

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, D.C. 20004

Plaintiff,

v.

**THE TREA 1001 PENNSYLVANIA
AVENUE TRUST**
730 Third Avenue
New York, N.Y. 10017

Defendant.

Case No. 2023-CAB-001531

Jury Trial Demanded

**COMPLAINT FOR BREACH OF CONTRACT AND MONEY HAD AND
RECEIVED SEEKING MONETARY DAMAGES**

Crowell & Moring LLP (“Crowell & Moring” or “Tenant”) brings this breach-of-contract action based on a unique, highly negotiated office lease, dated March 29, 1985, and amended nineteen times, between Crowell & Moring, as Tenant, and The TREA 1001 Pennsylvania Avenue Trust, as Landlord and successor in interest to previous landlords (the “Lease”). Crowell & Moring seeks to enforce the plain language of the Lease—which was expressly added to the Lease in its Seventeenth Amendment—and which provides Crowell & Moring the right to proportionately abate rent during the pendency of a Force Majeure event, such as the COVID-19 pandemic and related governmental orders since 2020.

Accordingly, Crowell & Moring brings this Breach of Contract action against Defendant The TREA 1001 Pennsylvania Avenue Trust (“TREA Trust” or “Landlord”) as follows:

BACKGROUND

1. Pursuant to the parties' Lease, Crowell & Moring is leasing certain "Premises" consisting of approximately 391,757 square feet of office space in the building located at 1001 Pennsylvania Avenue N.W., Washington, D.C. (the "Building").

2. The Seventeenth Amendment to the Lease, dated July 22, 2010, expressly provides Crowell & Moring with a right to abate rent in the event that it "actually suffers a material interference...of its use and enjoyment of any portion of the Premises" and such interference renders the Premises "unusable for the purpose of conducting Tenant's business in such applicable part of the Premises" as a result of a Force Majeure event, *i.e.*, "any prevention, delay or stoppage due to any Act of God,...laws, orders of government or of civil, military or naval authorities."

3. Between March 2020 and May 2021, Crowell & Moring suffered a material interference of its use and enjoyment of the Premises—as the Premises themselves were rendered unusable for the normal conduct of Crowell & Moring's business—due to the COVID-19 outbreak and resulting Executive Orders, which is a Force Majeure event under the Lease and which materially interfered with business operations in the Premises.

4. Pursuant to the Executive Orders, the District of Columbia suspended public gatherings, ordered strict restrictions on the operations of essential and non-essential businesses, and directed residents to shelter in place during the relevant time period. For example, businesses were ordered to take all reasonable measures to enable their employees to work from home, with violations of the Executive Orders subject to civil, criminal, and administrative penalties, including fines, pursuant to District of Columbia Official Code section 7-2307.

5. Local, national, and international health organizations, including the World Health Organization and the U.S. Centers for Disease Control and Prevention, also issued recommendations and directives to suspend public gatherings as well.

6. As a result, Crowell & Moring was forced to cease normal business operations from the Premises, and its use of the Premises was restricted to having certain personnel access the Premises on a very limited basis, such as to collect mail. Crowell & Moring suffered a material interference of its use and enjoyment of the Premises for the normal conduct of its business for the period beginning March 2020 and continuing until after the restrictions in the COVID-19 Executive Orders were lifted.

7. These limitations constitute an interference or limitation of Crowell & Moring's use of the Premises, triggering its right to an abatement of rent under the Lease, including Section 13(f) of the Seventeenth Amendment to the Lease. TREA Trust, however, has failed to honor Crowell & Moring's contractual right to abate rent, and such failure is a material breach of the Lease.

8. Therefore, Crowell & Moring seeks damages for TREA Trust's failure to honor its contractual rights under the Lease or, alternatively, restitution for the overpayments of rent that TREA Trust unjustifiably forced Crowell & Moring to pay. Crowell & Moring seeks to enforce its contractual right to an abatement of rent under the Lease as the Premises were rendered unusable for Crowell & Moring's normal and customary business operations due to the COVID-19 pandemic and Executive Orders that were in effect between March 17, 2020, and May 21, 2021. During the relevant time period, Crowell & Moring paid TREA Trust more than \$30 million in Annual Rent, even though it was entitled to a 98% abatement of Annual Rent as a result of its inability to use the Premises for the normal conduct of its business operations. Crowell & Moring is thus entitled to a reimbursement of approximately \$30 million, representing its overpayments of rent and applicable pre-judgment interest.

THE PARTIES

9. Plaintiff Crowell & Moring LLP is, and at all relevant times was, a limited liability partnership duly organized and existing under the laws of the District of Columbia. Crowell & Moring is a law firm and currently operates an office at the Building, located at 1001 Pennsylvania Avenue N.W., Washington, D.C.

10. Crowell & Moring is informed and believes, and upon such information alleges, that Defendant The TREA 1001 Pennsylvania Avenue Trust is, and at all relevant times was, a statutory trust created and existing under the laws of the District of Columbia and conducting business and owning real property in the District of Columbia.

JURISDICTION AND VENUE

11. This Court has jurisdiction pursuant to District of Columbia Code section 11-921.

12. This Court has jurisdiction over Defendant TREA Trust pursuant to District of Columbia Code section 13-423 because TREA Trust is a District of Columbia statutory trust and conducts business and owns real property in the District of Columbia.

13. Venue is proper in the District of Columbia because Defendant TREA Trust owns the subject property located at 1001 Pennsylvania Avenue N.W., Washington, D.C., and because the contract at issue was made, performed, and breached in the District of Columbia.

GENERAL ALLEGATIONS

I. Crowell & Moring Enters into an Office Lease Agreement with TREA Trust's Predecessors in Interest for the Purpose of Operating a Law Firm Office on the Premises.

14. On or about March 29, 1985, Crowell & Moring entered into an Office Lease Agreement with Lincoln Square Associates Limited Partnership and 1001 Pennsylvania Avenue Associates (the "Original Landlord") for the use of certain Premises as part of the Building, located

at 1001 Pennsylvania Avenue N.W., Washington, D.C. A true and correct copy of the Office Lease Agreement is attached as **Exhibit 1**.

15. The Office Lease Agreement was amended by a Seventeenth Amendment, dated July 22, 2010, between Crowell & Moring, as Tenant, and Teachers Insurance and Annuity Association of America, as then Landlord and successor in interest to the Original Landlord. A true and correct copy of the Seventeenth Amendment to the Office Lease is attached as **Exhibit 2**. The Office Lease Agreement, as amended by and through the Nineteenth Amendment to Office Lease, is referred to herein as the “Lease.”

16. In 2018, then Landlord Teachers Insurance and Annuity Association of America conveyed the Building to TREA Trust, which became Landlord under the Lease.

17. The Premises currently include approximately 391,757 square feet of office space on the 7th through 14th floors of the Building and 4,218 square feet of storage space in the Building. Lease, 17th Amd. at 2.

18. With respect to the Premises’ “Use,” the Lease states that the Premises shall be used for “**general office purposes**.” Lease, art. 9, *as amended by* Lease, 17th Amd. § 5 (emphasis added). The Lease also specifically provides that:

The Premises shall be used only for general office purposes and other uses incidental to general office uses, such as, without limitation, use for shower and locker room facilities, conferences, receptions, use for food preparation areas (including, without limitation, a cafeteria) for the benefit of employees, partners and guests of Tenant and use for seminars and training for Tenant’s employees, partners and guests ***and for no other purpose***.

Id. (emphasis added).

19. The “Lease Term” has been extended several times and is currently set to expire on July 31, 2026. Lease, 17th Amd. at 2.

20. In exchange for its use of the Premises, Crowell & Moring agreed to pay TREA Trust a certain amount of “Annual Rental,” as well as “Initial Basic Costs Monthly Amount”, “Proportionate Share of Basic Costs Excess”, “Initial Utility Costs Monthly Amount”, and “Proportionate Share of Utility Costs Excess”, as more particularly set forth in the Lease. *Id.*, 17th Amd. at 3–4.

II. The Lease Contains Several Provisions Safeguarding Crowell & Moring’s Intended Use of the Premises as an Office Space Open to Its Employees, Clients, and Vendors, and Places Obligations on TREA Trust to Ensure the Premises Are Accessible and Usable for This Purpose.

21. The Lease contains several provisions relating to its fundamental purpose of making available to Crowell & Moring, as a law firm and an office tenant, Premises that are suitable for, and capable of, supporting its intended use and operation of the Premises as a law firm office. This fundamental purpose also represents the benefits of the bargain Crowell & Moring received in exchange for the payment of rent to TREA Trust.

22. For example, Section 4.01 of the Lease provides that:

Landlord shall operate the Building as a first-class District of Columbia modern office building. Landlord, at its cost and expense, shall keep and maintain the Building, its fixtures, appurtenances, systems and facilities, and the sidewalks, plazas and landscaped areas adjoining the Building, ***in good working order, condition and repair*** and shall make all repairs, structural and otherwise, interior and exterior, ordinary or extraordinary, as and when needed in or about the Premises or the Building, except the Leasehold Improvements and those repairs for which Tenant is expressly responsible pursuant to any other provisions of this lease.

Id. (emphasis added).

23. Under Section 4.01, TREA Trust has an obligation to “operate” and “maintain” “in good working order, condition and repair” the Building as “a first-class District of Columbia modern office building.” *See id.*

24. Further, Section 4.02 provides that:

*Landlord, at its cost and expense, shall . . . provide Tenant, its employees and invitees prompt access (in a manner consistent with a first-class modern office building in the District of Columbia) into the Building (through the lobby) and the Premises **twenty-four (24) hours each day, seven (7) days per week.***

Id. (emphasis added).

25. Thus, under Section 4.02, Crowell and Moring is entitled to “prompt access” to the Building and Premises, 24 hours per day and 7 days per week, for “its employees and invitees.”

Id.

26. The foregoing provisions highlight the fundamental purpose of the Lease—namely, to make available to Crowell & Moring, as a law firm and an office tenant, Premises that are suitable for, and capable of, supporting its intended use and operation of the Premises as a law-firm office, open and accessible to its partners, officers, employees, vendors, and clients.

III. Section 13(f) of the Seventeenth Amendment Provides Crowell & Moring with an Abatement of Annual Rent in the Event It Suffers a Material Interference of Its Use and Enjoyment of the Premises for the Normal Conduct of Its Business.

27. To protect Crowell & Moring’s benefits of its bargain, the Lease expressly provides for an abatement of rent under certain circumstances.¹

28. Indeed, when the parties entered into the Seventeenth Amendment to the Lease, they specifically included a provision—Section 13(f)—that would allow Crowell & Moring to

¹ For example, Section 16.01 of the Lease provides Crowell & Moring with the right to abate Rental in the event the Premises are rendered unusable for “the normal conduct of [its] business” as a result of “casualty.” Section 13(f) of the Seventeenth Amendment provides Crowell & Moring with the right to abate Annual Rental when a Force Majeure event occurs, which does not constitute a casualty under the Lease. *See id.* (“The foregoing shall not apply with respect to a casualty or condemnation, in which event the provisions of Sections 16 and 17 of the Lease shall apply.”).

abate Annual Rental in the event it suffers a material interference in its use and enjoyment of the Premises for the normal conduct of its business as a result of a Force Majeure event.

29. The conditions for Tenant's abatement right under Section 13(f) of the Seventeenth Amendment include:

- (1) Tenant actually suffers *a material interference*, interruption, curtailment, stoppage or suspension *of its use and enjoyment of any portion of the Premises* by reason of *any interruption of any Essential Building Service . . .* (collectively, "Interference"),
- (2) such Interference shall render all or *any material part of the Premises unusable for the purpose of conducting Tenant's business in such applicable part of the Premises* as permitted under this Lease and
- (3) *. . . such Interference arises from . . . a Force Majeure . . . event* and such Interference shall continue for more than seven (7) consecutive business days after Landlord has been given written notice by Tenant of the Interference.

Lease, 17th Amd. § 13(f) (emphasis added).

30. "Essential Building Services" is described broadly in Section 13(f) through the use of non-exhaustive examples of what may constitute such services, which:

shall include HVAC, electrical, elevator and fire and life safety services as well as secure access to the Building (including the requirements set forth in Section 4.02 of the Lease [which includes, at Section 4.02(v), "*prompt access (in a manner consistent with a first-class modern office building in the District of Columbia) into the Building* (through the lobby) *and the Premises* twenty-four (24) hours each day, seven (7) days per week"]], hot and cold water, plumbing and sewage services.

Id. (emphasis added).

31. Using such a non-exclusive list to describe "Essential Building Services," the parties mean to include *any* building service that restricts Tenant's ability to use the Premises for their intended purpose. *Compare* Lease, 17th Amd. § 13(f) ("Essential Building Services' shall *include...*" (emphasis added)), *with id.* ("Force Majeure' shall *mean...*" (emphasis added)).

32. “Force Majeure,” in turn, is defined more restrictively and “shall mean”

any prevention, delay or stoppage due to any Act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, a taking by eminent domain, requisition, ***laws, orders of government*** or of civil, military or naval authorities, ***or any other cause similar to the foregoing not within the reasonable control of Landlord.***

Lease, 17th Amd. § 13(f) (emphasis added).

33. The remedy to Tenant under Section 13(f) is the abatement of Annual Rental:

Annual Rental shall abate in a reasonable and proportional amount (which takes into account all reasonably relevant factors, including that portion of the Premises which Tenant actually continues to reasonably operate under normal business conditions) ***based upon the degree of material interference of Tenant’s use and enjoyment of the Premises*** (“Premises Interference”), calculated from the date of Landlord’s receipt of Tenant’s written notice until the date Tenant’s use and enjoyment of the applicable part of the Premises is restored. *Such abatement amount may decrease, in accordance with the standard set forth in the previous sentence, to the extent the Premises Interference is diminished.*

Id. (emphasis added).

34. In sum, Section 13(f) of the Seventeenth Amendment provides for an abatement of Annual Rental—proportionate to the “material interference of Tenant’s use and enjoyment of the Premises”—when Tenant “suffers a material interference, interruption, curtailment, stoppage or suspension of its use and enjoyment of any portion of the Premises by reason of any interruption of any Essential Building Service” such as HVAC, “secure access,” or “prompt access” to the Building and Premises. *See id.* This provision applies even when the interruption of any Essential Building Service is due to a Force Majeure event, including “laws, orders of government . . . , or any other cause similar to the foregoing not within the reasonable control of Landlord.” *Id.*

IV. A Public Health Crisis and Ensuing Executive Orders Force Businesses, including Crowell & Moring, to Cease On-Site Business Operations.

35. In late 2019—early 2020, COVID-19 emerged as a novel respiratory disease and spread throughout the world in an unusual manner, resulting in a global pandemic.

36. As a result of the pandemic, local, national, and international health organizations, including the World Health Organization and U.S. Centers for Disease Control and Prevention, issued recommendations and directives to suspend public gatherings. Accordingly, the District of Columbia suspended public gatherings, ordered restrictions on the operation of essential and non-essential businesses, and ordered residents to shelter in place. *See* Gov’t of D.C., Mayor’s Order 2020-053 (“Closure of Non-Essential Businesses and Prohibition on Large Gatherings During Public Health Emergency for the 2019 Novel Coronavirus (COVID-19)”) (Mar. 24, 2020), *as amended by* Mayor’s Order 2020-063 (“Extensions of Public Emergency and Public Health Emergency and Measures to Protect Vulnerable Populations During the COVID-19 Public Health Emergency”) (Apr. 15, 2020), *as amended by* Mayor’s Order 2020-079 (“Extensions of Public Emergency and Public Health Emergency and Delegations of Authority Authorized During COVID-19”) (July 22, 2020); Gov’t of D.C., Mayor’s Order 2020-054 (“Stay at Home Order”) (Mar. 30, 2020), *as amended by* Mayor’s Order 2020-063, *as amended by* D.C. Mayor’s Order 2021-069 (May 17, 2021) (collectively, “Executive Orders”). True and correct copies of the Executive Orders are attached as **Exhibits 3 through 7**.

37. Under the Mayor’s Order 2020-053, legal services were “Essential Businesses” only “when necessary to assist in compliance with legally mandated activities, Essential Businesses or Essential Governmental Functions.” *Id.* § IV.1.1. Thus, Crowell & Moring was not deemed an Essential Business because very little of its day-to-day business pertains to services “necessary to assist in compliance with legally mandated activities, Essential Businesses or

Essential Governmental Functions,” as much of its work involves services for private parties with respect to voluntary, not legally mandated, activities. *See id.*

38. In any event, the Mayor’s Order 2020-053 also mandated certain restrictions on *all businesses*, essential and non-essential alike. For example, Section III.3 of the Order provides that:

Essential and non-Essential businesses shall take all reasonable steps necessary for employees to work remotely from their residences and to deliver services to the businesses and their customers by telephone, video, internet, or other remote means.

Mayor’s Order 2020-053 § III.3 (emphasis added). “Any individual or entity that knowingly violates this Order shall be subject to all civil, criminal, and administrative penalties authorized by law, including sanctions or penalties for violating D.C. Official Code § 7-2307, including civil fines, summary suspension or revocation of licensure.” *Id.* § VI.

39. Under District of Columbia law, these Executive Orders shall have “the full force and effect of law.” *Newspapers, Inc. v. Metro. Police Dep’t*, 546 A.2d 990, 1000 (D.C. 1988).

40. These Executive Orders thus constitute a Force Majeure under the Lease, which triggered Crowell & Moring’s right to abate rent. *See* Lease, 17th Amd. § 13(f) (“‘Force Majeure’ shall mean any prevention, delay or stoppage due to . . . laws, orders of government or of civil, military or naval authorities . . .”).

V. Crowell & Moring Suffers a Material Interference in Its Use and Enjoyment of the Premises for the Normal Conduct of Its Business as a Result of the COVID-19 Government Orders.

41. During the relevant time period, Crowell & Moring was afforded very limited access to the Premises to conduct its “**Minimum Basic Operations**,” consistently with the Executive Orders. *See generally id.* § IV.4. This is contrary to what was contemplated under the

Lease; Crowell & Moring was to be afforded access and use of the Premises sufficient for “the normal conduct of [Crowell & Moring’s] business,” not merely for Minimum Basic Operations.

42. More specifically, Crowell & Moring had 5 to 10 employees in the office a few days per week. They made up less than 2% of Crowell & Moring’s 660-employee workforce who worked in the District of Columbia office during the relevant time period. This remained true until after the business restrictions from the COVID-19 Executive Orders had been lifted, *see* D.C. Mayor’s Order 2021-069 § III (May 17, 2021) (allowing businesses in the District to resume full operations beginning May 21, 2021). Like other businesses in the District, Crowell & Moring was not in a position to have its employees return to the office immediately after May 21, 2021.

43. In short, during this relevant time period, there was an interruption of Essential Building Services, including prompt access to the Building, that was due to the COVID-19 Executive Orders, which were a Force Majeure event under the Lease, and that resulted in a “material interference” of Crowell & Moring’s use and enjoyment of the Premises for “the purpose of conducting Tenant’s business as permitted under the Lease.” *See* Lease, 17th Amd. § 13(f).

VI. The Plain Language of the Lease Entitles Crowell & Moring to an Abatement of Rent During the Period of Interference with Its Use and Enjoyment of the Premises Due to the COVID-19 Government Orders.

44. The plain language of Section 13(f) of the Seventeenth Amendment to the Lease enabled Crowell & Moring to abate *Annual Rental* for the period of time when it suffered a material interference of its use and enjoyment of the Premises as a result of the Force Majeure event, *i.e.*, the COVID-19 pandemic and related Executive Orders.

45. As discussed above, Section 13(f) provides Crowell & Moring with an abatement of Annual Rental in the event:

- (1) Tenant actually suffers *a material interference*, interruption, curtailment, stoppage or suspension *of its use and enjoyment of any*

portion of the Premises by reason of *any interruption of any Essential Building Service* . . . (collectively, “Interference”).

(2) such Interference shall render all or *any material part of the Premises unusable for the purpose of conducting Tenant’s business* in such applicable part of the Premises as permitted under this Lease and

(3) . . . *such Interference arises from . . . a Force Majeure . . . event* and such Interference shall continue for more than seven (7) consecutive business days after Landlord has been given written notice by Tenant of the Interference

Lease, 17th Amd. § 13(f) (emphasis added).

46. “Essential Building Services” is defined broadly in Section 13(f) through the use of non-exhaustive examples of what may constitute such services, and:

shall include HVAC, electrical, elevator and fire and life safety services *as well as secure access to the Building* (including the requirements set forth in Section 4.02 of the Lease [which includes at Section 4.02(v) “*prompt access (in a manner consistent with a first-class modern office building in the District of Columbia) into the Building* (through the lobby) *and the Premises* twenty-four (24) hours each day, seven (7) days per week”]), hot and cold water, plumbing and sewage services.

Id. (emphasis added).

47. Under this plain language, an abatement event is triggered by *any* interference of “secure access to the Building (including the requirements set forth in Section 4.02 of the Lease)” by reason of a *Force Majeure*, such as “orders of government” or “any other cause . . . not within the reasonable control of Landlord.” *Id.* (emphasis added). “[S]ecure access” as “set forth in Section 4.02” of the Lease includes “**prompt access**” into the Building and the Premises “*twenty-four (24) hours each day, seven (7) days per week*” for “*Tenant, its employees and invitees.*” *Id.* § 4.02(v) (emphasis added). What is more, such “prompt access” and “secure access” must also be “*in a manner consistent with a first-class modern office building.*” *Id.* (emphasis added).

48. During the COVID-19 pandemic, TREA Trust did not and could not—consistently with its obligations under the Lease—provide safe Premises and agreed-upon Building services, including HVAC services, for Crowell & Moring’s use and enjoyment for the purposes of conducting a law practice. The Executive Orders at issue, which aimed to provide protection from the spread of COVID-19 by limiting the occupancy inside office buildings, including the Building, attempted to help correct this evidenced failure. These measures, while reducing, did not eliminate the significant health risks associated with the presence of SARS-CoV-2 in the Building air.

49. Due to the COVID-19 pandemic and the ensuing Executive Orders, its access to, and use of, the Premises during the relevant time period was also significantly diminished.

50. These causes—a pandemic and ensuing Executive Orders—involved both “orders of government” and “other cause . . . not within the reasonable control of Landlord,” *i.e.*, Force Majeure events. Thus, there was a material interference of Crowell & Moring’s access to, and use of, the Premises as a direct result of Force Majeure events.

51. In light of the Executive Orders mandating cessation of on-site operations and distancing between individuals permitted to work, Crowell & Moring had no more than a few of its employees access the Premises simultaneously at any given point in time. That was *not* the nature of “access” that would allow Crowell & Moring to effectively conduct its business under normal business conditions as a nearly-700-person law firm in the Premises. Crowell & Moring thus suffered a material interference, interruption, or curtailment of its use and enjoyment of the Premises.

52. Thus, there was an abatement event under Section 13(f) of the Seventeenth Amendment to the Lease, beginning March 17, 2020, when Crowell & Moring was forced to close its office at the Premises.

53. On April 7, 2020, Crowell & Moring provided TREA Trust with written notice of the abatement event, thus satisfying the notice requirement under this section. A true and correct copy of the notice is attached as **Exhibit 8**.

54. Accordingly, the plain language of Section 13(f) of the Seventeenth Amendment entitles Crowell & Moring to an abatement of Annual Rental beginning April 17, 2020 (*i.e.*, seven consecutive business days after notice). Because Crowell & Moring's access and use of the Premises was reduced to less than 2% of the normal use and access contemplated under the Lease, this abatement should equal approximately 98% of Annual Rental. *See* Lease, 17th Amd. § 13(f) ("Annual Rental shall abate in a reasonable and proportional amount (which takes into account all reasonably relevant factors, including that portion of the Premises which Tenant actually continues to reasonably operate under normal business conditions) based upon the degree of material interference of Tenant's use and enjoyment of the Premises").

VII. That Crowell & Moring Was Able to Conduct Its Business Operations During the Relevant Time Period *from Elsewhere Outside the Premises* Does Not Negate Its Entitlement to an Abatement of Rent.

55. The Lease recognizes that Crowell & Moring is a law-firm office and that its normal business operations require a certain number of individuals, including, for example, its "employees and invitees." Lease § 4.02.

56. Thus, when Crowell & Moring is not provided with the necessary access to carry out its normal business operations *in the Premises*, the Lease provides it a right to abate rent. *See* Lease § 16.01 ("the Rental payable hereunder shall be reduced in proportion to the extent that the Premises are rendered unusable for the normal conduct of the business then conducted on the Premises"); Lease, 17th Amd. § 13(f) ("Annual Rental shall abate in a reasonable and proportional amount (which takes into account all reasonably relevant factors, including that portion of the

Premises which Tenant actually continues to reasonably operate under normal business conditions) based upon the degree of material interference of Tenant’s use and enjoyment of the Premises”).

57. Put differently, that Crowell & Moring was able to conduct its business operations during the relevant time period *from elsewhere* outside the Premises—with its employees working primarily in remote settings—does not affect its rights to abate rent as expressly provided for under the Lease and tied to “the normal conduct of the business then conducted on the Premises.” *See* Lease § 16.01; *see also Schulte Roth & Zabel LLP v Metro. 919 3rd Ave. LLC*, 202 A.D.3d 641 (N.Y. App. Div. 2022) (allowing similar claims by a law-firm tenant who “seeks a rent abatement for a period of time during the Covid-19 pandemic in which the great majority of its employees worked remotely and not at the leased premises”).

VIII. The Unavoidable Delay Provision in the Lease Does Not Alter Crowell & Moring’s Rights to an Abatement of Rent as It Has No Application Under the Circumstances.

58. The Lease includes an Unavoidable Delay provision excusing nonperformance of certain obligations, *excluding financial obligations*, due to causes beyond the reasonable control of the party obligated to perform. This provision, however, has no application under the circumstances so as to affect Crowell & Moring’s rights to an abatement of rent.

59. Section 33.07 of the Lease provides that:

Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant (other than with respect to the payment of money . . .), a party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of such party (an “Unavoidable Delay”); provided, that the inability of a party to timely fulfill its obligations solely for financial reasons shall not be deemed a cause beyond the reasonable control of such party.

Lease § 33.07 (emphasis added).

60. This Unavoidable Delay provision excuses nonperformance of, and extends the time to perform, Lease obligations due to any “cause of any kind whatsoever which is beyond the reasonable control of [the] party,” excluding the obligations with regard to rent or other payments between the parties. *Id.* The provision, however, does not apply here to alter Crowell & Moring’s right to abate rent.

61. To the contrary, the Lease specifically provides that any “interruption of any Essential Building Service”—*even if* due to a cause “not within the reasonable control of Landlord,” as similarly contemplated under the Unavoidable Delay provision—may still serve as a proper basis for Crowell & Moring’s contractual right to an abatement of rent under the Lease. *Compare* Lease § 33.07, *with* Lease, 17th Amd. § 13(f).

62. Such an unavoidable cause, *i.e.*, a cause “beyond the reasonable control of [Landlord]” or “not within the reasonable control of Landlord,” is called a Force Majeure event. *See* Lease, 17th Amd., §13(f). And a Force Majeure event extends the notice period under Section 13(f) from “three (3) consecutive business days” to “seven (7) consecutive business days.” *Id.*

63. In short, a Force Majeure event provides the very basis for Tenant’s abatement right under Section 13(f). It cannot be interpreted otherwise to somehow write out that right.

64. Thus, there is no basis in the Lease to even suggest that a cause not within TREA Trust’s control—whether labeled as a Force Majeure event, under Section 13(f) of the Seventeenth Amendment, or an Unavoidable Delay, under Section 33.07 of the Lease—would nullify or somehow alter Crowell & Moring’s contractual right to an abatement of rent specifically set forth under Section 13(f) of the Seventeenth Amendment of the Lease.

65. The Unavoidable Delay provision provides only that Crowell & Moring may not cite the provision itself as a basis to avoid rent. And that is not the case here.

66. Crowell & Moring is relying on separate conditions and provision of the Lease as bases to abate rent. Put differently, it is Section 13(f) of the Seventeenth Amendment—not the Unavoidable Delay provision—that provides Crowell & Moring a basis to abate rent.

67. Section 33.07 thus has no application here and does not alter Crowell & Moring’s rights to an abatement of rent.

IX. TREA Trust Fails to Honor Crowell & Moring’s Contractual Rights to Abate Rent During the Relevant Time Period.

68. On April 7, 2020, Crowell & Moring informed TREA Trust, in writing, that it had suffered an “Interference” as defined in the Lease (*i.e.*, “a material interference, interruption, curtailment, stoppage or suspension of its use and enjoyment of any portion of the Premises by reason of any interruption of any Essential Building Service”), which had rendered the Premises unusable for the normal conduct of Crowell & Moring’s business operations. *See generally* Ex. 8.

69. Crowell & Moring specifically explained that such Interference had occurred as a consequence of “the various governmental restrictions and orders arising out of the COVID-19 pandemic,” which had rendered “the Premises unusable for the purpose of conducting Tenant’s business.” Ex. 8 at 1.

70. On April 27, 2020, and August 11, 2022, Crowell & Moring sent further written correspondence to TREA Trust, requesting that TREA Trust provide Crowell & Moring with an abatement of rent for its inability to use the Premises for the normal conduct of its business operations beginning March 16, 2020.

71. Crowell & Moring’s payments of rent were made during the relevant time period subject to and under a reservation of rights, including “all rights under the Lease and applicable law and in equity.” *See* Ex. 8 at 1.

72. To date, TREA Trust's only substantive response has been by a letter, dated November 10, 2022, in which it claimed that it had "worked diligently to continue 'business as usual' at the Building," but provided no explanation as to what it meant by "business as usual." TREA Trust also acknowledged that "D.C. COVID restrictions forced the closure of non-essential businesses, *such as Tenant's*, beginning on March 25, 2020."²

73. Between April 2020 and May 2021, when the government orders were in effect, Crowell & Moring paid TREA Trust more than \$30 million in Annual Rent, even though it was entitled to a 98% abatement of Annual Rent as a result of its inability to use the Premises for the normal conduct of its business operations.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Breach of Contract

74. Crowell & Moring incorporates herein by reference, and alleges as though set forth in full, the allegations contained in Paragraphs 1 through 73.

75. TREA Trust breached the terms of the Lease by failing to honor Crowell & Moring's right to an abatement of rent as triggered by the COVID-19 pandemic and the ensuing Executive Orders.

76. The breach by TREA Trust was material and willful.

77. As a direct and proximate result of the breach, Crowell & Moring sustained injury.

78. By reason of the breach by TREA Trust, Crowell & Moring is entitled to damages, in an amount of approximately \$30 million, which is to be proven at trial.

² TREA Trust did not address whether COVID-19 was a casualty event under the Lease that would trigger Crowell & Moring's right to abate rent under Section 16.01 of the Lease. *See* Lease § 16.01; *see also id.*, 17th Amd. § 13(f) ("The foregoing shall not apply with respect to a casualty or condemnation, in which event the provisions of Sections 16 and 17 of the Lease shall apply.").

SECOND CAUSE OF ACTION
Money Had and Received

79. Crowell & Moring incorporates herein by reference, and alleges as though set forth in full, the allegations contained in Paragraphs 1 through 78.

80. Crowell & Moring overpaid to TREA Trust the amount of approximately \$30 million, which constitutes the difference between the rent amounts that Crowell & Moring actually paid to TREA Trust and the amounts of abated rent, which Crowell & Moring was entitled to pay pursuant to the Lease. This money belongs to Crowell & Moring.

81. TREA Trust acted inequitably by overcharging Crowell & Moring for rent not owed and refusing to accept abated rent, despite Crowell & Moring's repeated requests.

82. Under the circumstances, in equity and good conscience, TREA Trust should not be permitted to retain the overpayments and instead should be required to return them to Crowell & Moring.

PRAYER

WHEREFORE, Crowell & Moring prays for judgment against TREA Trust as follows:

1. For an award of compensatory damages in favor of Crowell & Moring and against TREA Trust or, in the alternative, an order requiring TREA Trust to make restitution to Crowell & Moring, in an amount to be determined based on the evidence at trial, but no less than \$30 million, including pre-judgment interest;

2. For reasonable attorneys' fees and costs of suit herein incurred as specifically authorized under Article 27 of the Lease or otherwise permitted by law; and

3. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Crowell & Moring demands a trial by jury of all issues so triable as of right. Super. Ct.
Civ. R. 38(b).

Dated: March 10, 2023

CROWELL & MORING LLP

/s/Toni Michelle Jackson

KEITH J. HARRISON (D.C. Bar No. 416755)

kharrison@crowell.com

TONI MICHELLE JACKSON (D.C. Bar No. 453765)

tjackson@crowell.com

CROWELL & MORING LLP

1001 Pennsylvania Avenue, N.W.

Washington, DC 20004

Telephone: 202.624.2500

Facsimile: 202.628.5116

Counsel for Plaintiff

CROWELL & MORING LLP