRIBECA (the “**Board**”), MICHAEL A. SMITH (“**Smith**”) and NATALIE A. CUCHEL (“**Cuchel**” and, together with Smith, “**Smith/Cuchel**” and, collectively with the Board and Smith, “**Defendants**”), alleges as follows.

PARTIES

1. Plaintiff is a Delaware corporation authorized to do business in New York.

2. Upon information and belief, the Board is the duly constituted Board of Managers of the residential/commercial condominium, known as “**The Tribeca**,” established pursuant to Article 9-B of the New York State Real Property Law and that certain Declaration Establishing a Plan for Condominium Ownership of Premises located at 303-307 Greenwich Street, 147-149 Reade Street and 165 Chambers Street, New York, New York, dated October 1, 1987, and recorded in the New York County Office of the Register of the City of New York on November 30, 1987, at Reel 1324, Pages 1334-1407, as amended by First Amendment to the Declaration of Dalton on Greenwich dated September 9, 1988, and recorded November 18, 1988, at Reel 1495, Pages 1541-

1545, Second Amendment to the Declaration of Dalton on Greenwich dated December 9, 1988, and recorded February 9, 1989, at Reel 1534, Pages 1290-1296, and Third Amendment to the Declaration of Dalton on Greenwich dated July 9, 1990, and recorded September 24, 1990, at Reel 1730, Pages 2413-2448 (collectively, the “**Declaration**”), and comprised of the buildings known as and located at 303-307 Greenwich Street, 147-149 Reade Street and 165 Chambers Street, in the County and State of New York.¹

3. Upon information and belief, Smith is a New York resident subject to the jurisdiction of this Court.

4. Upon information and belief, Cuchel is a New York resident subject to the jurisdiction of this Court.

FACTS

5. By Deed dated February 22, 1990, and recorded in the New York County Office of the Register of the City of New York on March 21, 1990, at Reel 1677, Pages 834-841, Plaintiff acquired The Tribeca’s commercial units C2, C3, C6 and C7 (the “**McDonald’s Units**”).

6. The McDonald’s Units are located on the ground floor (C2 and C6) and cellar level (C3 and C7) of 303-307 Greenwich Street.

7. By Easement Agreement dated February 22, 1990, and recorded in the New York County Office of the Register of the City of New York on April 4, 1990, at Reel 1680, Pages 2490-2501 (the “**Easement Agreement**”), The Tribeca’s sponsor, 165 Chambers Street Associates, L.P. (“**Sponsor**”), granted Plaintiff various easements over, under and across The Tribeca properties, including the following “**HVAC Easement**” set forth at paragraph 7 of the Easement Agreement:

¹ References to The Tribeca’s buildings will hereafter, as circumstances require, be by their individual street addresses (*e.g.*, 303-307 Greenwich Street, 147-149 Reade Street (and, where applicable, 147 Reade Street and/or 149 Reade Street) and 165 Chambers Street).

“Grantor grants and conveys to Grantee a non-exclusive, perpetual easement for the purpose of installing, operating, maintaining, repairing, replacing and renewing an HVAC system, including a condenser water tower, over, above, along, under, in, and across [The Tribeca] as shown on McDonald’s plans M-1 through M-4.”²

8. Plans M-1 through M-4 referenced in the Easement Agreement (the “**HVAC Easement Plans**”) depict, among other things, a cooling tower on the roof of 147-149 Reade Street with appurtenant piping and ductwork running vertically through the building to the basement and then horizontally below-grade through the cellar levels of 147-149 Reade Street, 165 Chambers Street and 303-307 Greenwich Street, respectively, to the McDonald’s Units (the areas encompassed by the HVAC Easement being, collectively, the “**HVAC Easement Areas**”).

9. Paragraph 10 of the Easement Agreement states that “[a]ll provisions of this instrument, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants, employees and personal representatives of the parties.”

10. Paragraph 12 of the Easement Agreement states that “[t]he rule of strict construction does not apply to this grant” and “[t]his grant shall be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out.”

11. Upon information and belief, the Board is the assignee of and/or successor to Sponsor as Grantor under the Easement Agreement.

12. Plaintiff installed and operated an HVAC system servicing the McDonald’s Units in accordance with and pursuant to the Easement Agreement.

² “**HVAC**” refers to heating, ventilating and air-conditioning.

13. By Deed dated December 23, 1997, and recorded in the New York County Office of the Register of the City of New York on July 1, 1998, at Reel 2606, Pages 1223-1228, Smith/Cuchel acquired The Tribeca's residential unit PHK ("**Unit PHK**").

14. Upon information and belief, at the time Smith/Cuchel acquired Unit PHK, it was a 1,253 square foot single-floor penthouse unit on the fifth (top) floor of 147 Reade Street.

15. Pursuant to the Declaration, ownership of Unit PHK also included exclusive use of a 1,040 square foot exterior terrace on a portion of the 147 Reade Street roof above Unit PHK.

16. On or about March 18, 2006, Plaintiff submitted plans to the Board in support of Plaintiff's proposed renovations in and to the McDonald's Units (the "**2006 Renovations**").

17. Plaintiff's proposed plans for the 2006 Renovations included replacement of the existing HVAC system with a new system that did not require the cooling tower and other HVAC equipment then located in the HVAC Easement Areas.

18. By letter dated March 29, 2006 (the "**March 2006 Board Letter**"), the Board approved Plaintiff's proposed plans for the 2006 Renovations subject to several conditions, including: "All HVAC equipment currently installed at 147-149 Reade Street will be removed."

19. The March 2006 Board Letter was signed by Smith, as the Board's Vice President.

20. Plaintiff removed its defunct HVAC equipment from 147-149 Reade Street and completed the 2006 Renovations.

21. Notwithstanding Plaintiff's installation of a replacement HVAC system in the McDonald's Units and removal of its defunct HVAC equipment from 147-149 Reade Street during the 2006 Renovations, the Easement Agreement and "perpetual" HVAC Easement therein were not terminated, modified or amended.

22. Upon information and belief, in or about early 2007, Smith/Cuchel obtained the Board's approval to expand Unit PHK.

23. Upon information and belief, Smith/Cuchel subsequently expanded Unit PHK to a five-floor unit containing approximately 3,000 square feet of interior space, a new outdoor terrace and an outdoor swimming pool.

24. Upon information and belief, Smith/Cuchel's expansion of Unit PHK included demolition of the portion of the HVAC Easement Areas on the roof of 147 Reade Street (the "**147 Reade Roof HVAC Easement Area**") and incorporation of that space into the expanded Unit PHK.

25. On February 18, 2012, Rupinder Singh ("**Singh**"), the then franchisee-operator of the restaurant in the McDonald's Units, emailed Ivan Abrams ("**Abrams**"), a Board member, and, in addition to addressing other unrelated issues: (a) alleged the existence of "serious HVAC problems" in the McDonald's Units; (b) directed Abrams to the Easement Agreement and HVAC Easement therein "which gives us rights to place HVAC equipment"; and (c) stated that the "only solution is to install water tower and condensers" (the "**February 2012 Singh Email**").

26. Abrams replied to the February 2012 Singh Email that same day (February 18, 2012), disputed none of Singh's aforesaid contentions, and in regard thereto stated only "we should not confuse issues at this point, if something else is now on your mind, and you would like us to entertain a particular request, I am happy to ask other board members to attend our next, or another future meeting."

27. In or about September 2015, Plaintiff's Kim Warburton ("**Warburton**") initiated discussions with the Board, through Lisa Moretti ("**Moretti**") of Douglas Elliman Property Management, The Tribeca's then property manager, regarding: (a) Plaintiff's proposed installation

of a new HVAC system servicing the McDonald's Units, including in a portion of The Tribeca's ground-level outdoor courtyard (the "**Courtyard**"), to replace the system that had been installed during the 2006 Renovations; and (b) amendment of the Easement Agreement to reflect the resulting changes to the HVAC Easement Areas.

28. On or about November 5, 2015, Smith, then the Board's President, met with Plaintiff's representatives and inspected Plaintiff's proposed Courtyard location for the new HVAC installations.

29. On or about December 7, 2015, Smith advised Plaintiff that the Board would not approve HVAC installations in the Courtyard area proposed by Plaintiff.

30. On February 4, 2016, Warburton emailed plans to Smith and Moretti identifying an alternate proposed Courtyard location for Plaintiff's new HVAC installations.

31. On April 24, 2016, Smith emailed Warburton to advise that the Board had "soundly rejected" Plaintiff's proposal.

32. On June 13, 2016, Warburton emailed Smith and, among other things, requested a call to "discuss the ongoing HVAC issue" and "a couple of different concepts that we would like to discuss with you to see if we can bring this issue to a conclusion" (the "**June 2016 Warburton Email**").

33. The June 2016 Warburton Email expressly referenced the Easement Agreement and HVAC Easement and confirmed that "[n]othing amended or released any of [Plaintiff]'s easement rights under Paragraph 7 of the Easement, including the right to replace and renew the condenser water tower."

34. The June 2016 Warburton Email further stated that "[p]roposed resolutions" included installing Plaintiff's new HVAC equipment in alternate Courtyard locations or "in the

same location as provided for under the Easement Agreement, along with the necessary appurtenances, as [Plaintiff]’s right to do so under the Easement remains in full force and effect.”

35. Smith replied to the June 2016 Warburton Email on June 14, 2016, disputed none of the contentions therein, and agreed to the requested call.

36. Upon information and belief, on or about June 17, 2016, Plaintiff’s representatives spoke with Smith regarding the “ongoing HVAC issue” and “proposed resolutions” referenced in the June 2016 Warburton Email, but did not reach any agreement with respect thereto.

37. On August 2, 2021, Plaintiff’s Anna Knighton emailed Lauren Martinez (“**Martinez**”) of FirstService Residential (“**FirstService**”), The Tribeca’s then property manager, to request the Board’s approval of Plaintiff’s plans to install new HVAC equipment in the HVAC Easement Areas, including the 147 Reade Roof HVAC Easement Area.

38. Martinez responded by email that same day (August 2, 2021), noting “[i]t appears that [Plaintiff] intends on placing the condensing unit on the building’s roof” and asking several questions regarding Plaintiff’s proposal.

39. On August 3, 2021, Plaintiff’s Katrina Rainey (“**Rainey**”) emailed responses to Martinez’s questions (the “**August 2021 Rainey Email**”), specifically referencing the Easement Agreement and advising, among other things, that Plaintiff proposed to install its new HVAC equipment in “the same space” on the roof of 147-149 Reade Street (*i.e.*, the 147 Reade Roof HVAC Easement Area) and as otherwise depicted in the original HVAC Easement Plans.

40. In a subsequent email to Martinez on September 1, 2021, Rainey further noted that “[w]e are exercising ou[r] perpetual easement rights to maintain, repair, and replace the HVAC” and quoted the HVAC Easement (the “**September 2021 Rainey Email**”).

41. On October 11, 2021, a representative of Plaintiff's HVAC contractor, M.J. Marchia, Inc., inspected The Tribeca properties to evaluate the state of the HVAC Easement Areas.

42. On November 8, 2021, George Kavrakakis of Blackacre Development Inc., Plaintiff's consulting engineer, emailed Rainey and advised that the 147 Reade Roof HVAC Easement Area "is no longer there" and a "penthouse has been constructed" thereon.

43. On April 21, 2022, Plaintiff's Sandra Martel ("**Martel**") emailed Rezelinda Spahiu ("**Spahiu**") and Ed Ermler ("**Ermler**"), the then representatives of FirstService, to, among other things, resume discussions with the Board regarding possible alternate locations for Plaintiff's new HVAC installations (the "**April 2022 Martel Email**").

44. The April 2022 Martel Email expressly referenced the Easement Agreement and HVAC Easement and confirmed, among other things, that, notwithstanding Plaintiff's removal of its HVAC equipment from 147-149 Reade Street during the 2006 Renovations, "the easement was not amended" and "we have the easement rights."

45. The April 2022 Martel Email also: (a) acknowledged that Smith/Cuchel had expanded Unit PHK "to encompass the area where [Plaintiff] had the HVAC equipment, therefore it cannot be put back into the exact same location"; and, accordingly, (b) proposed installing Plaintiff's new HVAC equipment either (i) in a Courtyard location or (ii) on the roof of 149 Reade Street (provided access to that area through Unit PHK was granted).

46. On September 12, 2022, Martel emailed Ermler and presented additional details regarding the alternate proposals referenced in the April 2022 Martel Email, noting, among other things, that the Courtyard alternative was Plaintiff's "preferred location . . . but would require amending the easement agreement to reflect the new location."

47. Spahiu emailed Martel on September 22, 2022, and advised that Plaintiff's alternate proposals would be presented to the Board on or about September 26, 2022, and Plaintiff would thereafter be advised of any questions the Board might have with respect thereto.

48. Plaintiff's Kevin Hyde ("**Hyde**") sent a letter to the Board dated October 7, 2022, again confirming that Plaintiff "maintains its rights pursuant to the Easement Agreement" and demanding that the Board or its agents engage with Martel to determine a mutually agreeable location for Plaintiff's new HVAC installations (the "**October 2022 Hyde Letter**").

49. In response to the October 2022 Hyde Letter, Plaintiff received a letter from Kenneth Jacobs ("**Jacobs**"), the Board's attorney, dated October 12, 2022, which, among other things, stated "[t]o begin with, please be assured that The Tribeca recognizes [Plaintiff]'s rights to install appropriate HVAC equipment under the Easement Agreement" and "The Condominium is prepared to consider alternative locations for your HVAC equipment" (the "**October 2022 Jacobs Letter**").

50. On February 17, 2023, Spahiu emailed Martel and advised, among other things, that "[a]fter further investigation into additional locations for the HVAC equipment we determined that these locations would not be viable for the necessary equipment."

51. Believing Spahiu's above statement to apply to both the 147-149 Reade Street roof and the proposed alternate Courtyard areas, Martel replied with an email on February 20, 2023, stating, among other things, that "[w]e have a valid easement agreement for the location on the roof so unfortunately advising that this is not a viable option is a default under the easement agreement" (the "**February 2023 Martel Email**").

52. Spahiu replied with an email to Martel that same day (February 20, 2023), clarifying that "[w]e did not say that the roof was not a viable option" and confirming that "[t]here

is an easement and we are fully aware of that and have not challenged this at all” (the “**February 2023 Spahiu Email**”).

53. Subsequent discussions between Plaintiff’s and the Board’s representatives continued to be unsuccessful, and Plaintiff’s Rebekeh Czerwionka (“**Czerwionka**”) sent a letter to Jacobs dated November 17, 2023, again confirming the continuing Easement Agreement and Plaintiff’s rights thereunder, including to “the easement area located on the roof” (the “**November 2023 Czerwionka Letter**”).

54. Thereafter, on January 30, 2024, Czerwionka emailed Jacobs and recounted some of the history of the issues, confirming again that “[Plaintiff] still has enforceable easement rights but has been trying to work with the condo for a reasonable alternative location for the HVAC for years” and reiterating that Plaintiff “will gladly reinstall HVAC on the roof per our easement rights if the Board will not cooperate with us on the courtyard locations” (the “**January 2024 Czerwionka Email**”).

55. On February 9, 2024, Jacobs emailed Czerwionka and advised that the Board was “proceeding as discussed with [Plaintiff], and will be presenting the option of installing the HVAC equipment in the courtyard to owners at [The Tribeca’s] annual meeting.”

56. Plaintiff received no further response or information from the Board or its representatives, and served the Board with a Notice of Default dated June 17, 2024, which, among other things, declared the Board to be “in material default under the Easement [Agreement] by reason of, among other things, the Board’s unreasonable and impermissible refusal to permit [Plaintiff] to install HVAC equipment and perform related work, as expressly permitted in the Easement [Agreement]” and demanded that the Board cure its default by confirming its agreement

to Plaintiff's installation of new HVAC equipment in either the original HVAC Easement Areas or an alternate Courtyard location (the "**June 2024 Default Notice**").

57. Jacobs responded on behalf of the Board by letter dated July 3, 2024, purporting to "reject" the June 2024 Default Notice and vaguely "suggest[ing]" that the HVAC Easement may have been "abandoned," while simultaneously and inconsistently: (a) acknowledging the Easement Agreement; (b) noting that the HVAC Easement "provides for the installation of HVAC equipment in a designated location and in accordance with the [HVAC Easement Plans]"; (c) asserting that "McDonald's has not sought installation (or reinstallation) of its equipment in the designated location" and "the Board of Managers had no legal duty to consider [Plaintiff]'s request to relocate their equipment anywhere other than as set forth in the Easement"; and (d) offering to "discuss the potential installation of HVAC equipment in a mutually acceptable location" (the "**July 2024 Jacobs Letter**").

58. Subsequent communications between Plaintiff's and the Board's attorneys failed to achieve any progress in resolving the disputed HVAC issues.

59. The Easement Agreement and HVAC Easement have not been terminated, modified or amended.

60. Plaintiff has repeatedly and consistently confirmed its continuing rights pursuant to the Easement Agreement, and in and to the HVAC Easement therein, including in the February 2012 Singh Email, June 2016 Warburton Email, August 2021 Rainey Email, September 2021 Rainey Email, April 2022 Martel Email, October 2022 Hyde Letter, February 2023 Martel Email, November 2023 Czerwionka Letter and January 2024 Czerwionka Email.

61. Prior to the vague "suggest[ion]" of "abandon[ment]" in the July 2024 Jacobs Letter, the Board and its representatives, including Smith in his capacity as Board President and

the employees of various property managers employed by The Tribeca, never disputed that the Easement Agreement and HVAC Easement remained unmodified and in full force and effect.

62. The Board and its representatives, including Smith in his capacity as Board President and the employees of various property managers employed by The Tribeca, expressly and impliedly acknowledged the continuing viability of the Easement Agreement and HVAC Easement, including in the October 2022 Jacobs Letter, February 2023 Spahiu Email and July 2024 Jacobs Letter.

63. The Board and its representatives, including Smith in his capacity as Board President and the employees of various property managers employed by The Tribeca, and Smith in his individual capacity, failed to disclose to and concealed from Plaintiff that Smith/Cuchel's expansion of Unit PHK had included demolition of the 147 Reade Roof HVAC Easement Area and incorporation of that space into the expanded Unit PHK in violation of Plaintiff's rights pursuant to the Easement Agreement.

64. Plaintiff has complied with all terms, covenants and conditions of the Easement Agreement.

FIRST CAUSE OF ACTION
(Declaratory Judgment v. All Defendants)

65. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

66. Upon information and belief, Defendants dispute that the Easement Agreement and/or HVAC Easement remain viable, unmodified and unamended, and in full force and effect.

67. A ripe and justiciable controversy exists between Plaintiff and Defendants with respect to whether the Easement Agreement and/or HVAC Easement remain viable, unmodified and unamended, and in full force and effect.

68. Plaintiff has no adequate remedy at law.

69. By reason of the foregoing, Plaintiff is entitled to a declaration that the Easement Agreement and HVAC Easement remain viable, unmodified and unamended, and in full force and effect, and that Plaintiff is entitled to the use and enjoyment of all HVAC Easement Areas in accordance with and pursuant to the terms of the Easement Agreement, the HVAC Easement and the HVAC Easement Plans.

SECOND CAUSE OF ACTION
(Breach of Contract / Specific Performance v. The Board)

70. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

71. The Board breached the Easement Agreement by, among other things, refusing to permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas and otherwise failing to cure its defaults as set forth in and required by the June 2024 Default Notice.

72. The Easement Agreement and HVAC Easement relate to interests in real property that are special, unique and irreplaceable.

73. Plaintiff has no adequate remedy at law with respect to the Board's breaches of contract.

74. By reason of the foregoing, Plaintiff is entitled to an order of specific performance directing the Board to take all necessary action to restore Plaintiff's full and unrestricted access to all HVAC Easement Areas, including the 147 Reade Roof HVAC Easement Area, and otherwise permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas, in accordance with and pursuant to the Easement Agreement.

THIRD CAUSE OF ACTION
(Breach of Contract / Damages v. The Board)

75. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

76. The Board breached the Easement Agreement by, among other things, refusing to permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas and otherwise failing to cure its defaults as set forth in and required by the June 2024 Default Notice.

77. Plaintiff has been and will continue to be damaged by the Board's breaches of the Easement Agreement.

78. By reason of the foregoing, Plaintiff is entitled to a judgment against the Board in an amount to be determined by the Court not less than \$10,000,000.

FOURTH CAUSE OF ACTION
(Breach of Good Faith & Fair Dealing / Mandatory Injunction v. The Board)

79. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

80. The Easement Agreement requires, among other things, that it "be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out."

81. New York law implies a covenant of good faith and fair dealing into all contracts, including the Easement Agreement, which requires the parties to act in good faith and not take actions that would frustrate or hinder a party's rights thereunder.

82. The Board and its representatives, including Smith in his capacity as Board President and the employees of various property managers employed by The Tribeca, have

frustrated and hindered Plaintiff's rights under the Easement Agreement by unreasonably refusing to approve and allow Plaintiff's installation of new HVAC equipment in alternate locations proposed by Plaintiff in the Courtyard and/or elsewhere on The Tribeca properties.

83. Plaintiff has no adequate remedy at law with respect to the Board's breach of the implied covenant of good faith and fair dealing.

84. By reason of the foregoing, Plaintiff is entitled to a permanent mandatory injunction compelling the Board to approve and allow Plaintiff's installation of new HVAC equipment in alternate locations proposed by Plaintiff on The Tribeca properties in the Courtyard, or on the roof of 303-307 Greenwich Street, 165 Chambers Street, or 149 Reade Street.

FIFTH CAUSE OF ACTION
(Breach of Good Faith & Fair Dealing / Damages v. The Board)

85. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

86. The Easement Agreement requires, among other things, that it "be given a reasonable construction so that the intention of the parties to convey a commercially usable right of enjoyment to Grantee is carried out."

87. New York law implies a covenant of good faith and fair dealing into all contracts, including the Easement Agreement, which requires the parties to act in good faith and not take actions that would frustrate or hinder a party's rights thereunder.

88. The Board and its representatives, including Smith in his capacity as Board President and the employees of various property managers employed by The Tribeca, have frustrated and hindered Plaintiff's rights under the Easement Agreement by unreasonably refusing to approve and allow Plaintiff's installation of new HVAC equipment in alternate locations proposed by Plaintiff in the Courtyard and/or elsewhere on The Tribeca properties.

89. Plaintiff has been and will continue to be damaged by the Board's breach of the implied covenant of good faith and fair dealing.

90. By reason of the foregoing, Plaintiff is entitled to a judgment against the Board in an amount to be determined by the Court not less than \$10,000,000.

SIXTH CAUSE OF ACTION
(Trespass / Injunction v. Smith/Cuchel)

91. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

92. Smith/Cuchel's demolition of the 147 Reade Roof HVAC Easement Area and incorporation of that space into the expanded Unit PHK without Plaintiff's knowledge or consent constitutes, and will continue to constitute, an intentional, unlawful, ongoing, wanton and/or reckless trespass upon the 147 Reade Roof HVAC Easement Area.

93. Plaintiff has no adequate remedy at law with respect to Smith/Cuchel's trespass.

94. By reason of the foregoing, Plaintiff is entitled to a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147 Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel's trespass thereupon.

SEVENTH CAUSE OF ACTION
(Trespass / Damages v. Smith/Cuchel)

95. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

96. Smith/Cuchel's demolition of the 147 Reade Roof HVAC Easement Area and incorporation of that space into the expanded Unit PHK without Plaintiff's knowledge or consent

constitutes, and will continue to constitute, an intentional, unlawful, ongoing, wanton and/or reckless trespass upon the 147 Reade Roof HVAC Easement Area.

97. Plaintiff has been and will continue to be damaged by Smith/Cuchel's trespass.

98. By reason of the foregoing, Plaintiff is entitled to a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000.

EIGHTH CAUSE OF ACTION
(Tortious Interference / Injunction v. Smith/Cuchel)

99. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

100. Upon information and belief, Smith was and is aware of the Easement Agreement and HVAC Easement.

101. Upon information and belief, Cuchel was and is aware of the Easement Agreement and HVAC Easement.

102. The Board breached the Easement Agreement by, among other things, refusing to permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas and otherwise failing to cure its defaults as set forth in and required by the June 2024 Default Notice.

103. Upon information and belief, Smith/Cuchel intentionally and wrongfully procured the Board's aforesaid breach of the Easement Agreement.

104. Plaintiff has no adequate remedy at law with respect to Smith/Cuchel's tortious interference with the Easement Agreement.

105. By reason of the foregoing, Plaintiff is entitled to a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147

Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel's encroachment thereupon.

NINTH CAUSE OF ACTION
(Tortious Interference / Damages v. Smith/Cuchel)

106. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

107. Upon information and belief, Smith was and is aware of the Easement Agreement and HVAC Easement.

108. Upon information and belief, Cuchel was and is aware of the Easement Agreement and HVAC Easement.

109. The Board breached the Easement Agreement by, among other things, refusing to permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas and otherwise failing to cure its defaults as set forth in and required by the June 2024 Default Notice.

110. Upon information and belief, Smith/Cuchel intentionally and wrongfully procured the Board's aforesaid breach of the Easement Agreement.

111. Plaintiff has been and will continue to be damaged by Smith/Cuchel's tortious interference with the Easement Agreement.

112. By reason of the foregoing, Plaintiff is entitled to a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000.

TENTH CAUSE OF ACTION
(RPAPL § 871 Encroachment v. Smith/Cuchel)

113. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

114. Pursuant to § 871 of the New York State Real Property Actions and Proceedings Law (“**RPAPL**”), “[a]n action may be maintained by the owner of any legal estate in land for an injunction directing the removal of a structure encroaching on such land.”

115. The portion of the expanded Unit PHK built upon the 147 Reade Roof HVAC Easement Area constitutes a structure encroaching upon Plaintiff’s legal estate in land within the meaning of RPAPL § 871.

116. Plaintiff has no adequate remedy at law with respect to the expanded Unit PHK’s encroachment upon the 147 Reade Roof HVAC Easement Area.

117. Plaintiff has been and will continue to be damaged by the expanded Unit PHK’s encroachment upon the 147 Reade Roof HVAC Easement Area.

118. By reason of the foregoing, Plaintiff is entitled, pursuant to RPAPL § 871, to: (a) a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147 Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel’s encroachment thereupon; or, alternatively, (b) a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000.

ELEVENTH CAUSE OF ACTION
(RPAPL Art. 15 Declaration v. All Defendants)

119. Plaintiff repeats and realleges the allegations set forth above as if fully set forth herein.

120. This cause of action is asserted pursuant to RPAPL Article 15 to compel the determination of Plaintiff’s rights to the HVAC Easement Areas.

121. Pursuant to the Easement Agreement, Plaintiff is the beneficiary of the HVAC Easement and holds a valid property interest in all HVAC Easement Areas.

122. Smith/Cuchel have claimed an interest in title adverse to that of Plaintiff with respect to the 147 Reade Roof HVAC Easement Area by demolishing the 147 Reade Roof HVAC Easement Area and incorporating that space into the expanded Unit PHK without Plaintiff's knowledge or consent.

123. Smith/Cuchel's encroachment upon the 147 Reade Roof HVAC Easement Area is illegal and violates Plaintiff's easement rights in and to the HVAC Easement Areas.

124. Upon information and belief, the Board might claim an estate or interest in some or all of the HVAC Easement Areas.

125. Upon information and belief, there are no known or unknown defendants who have an interest in this action other than as named in this Complaint, and none of the Defendants is an infant, developmentally disabled, mentally ill or an alcohol abuser.

126. Upon information and belief, any judgment entered herein will not affect a person or persons not in being or ascertained at the commencement of this action who by any contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the HVAC Easement Areas, and every person in being who would have been entitled to a beneficial estate or interest in the HVAC Easement Areas if such event had happened immediately before the commencement of this action is named as a party hereto.

127. Plaintiff has no adequate remedy at law with respect to the expanded Unit PHK's encroachment upon the 147 Reade Roof HVAC Easement Area.

128. By reason of the foregoing, Plaintiff is entitled to: (a) a declaration that the Easement Agreement and HVAC Easement remain viable, unmodified and unamended, and in full

force and effect, and that Plaintiff is entitled to the use and enjoyment of all HVAC Easement Areas in accordance with and pursuant to the terms of the Easement Agreement, HVAC Easement, and HVAC Easement Plans; and (b) a permanent mandatory injunction prohibiting Defendants from depriving Plaintiff of its rights under and pursuant to the Easement Agreement and HVAC Easement.

WHEREFORE, Plaintiff respectfully requests judgments against Defendants as follows:

- (a) on the first cause of action, declaring that the Easement Agreement and HVAC Easement remain viable, unmodified and unamended, and in full force and effect, and that Plaintiff is entitled to the use and enjoyment of all HVAC Easement Areas in accordance with and pursuant to the terms of the Easement Agreement, HVAC Easement and HVAC Easement Plans;
- (b) on the second cause of action, awarding Plaintiff an order of specific performance directing the Board to take all necessary action to restore Plaintiff's full and unrestricted access to all HVAC Easement Areas, including the 147 Reade Roof HVAC Easement Area, and otherwise permit Plaintiff to install, operate, maintain, repair, replace and renew a new HVAC system in the HVAC Easement Areas, in accordance with and pursuant to the Easement Agreement;
- (c) on the third cause of action, awarding Plaintiff a judgment against the Board in an amount to be determined by the Court not less than \$10,000,000;
- (d) on the fourth cause of action, awarding Plaintiff a permanent mandatory injunction compelling the Board to approve and allow Plaintiff's installation of new HVAC equipment in alternate locations proposed by Plaintiff on The Tribeca properties in the Courtyard, or on the roof of 303-307 Greenwich Street, 165 Chambers Street or 149 Reade Street;
- (e) on the fifth cause of action, awarding Plaintiff a judgment against the Board in an amount to be determined by the Court not less than \$10,000,000;
- (f) on the sixth cause of action, awarding Plaintiff a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147 Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel's trespass thereupon;

- (g) on the seventh cause of action, awarding Plaintiff a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000;
- (h) on the eighth cause of action, awarding Plaintiff a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147 Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel's encroachment thereupon;
- (i) on the ninth cause of action, awarding Plaintiff a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000;
- (j) on the tenth cause of action, pursuant to RPAPL § 871, awarding Plaintiff
 - (i) a permanent mandatory injunction compelling Smith/Cuchel to demolish and remove all encroaching structures of, and appurtenances to, the expanded Unit PHK from the 147 Reade Roof HVAC Easement Area and restore the 147 Reade Roof HVAC Easement Area to the condition in which it existed immediately prior to Smith/Cuchel's encroachment thereupon, or, alternatively,
 - (ii) a judgment against Smith/Cuchel in an amount to be determined by the Court not less than \$10,000,000;
- (k) on the eleventh cause of action, pursuant to RPAPL Article 15, awarding Plaintiff
 - (i) a declaration that the Easement Agreement and HVAC Easement remain viable, unmodified and unamended, and in full force and effect, and that Plaintiff is entitled to the use and enjoyment of all HVAC Easement Areas in accordance with and pursuant to the terms of the Easement Agreement, HVAC Easement and HVAC Easement Plans, and
 - (ii) a permanent mandatory injunction prohibiting Defendants from depriving Plaintiff of its rights under and pursuant to the Easement Agreement and HVAC Easement;
- (l) awarding Plaintiff costs in accordance with applicable law; and

(m) granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, NY
November 26, 2024

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