

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

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CITY WINERY NEW YORK, LLC, a Delaware Limited Liability Company,	: : :
	: Index No.
	: :
Plaintiff,	: :
	: :
- against -	: :
	: :
THE RECTOR, CHURCH-WARDENS AND VESTRYMEN OF TRINITY CHURCH IN THE CITY OF NEW YORK, a New York religious corporation,	: : : :
	: :
Defendant.	: : : :
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City Winery New York, LLC (“*City Winery*” or “*Tenant*”), as and for its Verified Complaint (“*Complaint*”) in this action, respectfully alleges as follows:

**THE PARTIES**

1. City Winery is a Delaware limited liability company with an address of 143 Varick Street, New York, New York 10013.
2. Upon information and belief, The Rector, Church-Wardens and Vestrymen of Trinity Church in the City of New York (“*Trinity*” or “*Landlord*”) is a New York religious corporation, having an address 120 Broadway, 38<sup>th</sup> Floor, New York, New York 10271. Trinity is made a party defendant herein by reason of being the landlord under a certain Lease (defined herein), concerning a certain building commonly known as 143 Varick Street (a/k/a 155 Varick Street), New York, New York 10013 (the “*Building*”), during the time period relevant to this Complaint.

### VENUE

3. Venue is proper in this Court pursuant to New York Civil Practice Law and Rule 507 on the basis that this action concerns the possession, use and/or enjoyment of the Premises<sup>1</sup>, which is located in County of New York County, State of New York.

4. Venue is also proper pursuant to Article Thirty-Five the Lease (defined herein), wherein the parties herein consented to the jurisdiction of the State of New York in any action or proceeding arising out of the use and occupancy of the Premises.

### FACTS

#### **A. The Lease of the Ground Floor and Cellar**

5. Trinity and City Winery entered into a certain lease dated as of April 24, 2008 (the "**Lease**"), which Lease was thereafter modified and amended by a (i) letter from Trinity to City Winery dated September 26, 2008, (ii) letter agreement, made by and between Trinity and City Winery, dated January 9, 2009, and (ii) Agreement, made by and between Trinity and City Winery, dated as of July 31, 2015, whereby Trinity leased to City Winery and City Winery leased from Trinity, certain premises on the ground floor and the basement level (the "**Original Premises**") of the Building for a term originally expiring on December 31, 2021 (the "**Original Expiration Date**"). A copy of the Lease is annexed hereto as **Exhibit A**.

6. The Original Premises are set forth as the cross-hatched area on Exhibits A-1 and A-2 of the Lease. *See* Ex. A – Lease, p. 1.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Lease, as modified and amended through the Second Amendment. *See* Exs. A – Lease; C – Second Amendment.

7. Pursuant to the Lease, City Winery agreed to pay annual base rent of \$525,000 (“**Fixed Rent**”), payable in equal monthly installments of \$43,750. *See* Ex. A – Lease, Art. One, subsection (a).

8. Essential to City Winery agreeing to the terms of the Lease was an assurance that it would recover any investments in altering and improving the Original Premises. Accordingly, the Lease provided for a twenty (20) month rent abatement following the Commencement Date of May 1, 2008, wherein City Winery was not required to pay any Fixed Rent with respect to the Original Premises until January 1, 2010. *See* Ex. A – Lease, Art. One, subsection (g).

9. Further, the Lease provided to City Winery certain assurances in the event the Building was ever voluntarily demolished. Pursuant to Article Eleven of the Lease (the “**Demo Clause**”), City Winery is entitled to the following:

- a. not less than twelve (12) months’ notice of the voluntary demolition;
- b. a guarantee that no demolition would occur prior to the second (2<sup>nd</sup>) anniversary of the Commencement Date;
- c. a \$500,000 cash payment if the demolition occurred prior to the third (3<sup>rd</sup>) anniversary of the Commencement Date; and
- d. relief from any payment of Fixed Rent for eight (8) months prior to the Termination Date.

*See* Ex. A – Lease, Art. Eleven, subsection (b).

10. Until the events giving rise to this Complaint occurred, City Winery faithfully paid all amounts due and owing to Trinity under the Lease and City Winery did not default on any obligation under the Lease.

11. City Winery duly performed under the Lease and made substantial investments in the Premises to fit out the space and make it a community gathering place for meals, gatherings

and music and City Winery was content with the Original Premises and had no real plans to lease any additional space in the Building until the events giving rise to this Complaint.

**B. Trinity's Proposal for City Winery to Lease the Second Floor and Roof**

12. In late 2016, Trinity's Director of Real Estate Operations, John Franqui, was eager to lease the then vacant and dilapidated second floor (the "*Second Floor*") and rooftop area ("*Roof*") of the Building.

13. Seeking to increase the overall value and attractiveness of the Building to potential tenants and developers, Trinity conducted at least one (1) study of a neighboring rooftop space to understand the structural costs and potential value in creating a new common space amenity for the benefit of the neighborhood businesses and surrounding community, often referred to by Trinity as the "*Hudson Square Neighborhood*."

14. In lieu of expending its own capital to create this amenity, Trinity approached City Winery's President, Michael Dorf, on or around December 2016 about leasing the Second Floor and Roof. Trinity suggested that City Winery create a common area for the benefit of the Hudson Square Neighborhood businesses, their tenants, and Trinity.

15. City Winery was reluctant to lease additional space, and advised Trinity that it would not agree to spend millions of dollars on improving these areas unless Trinity assured City Winery that City Winery would recover its capital investment in improving the Second Floor and Roof ("*Capital Investment*").

16. Mr. Franqui repeatedly assured City Winery in oral and written communications that City Winery would recover its Capital Investment and agreed to negotiate an amendment to the Lease for that purpose.

17. Mr. Franqui further assured City Winery that Trinity would not exercise the Demo Clause for at least three (3) years, and maybe as many as five (5) years, from the beginning of City Winery commencing its lease of the Second Floor and Roof in order to give City Winery time to recover its Capital Investment.

18. Eager to lease the vacant Second Floor and Roof and to increase the value of the Building, and to create allure for prospective new tenants and developers, Mr. Franqui stated that, "I really want to make this work, I think it would be great for the neighborhood, and makes it easier for me to get a seat at the bar!"

19. Throughout 2017, Trinity and City Winery continued to negotiate a contract in which City Winery would be ensured to recover its Capital Investment.

20. On March 12, 2017, Mr. Dorf emailed to Trinity a spreadsheet ("**Recovery Calculations Spreadsheet**") calculating that the minimum Capital Investment required to improve the Second Floor and Roof to be the sum of \$1,500,000.00. The Recovery Calculations Spreadsheet further demonstrates that City Winery would require a minimum of three (3) years of projected profits to merely break even on its Capital Investment. A copy of the Recovery Calculations Spreadsheet is annexed hereto as **Exhibit B**.

21. On March 16, 2017, Trinity acknowledged and confirmed the Recovery Calculations Spreadsheet and proposed rent terms with profit sharing starting two (2) years after leasing the Second Floor and Roof or following recovery of the Capital Investment after three (3) years.

22. Trinity and City Winery continued to negotiate the terms of the Second Amendment (defined herein) to the Lease throughout May and into June 2017.

23. On or around June 2017, City Winery advised Trinity that the Capital Investment required to improve the Second Floor and Roof had increased to approximately \$2,000,000.00, based on the construction bids in hand and that City Winery was preparing contractors and materials to commence construction upon the parties' signing the Second Amendment.

24. On June 22, 2017, City Winery sent an email to Trinity reminding it that City Winery would not agree to enter into the Second Amendment unless City Winery "cover[ed its] costs in the case of demolition prematurely." This understanding and key part of the transaction was consistently part of the conversations and a key element to City Winery's agreement to enter the transaction at hand, i.e., the Second Amendment.

25. In response, on June 26, 2017, Trinity acknowledged City Winery's position and suggested "us[ing] the free rent deal as outlined in [Trinity's] proposal for the Additional Space" to ensure City Winery recovered its Capital Investment. Trinity further assured City Winery that there would be "No profit sharing until [City Winery] recover[ed] costs capped at \$2,000,000."

26. Mr. Franqui continued to assure City Winery that it would recover its Capital Investment, but stressed that he did not want to alter the terms of the Lease so much that it would "trigger a Board Approval requirement," i.e. an alteration of the Demo Clause that the parties had agreed to nine (9) years prior would require such an approval.

27. Based on these assurances, and given the long relationship and course of conduct of the parties, City Winery continued to negotiate the Second Amendment with Trinity.

### **C. The Final Version of the Second Amendment**

28. Based on the assurances provided by an authorized agent of Trinity, and on the assurances of ample time to recover its Capital Investment, Trinity and City Winery concluded their negotiations and entered into a certain second amendment to the Lease dated as of

September 1, 2017 (the “*Second Amendment*”). A copy of the Second Amendment is annexed hereto as Exhibit C.

29. The Second Amendment contained several terms and provisions intended to ensure that City Winery recovered its Capital Investment.

30. The Second Amendment extends the term of the Lease by five (5) years from the Additional Space Rent Commencement Date, i.e. to August 31, 2023. *See* Ex. C – Second Amendment, § 2.

31. With regard to the Second Floor, the Second Amendment provides that City Winery is not required to make any payments of Fixed Rent or Percentage Escalation for one (1) year after the date that Trinity delivers to City Winery the Second Floor in a vacant and broom-clean condition, i.e. the Additional Space Commencement Date, which would allow City Winery to more quickly recover its Capital Investment. *See* Ex. C – Second Amendment, §§ 2, 3(a), and 6(c).

32. With respect to the Roof, the Second Amendment provides City Winery with a revocable non-transferable license to use the Roof without payment of Fixed Rent. *See* Ex. C – Second Amendment, § 12(a).

33. The Second Amendment provides that City Winery is not required to make any payments of Percentage Rent until such time as City Winery has earned Gross Sales and Gross Ticket Sales from the Second Floor and Roof equal to the lesser of (i) the actual amount of the Capital Investment or (ii) \$2,000,000, in order to allow City Winery to recover its Capital Investment. *See* Ex. C – Second Amendment, § 14(c).

34. The Second Amendment also provides to City Winery certain assurances in the event the Building is ever voluntarily demolished (“*Second Amendment Demo Clause*”), including the following:

- a. a reimbursement of Fixed Rent and Percentage Escalation paid by City Winery for the last six (6) months of the term if Trinity exercises its termination right prior to the third (3<sup>rd</sup>) anniversary of the Additional Space Commencement Date; and
- b. a reimbursement of Fixed Rent and Percentage Escalation paid by City Winery for the last three (3) months of the term if Trinity exercises its termination right prior to the fourth (4<sup>th</sup>) anniversary of the Additional Space Commencement Date.

*See* Ex. C – Second Amendment, § 13(b).

35. Based on City Winery’s ability to recover its Capital Investment, the business deal provided that Trinity would not contribute any funds to improving the Second Floor and Roof, and that City Winery was tasked solely with the cost of the improvements to same. *See* Ex. C – Second Amendment, §§ 3(b), 4, and 12.

36. Approximately two (2) months following the execution of the Second Amendment, City Winery began construction of the improvements to the Second Floor and Roof.

37. The said construction was only completed in July 2018.

38. By the end of construction, City Winery’s Capital Investment was in excess of \$2,300,000.

39. Pursuant to the Second Amendment, the term of the Lease had been extended to August 31, 2023. *See* Ex. C – Second Amendment, § 2. At the time of contracting, based on Trinity’s repeated assurances and the intentions of the parties in negotiating the Second Amendment, City Winery fully expected the Building to be its home until at least August 31,

2023, and that during that time it would fully recover its Capital Investment in renovating the Second Floor and Roof.

**D. The Demo Letter**

40. On April 10, 2018, prior to the completion of construction of the improvements to the Second Floor and Roof, Mr. Dorf was contacted out of the blue by two (2) different brokers inquiring whether City Winery had received its twelve (12) month Demo Clause/Second Amendment Demo Clause letter from Trinity.

41. Completely bewildered by these telephone calls, Mr. Dorf contacted Mr. Franqui that day, April 10, 2018, and Mr. Franqui sheepishly advised Mr. Dorf that Trinity was indeed negotiating a sale of the Building to an entity later revealed to be Hudson Square Realty, LLC (“*Hudson Square*”) and that the Building would soon be voluntarily demolished by the new owner.

42. Thus, amid construction to completely renovate the Second Floor and Roof and after negotiating a five (5) year extension of the Lease, City Winery was advised that Trinity was closing a deal to sell the property to Hudson Square and that Trinity or its successor would be terminating the Lease by exercising the Demo Clause.

43. Aware of its prior assurances and the potential liability, Trinity attempted frantically to arrange for a new location for City Winery at one of Trinity’s other locations, including its Greenwich Street property.

44. To help mitigate its exposure, in March 2018, Trinity had a meeting with City Winery to discuss moving to another site owned by Trinity on Greenwich Street.

45. Upon information and belief, Trinity sought to discuss this move with City Winery because Trinity was already negotiating with Hudson Square the purchase of the

Building and Trinity understood its liability to City Winery if the Building was soon scheduled for demolition.

46. Unfortunately, the Greenwich Street site did not work and thereafter Trinity ceased communicating with City Winery despite City Winery's consistent efforts to engage in a dialogue.

**FIRST CAUSE OF ACTION**

**(Fraud)**

47. City Winery repeats and realleges the allegations contained in each of the preceding paragraphs as if fully set forth herein.

48. Trinity made fraudulent misrepresentations of material fact to City Winery that City Winery would recover its Capital Investment in improving the Second Floor and Roof before the Building was voluntarily demolished.

49. Trinity was already negotiating to sell the Building to Hudson Square when it made these misrepresentations and knew them at the time to be false.

50. Trinity intended to induce City Winery to rely on these misrepresentations.

51. City Winery justifiably relied on these misrepresentations.

52. City Winery spent \$2,300,000 of its own funds in reliance on Trinity's misrepresentations.

53. City Winery has been damaged as a result in the sum of \$2,300,000, plus additional costs and expenses, at a minimum.

54. City Winery is entitled to actual and punitive damages as a result of Trinity's fraudulent conduct.

**WHEREFORE**, City Winery hereby demands judgment in favor of City Winery and against Trinity, and that City Winery be awarded actual damages in the sum of \$2,500,000 and

punitive damages in the amount of not less than \$5,000,000, plus the costs and reasonable attorneys' fees incurred by City Winery in this action, as well as post-judgment interest thereon, and for such other relief as this Court deems just and proper.

**SECOND CAUSE OF ACTION**  
**(Estoppel/Detrimental Reliance)**

55. City Winery repeats and realleges the allegations contained in each of the preceding paragraphs as if fully set forth herein.

56. By words or conduct, Trinity affirmatively misrepresented to City Winery crucial and material facts that City Winery would recover its Capital Investment in improving the Second Floor and Roof before the Building was voluntarily demolished and/or Trinity concealed material facts that Trinity, or its intended a successor in interest, intended to use the Demo Clause/Second Amendment Demo Clause prior to City Winery recovering its Capital Investment.

57. Trinity intended City Winery to rely and act upon such words or conduct.

58. Trinity had knowledge of the true facts when it made its affirmative misrepresentations of material facts and/or concealment of material facts.

59. City Winery lacked knowledge of the true facts.

60. City Winery reasonable relied upon such words or conduct of Trinity.

61. City Winery spent \$2,300,000 of its own funds in reliance on Trinity's and as a result of Trinity's words or conduct.

62. City Winery has been damaged as a result in the sum of \$2,300,000, plus additional costs and expenses, at a minimum.

**WHEREFORE**, City Winery hereby demands judgment in favor of City Winery and against Trinity, and that City Winery be awarded damages in the sum of \$2,500,000, plus the

costs and reasonable attorneys' fees incurred by City Winery in this action, as well as post-judgment interest thereon, and for such other relief as this Court deems just and proper.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment)**

63. City Winery repeats and realleges the allegations contained in each of the preceding paragraphs as if fully set forth herein.

64. Trinity has been enriched by, and benefited from, City Winery's Capital Investment and the resulting improvements to the Second Floor and Roof.

65. Trinity's enrichment and benefit of Rent and Additional Rent and of increased value in the property are at the expense of City Winery because the improvements to the Second Floor and Roof are the result of Capital Investment.

66. It is against equity and good conscience to permit Trinity to retain this unjust enrichment and benefit without just compensation to City Winery.

**WHEREFORE**, City Winery hereby demands judgment in favor of City Winery and against Trinity, and that City Winery be awarded damages in the sum of \$2,500,000, plus the costs and reasonable attorneys' fees incurred by City Winery in this action, as well as post-judgment interest thereon, and for such other relief as this Court deems just and proper.

**FOURTH CAUSE OF ACTION**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

67. City Winery repeats and realleges the allegations contained in each of the preceding paragraphs as if fully set forth herein.

68. There is an implied covenant of good faith and fair dealing contained within the Lease, as amended by the Second Amendment.

69. Trinity has engaged in unreasonable conduct which has the effect of preventing City Winery from receiving the benefits of the Second Amendment and from being reimbursed for its Capital Investment.

70. Trinity has frustrated the overarching purpose of the Second Amendment to permit City Winery to recover its Capital Investment by exercising the Demo Clause/Second Amendment Demo Clause and, thereby, depriving City Winery of its rightful recoupment of the Capital Investment.

71. Had City Winery knew that Trinity, or its intended successor in interest, intended to implement the Demo Clause/Second Amendment Demo Clause, the parties would have either specifically acknowledged and agreed to prohibit the use of the Demo Clause/Second Amendment Demo Clause in such a way as to prevent City Winery from recovering its Capital Investment or City Winery would have never agreed to enter into the Second Amendment.

**WHEREFORE**, City Winery hereby demands judgment in favor of City Winery and against Trinity, and that City Winery be awarded damages in the sum of \$\$2,500,000, plus the costs and reasonable attorneys' fees incurred by City Winery in this action, as well as post-judgment interest thereon, and for such other relief as this Court deems just and proper.

Dated: Newark, New Jersey  
January 30, 2019

**DUANE MORRIS LLP**

By: /s/Steven T. Knipfelberg  
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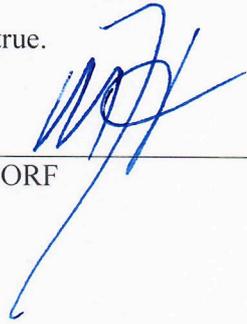
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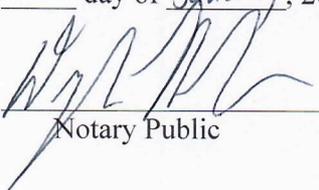
STATE OF NEW YORK )  
 )  
 ) ss.:  
 )  
COUNTY OF NEW YORK )

Michael Dorf, being duly sworn, deposes and says:

1. I am the President and Managing Member of Plaintiff City Winery New York, LLC ("*City Winery*"), a Delaware limited liability company. Pursuant to the City Winery's certificate of formation, I am authorized to verify this Verified Complaint ("*Complaint*") on City Winery's behalf.

1. I have read the foregoing Complaint and know the contents thereof and believe the same to be true to the best of my knowledge, except as to those matters stated to be on information and belief, and as to those matters, I believe it to be true.

  
\_\_\_\_\_  
MICHAEL DORF

Sworn to before me this  
28<sup>th</sup> day of January, 2019  
  
\_\_\_\_\_  
Notary Public

