

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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STEVEN TOBIN,	:	
	:	
Plaintiff	:	
	:	COMPLAINT
v.	:	
	:	Case Number:
PARISH OF TRINITY CHURCH,	:	
	:	
Defendant	:	
-----X		

INTRODUCTION

This is an action under the Visual Artists Rights Act of 1990 (VARA) to remedy an affront and damage to an acclaimed artist's honor and reputation, and to return an iconic sculpture, together with soil and DNA from 9/11 embedded in its patina, to the site it was created for and was promised it would occupy.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §106A *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in the Southern District of New York under 28 U.S.C. §§ 1391 (b)(1) and (2) because the defendant resides in this district, the events or omissions giving rise to the claim occurred in this district, and the property that is the subject of the action for over ten (10) years was situated in this district.

THE PARTIES AND THE SCULPTURE

3. Plaintiff Steven Tobin is a highly regarded visual artist based in Coopersburg,

Pennsylvania, and “the author of a work of visual art” under 17 U.S.C. §106A. Tobin is the creator of *The Trinity Root*, a sculpture which he conceptualized, designed, created and installed in the courtyard of Trinity Church at Broadway and Wall Street (the “Courtyard”). *The Trinity Root* is a work of recognized stature and has become Tobin’s best-known work of art. Tobin has a substantial professional and reputational interest in ensuring the protection and survival of his work in the permanent site for which it was commissioned and created and for which he donated and installed it. Tobin’s professional biography is attached as Exhibit A.

4. Defendant Parish of Trinity Church (the “Church”) is a religious organization. It is a member of the Episcopal Diocese in Manhattan that has been part of New York City’s history for more than three hundred years. Trinity Church and St. Paul’s Chapel are the cornerstones of the Parish’s community life, worship and mission. The Parish is also a major commercial landlord of property located in downtown Manhattan. As reported in its 2015 audited financial statements, the year-end appraised value of the Parish’s interest in real estate was approximately \$3.4 billion. In 2015, the Parish spent \$66.8 million on ministry activities including \$23.3 million for its parish programs and outreach ministries.

5. The Parish is the owner of *The Trinity Root*, having commissioned it from Tobin in 2004 and received it as a charitable donation in September 2005, when it was dedicated and installed within the Courtyard. The Courtyard is immediately south of St. Paul’s Chapel and the site of the World Trade Center’s destruction on September 11, 2001.

6. As is more fully described below, *The Trinity Root* is a cast bronze sculpture fifteen feet wide, twenty feet deep and thirteen feet high that weighs more than three tons. A poster produced by Trinity Church that depicts *The Trinity Root* at its location within the Courtyard is attached as Exhibit B.

STATUTORY BACKGROUND

7. Congress enacted the Visual Artist Rights Act (“VARA”) in 1990, as an Amendment to the Copyright Act. VARA extends to visual artists legal protection of their moral rights of attribution and integrity. 17 U.S.C. § 106A. VARA’s definition of a work of visual art includes a “sculpture, existing in a single copy,” *id.*, such as *The Trinity Root*.

8. An artist such as Tobin has the right to protect his works of visual art created after 1990 from “any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation.” *Id.* § 106A(a)(3)(B).

9. Works of “recognized stature” such as *The Trinity Root* are further protected from “destruction” which is “intentional or grossly negligent.” *Id.* § 106A(a)(3)(B).

10. The Act’s protection against destruction, distortion, mutilation, or modification prohibits the removal of sculptures such as *The Trinity Root* from a site when they are created for and intended to be permanently installed at that specific site. This protection could have been waived with respect to *The Trinity Root* if Tobin had executed a “written and express waiver his rights under VARA and the specific uses to which the VARA waiver applies.” However, no such written and express waiver was executed by Tobin in connection with *The Trinity Root*.

FACTUAL BACKGROUND

11. When the World Trade Center collapsed on September 11, 2001, a hundred-year-old sycamore tree standing in the churchyard of Trinity Church’s St. Paul’s Chapel at Broadway and Wall Street miraculously sheltered St. Paul’s Chapel from the blast and debris and preserved the chapel intact from damage. The tree itself became a casualty, toppling over with its roots exposed without disturbing the historic tombstones in the churchyard. In the weeks and months after the attack, the chapel served as a relief and counseling center for recovery and emergency teams, providing food, respite and quiet sanctuary from the grim scene outside, a place to post

“missing” posters for loved ones not recovered from Ground Zero, and solace for families of victims and parishioners.

12. Tobin’s signature works have been large structures of root systems of trees. Moved by the attack, the tree’s sacrifice and the preservation of the chapel, Tobin resolved to give a unique aesthetic and spiritual offering to Trinity Parish and the people of New York City. He proposed to create and donate for permanent installation in Trinity Church’s courtyard a full-size reproduction of the tree’s intricate root structure and stump cast in bronze, containing within its patina actual DNA from victims of the attack that came to rest in soil within St. Paul’s churchyard. Its purpose was to memorialize the site of a 9/11 event of grace and celebrate the tree’s role and sacrifice in protecting the chapel and courtyard from harm. The intent, spirit and design of the sculpture – its aesthetic essence and spiritual meaning – were inextricably specific to that site.

13. As recounted by *The Episcopal News Service*, “After hearing the story of the sycamore, Pennsylvania sculptor Steve Tobin decided to use the tree’s roots for inspiration, envisioning them as a metaphor for the strength and connectedness of St. Paul’s ministry in the aftermath of 9/11. He also wanted his work to honor the victims, volunteers and rescue workers.” A copy of *The Episcopal News Service* story is attached as Exhibit C.

14. Locating the sculpture in the Courtyard and designating “*The Trinity Root*” as the name of the piece were discussed with and approved by Linda Hanick, the Vice President of Communications for the Church. As Ms. Hanick later explained to the New York Times, 1.8 million people visited Trinity Church and St. Paul’s Chapel in 2004, many on pilgrimages to ground zero, and St. Paul’s was looking forward to having a kind of visual anchor that would not only tie the two churches together but also help tell visitors the story of 9/11 through art. A copy

of the *New York Times* article is attached as Exhibit D.

15. Tobin's sketch of the proposed sculpture framed by the Courtyard site where it would be installed was also approved by the Church. Approval of the sketch was a requirement of Tobin's contract with the Church. If the sketch or a revision had not been approved, Tobin's commission to create the sculpture would have been terminated. A copy of the approved sketch is attached as Exhibit E.

16. During the year-long period between the Church's approval of Tobin's sketch and the installation of *The Trinity Root* in the Courtyard, the Church repeatedly stated or acquiesced in statements by others that the sculpture's home would be permanently in the Courtyard. On August 9, 2004, Kathleen Rogers, Tobin's manager and communications consultant, submitted a press release to CBS Sunday Morning which stated that Tobin's sculpture "will be permanently sited at the corner of Wall St. and Broadway." The release was reviewed and approved by the Church. It also contained a statement by Trinity Church's Rector, the Rev. James H. Cooper. In addition, it quoted Tobin as saying, "I feel that this memorial recognizing the uplifting response to the disaster will be the most important sculpture of my career, and I am honored to be given this opportunity by my friends at Trinity Church." A copy of the press release is attached as Exhibit F.

17. A year later, the August 2005 Parish Administration edition of *The Living Church*, a weekly publication serving Episcopalians, published a feature article about Tobin's sculpture which stated that, "When the sculpture is completed, by September 11, 2005, it will be permanently sited at the corner of Wall Street and Broadway in Lower Manhattan, against the backdrop of the imposing Gothic Trinity Church." A copy of *The Living Church's* article is attached as Exhibit G.

18. On July 6, 2005, *The New York Times* wrote that the sculpture “will be installed and dedicated near ground zero on Sept. 11, becoming the first substantial permanent memorial in the area.” The *Times* article included comments from Linda Hanick, the Vice President of Communications for Trinity and St. Paul’s. A July 9, 2005 correction on the *Times* website noted that certain information about the location of a plaque had been omitted from the article. However, the article’s affirmation that the sculpture would be a “permanent” memorial at the site where it was installed and dedicated was not subject to correction or demur by the Church, either to the public or directly to Tobin. A copy of *The New York Times* article is attached as Exhibit H.

19. Similarly, the Church did not challenge or correct public declarations that appeared in the August 2005 *National Geographic Magazine* that “Tobin’s 18-foot-high, 23-foot-wide bronze sculpture of the stump and roots will be permanently placed in the yard of St. Paul’s parent church, Trinity,” and in the December 2005 edition of *Sculpture Magazine* that “Steve Tobin’s *Trinity Root* was installed at its permanent site on the corner of Wall Street and Broadway in Lower Manhattan on the 4th anniversary of 9/11.” Copies of the *National Geographic* and *Sculpture Magazine* articles are attached as Exhibit I.

20. In addition, on May 9, 2005 and again on September 1, 2005, *The Episcopal News Service* published articles about the sculpture’s impending installation and dedication. The articles quoted Tobin’s own statements that he was honored “to make something that will be a lasting monument.” Copies of *The Episcopal News* articles are attached as Exhibit J.

21. In reliance upon the Church’s commitment that *The Trinity Root* would be a permanent memorial located on the specific Courtyard site as depicted in the approved sketch, Tobin and his crew of assistants devoted more than 20,000 hours of labor to creating the

sculpture. Over a period of more than a year, they preserved the original sycamore tree's stump and root structure, molded and cast hundreds of intricate bronze roots and branches in Tobin's studio foundry and welded them together to create *The Trinity Root* sculpture. For the sculpture's patina, Tobin applied actual dirt taken from the courtyard containing matter, particles and DNA that had come to rest there from the World Trade Center's destruction.

22. With the assistance of the New York City Police and Fire Departments, the George Washington Bridge was closed to enable Tobin to transport *The Trinity Root* from his studio in Pennsylvania to lower Manhattan, where it was installed by crane under Tobin's supervision at its site in the Courtyard. Because the sculpture is composed of hundreds of fragile individual pieces welded together to form a single integral work of art, in order to avoid damage to its physical and artistic integrity Tobin and his expert team of riggers were required to supervise and carry out attaching and lifting the sculpture by crane from Tobin's studio, securing it onto and within a specially-designed wooden cage and cradle on top of an oversized flatbed truck for transportation from Tobin's studio to Trinity Church, and attaching and lifting the sculpture by crane from the transport vehicle to its site in the churchyard. Photographs of *The Trinity Root* transported to New York City within its wooden cage and cradle are attached as Exhibit K.

23. On September 11, 2005, the sculpture was dedicated with pomp and ceremony at the culmination of a public procession from Ground Zero during the Church's interfaith memorial and reconciliation service. The installation and dedication ceremony, at which Dr. Cooper officiated and referred to *The Trinity Root* as a "permanent" memorial, were the subject of news reports by media including *The Daily News*, *Newsday*, *The New York Sun*, CNN and NY1. The sculpture's installation and dedication were also recorded by the Church on a CD disk

that was offered for sale at the Trinity Church gift shop. Photographs of the installation, the dedication ceremony and crowds visiting the sculpture thereafter are attached as Exhibit K-1. A YouTube video that depicts the creation, transportation, installation and dedication of *The Trinity Root* can be viewed at <https://www.youtube.com/watch?v=Kr7ZwJbl5bl>.

24. To celebrate the installation of the sculpture, the Church published a full-page photograph of *The Trinity Root* standing in the Courtyard in *Art in America*, a leading American art-world publication. Under the title, *The Trinity Root / Steve Tobin / dedicated 9.11.05, New York City*, the Church's text stated that, "Trinity Church proudly announces the delivery of this commissioned sculpture that stands as a lasting memorial to the events of September 11, 2001 and the heroic response of many. **Sited at the corner of Wall Street and Broadway in lower Manhattan.** Cast Bronze, 15' wide x 20' deep x 13' high." A copy of the page is attached as Exhibit L (emphasis in the original).

25. The entire cost to Tobin of creating and installing *The Trinity Root*, including transporting and preserving the original tree stump, materials, insurance, transporting and installing the sculpture, Tobin's own time and the salaries of his crew of a dozen assistants, plus the opportunity cost of foregoing other projects and their compensation for a year, was more than a million dollars. Tobin took out a home equity loan to enable him to absorb that expense personally.

26. As set forth above, along with Tobin's artistic inspiration, its historical and cultural significance and the technical skill it incorporated, *The Trinity Root* was imbued with a deep element of honor and reputation. With the approval of the Church, the press release announcing the inception of the project contained Tobin's affirmation that, "I feel that this memorial recognizing the uplifting response to the disaster will be the most important sculpture

of my career, and I am honored to be given this opportunity by my friends of Trinity Church.” In his comments quoted by the *Episcopal News Service* articles in May and September 2005, Tobin reaffirmed that honor permeated the sculpture for himself as the artist allowed to become its creator and donor, and through him as a memorial to honor the victims, the response of St. Paul’s to 9/11 and the recovery and emergency teams.

27. . . . During the decade after the sculpture’s installation in the courtyard, many millions of visitors to New York City walked under and through it, touched its undulating root branches and pondered its significance. In the words of Dr. Cooper, the Church hoped that they would understand that *The Trinity Root* would “honor those who died, but then as a root it would also be an encouragement that something is going to grow from it . . . a powerful cynosure, embodying religious sentiment without being an overtly religious symbol . . . For us theologically, the roots are a symbol and reminder of the death and loss, but can also reflect the hope and promise of the resurrection. When our roots go deep in faith, we can find new life.” Many visitors and families of victims have written to Tobin to thank him for the memorial, and to say that they had found solace through visiting *The Trinity Root*.

28. . . . In May 2015, Kathleen Rogers contacted Nathan Brockman, a representative of Trinity Church, to suggest that after nearly ten years of public display it might be time to restore the sculpture’s patina, using dirt from the St. Paul’s churchyard that Tobin had preserved for that purpose. To her and Tobin’s surprise, she was told that Trinity Church’s new Rector, the Rev. Dr. William Lupfer who had taken office in February 2015, considered the sculpture ugly and wanted it to be removed. Brockman asked whether Tobin would consider taking the sculpture back to his studio or have it relocated somewhere else at the Church’s expense. At the same time, Mr. Brockman assured Ms. Rogers that the Church had no plans to remove the sculpture

from the Courtyard.

29. In a subsequent conversation, Mr. Brockman told Kathleen Rogers that Dr. Lupfer intended to send *The Trinity Root* away because he did not want non-parishioners and “hoards of strangers” to continue to crowd the Church’s courtyard. However, in an email responding to an inquiry from the *Wall Street Journal* reported on August 17, 2015, Mr. Brockman stated that Trinity had no plans to move the sculpture “at this time.”

30. Nevertheless, at nearly five pm on Friday afternoon, December 11, 2015, Mr. Brockman called Tobin and told him that the Church was “repurposing” the site where *The Trinity Root* was located and that the Church wanted to move the sculpture to Tobin’s studio or to a seminary in Connecticut. Tobin replied that moving the sculpture would destroy its artistic integrity because it was created to be site specific and used the dirt and DNA from Ground Zero in its patina. Tobin also told Mr. Brockman that time would be needed to prepare to move the sculpture and that it could be destroyed structurally if it were cut into pieces or was lifted incorrectly. Mr. Brockman asked Tobin when he would call back with a decision about what Tobin would agree to do. When Tobin said he needed to think about the Church’s request and that he would call in the following week, Mr. Brockman said that would be fine.

31. On the afternoon of Monday, December 14, 2015, Tobin called Mr. Brockman. Tobin told Mr. Brockman that he had checked with his foreman and that if the piece were cut apart to be moved its structural integrity would be destroyed, that Tobin’s own specialized shipper had the ability to move it, but that Tobin did not agree to its being moved from the location that the Church had promised would be permanent because it was a site specific work of art.

32. After further urging Tobin to consent to relocating the sculpture, Mr. Brockman said that he was “getting off the phone now.” Tobin then told Mr. Brockman that he would bring his children to New York City on the following Saturday so they could see the sculpture he had created at its intended site in the Courtyard, which they had not yet done. At that point, Mr. Brockman confessed that the Church had in fact removed the sculpture from the churchyard without notice or ceremony during the night hours between December 11th and December 12th and that it was already in Connecticut.

33. In January 2016, Mr. Brockman further revealed to Tobin that the sculpture had been damaged during its removal by the Church. Mr. Brockman texted to Tobin that, “If you are proposing to repair **our** property, we will allow the work, which would be done at **your** expense.” (Emphasis added.) Mr. Brockman later advised Tobin that while the sculpture was then located at the Church’s West Cornwall, Connecticut property in the rural hills of northwestern Connecticut, it would be moved a second time to a site at the Trinity Conference Center in Connecticut. Upon information and belief, the sculpture is currently located at that second Connecticut site. Photographs provided by the Church of damaged roots broken off the sculpture are attached as Exhibit L-1.

34. In a statement to *Artnet News* in the summer of 2016, the Church confirmed that what it termed “some minor, reparable damage,” “did occur to the sculpture as an unforeseen consequence of the move.” Tobin has not personally inspected the sculpture or the extent of the breakage, but he believes that it is substantial based upon photographs provided by the Church with huge pieces broken off. Upon information and belief, the damage caused by the Church has destroyed the structural integrity and the artistic integrity of the sculpture. A copy of the *Artnet News* article is attached as Exhibit M.

35. A copy of a July 6, 2016 article in *The New York Times* reporting that, “As for the condition of the sculpture, Mr. Brockman acknowledged that it had not survived the move to Connecticut unharmed . . .” is attached as Exhibit N.

FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

36. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

37. Tobin and the Church entered into an agreement dated as of August 4, 2004 (the “Agreement”). The Agreement acknowledged that Tobin “is a well-known professional artist who has received wide critical acclaim.” A copy of the Agreement is attached as Exhibit O.

38. The Agreement further provided that “Tobin agrees to prepare one color sketch of the Sculpture for Trinity’s approval prior to commencing work on the Sculpture.” As is more fully set forth above, *The Trinity Root* was offered by Tobin and accepted by the Church as a site specific work of art to be permanently located at the site within the Trinity Courtyard depicted in the sketch that was approved by the Church.

39. Under the heading “OWNERSHIP; COPYRIGHT” the Agreement further provided that “Tobin hereby transfers and assigns to Trinity by charitable donation all right, title and interest to the Sculpture and all materials related thereto (including but not limited to all sketches, photographs and audio-visual footage), including but not limited to the copyright therein, and any cause of action that Tobin may have with respect thereto, in perpetuity throughout the universe, for use in any manner and in any media now known or hereafter invented.” This provision does not constitute an express written waiver of Tobin’s rights under VARA.

40. A judgment should issue declaring that Tobin has not waived his rights under VARA with respect to *The Trinity Root*.

SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT

41. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

42. The Agreement further provides that “Tobin understands that Trinity has not promised the public exhibition of the Sculpture, and that Trinity may loan the Sculpture to third parties as Trinity deems appropriate.”

43. In a statement emailed to *Artnet News* after the sculpture was removed from the Courtyard and transported away to Connecticut, the Church contended that such removal was proper and said that “The original, signed agreement between Trinity and Mr. Tobin never discussed a permanent installation.” See Exhibit M.

44. As set forth above, through statements by its own representatives published in its own publications, by approving Tobin’s sketch of the proposed sculpture located *in situ* in the Courtyard, and by choosing not to challenge or correct statements by Tobin, his communications consultant’s press release and reports published by the press, the Church agreed that *The Trinity Root* was a site-specific work of art and committed to Tobin that *The Trinity Root* would be located permanently in the Trinity Courtyard.

45. The understanding recorded in the Agreement does not alter, repudiate or waive the Church’s commitment that *The Trinity Root* would be permanently located in the Trinity Church Courtyard. It did not authorize the Church to remove the sculpture and transport it to the Church’s own property in Connecticut, including the Trinity Conference Center.

46. Instead, the understanding indicates that the Church might not allow the public to come physically into the Courtyard to touch and wander through the sculpture’s roots and branches, while a loan to a third party would require that the sculpture be returned to its

permanent location in the Courtyard.

47. A judgment should issue declaring that the permanent location for *The Trinity Root* is the Trinity Courtyard.

THIRD CAUSE OF ACTION – VIOLATION OF VARA - INJUNCTION

48. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

49. The Church's removal of *The Trinity Root*, a site-specific work of art, from the Courtyard and continuing refusal to return it there is an intentional distortion, mutilation and modification of the work which is prejudicial to Tobin's reputation and honor and which Tobin has the right under VARA to prevent.

50. An injunction should issue requiring the Church to return *The Trinity Root* to the Courtyard.

FOURTH CAUSE OF ACTION – ESTOPPEL - INJUNCTION

51. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

52. Tobin relied to his detriment upon the Church's promise that *The Trinity Root* would be permanently located in the Courtyard. Without that promise, Tobin would not have devoted his artistic creativity, time, energy and funds to creating *The Trinity Root*, donating it to the Church and transporting and installing it in the Courtyard.

53. The Church is estopped from continuing to maintain *The Trinity Root* in a location other than the Courtyard.

54. Tobin has no adequate remedy at law.

55. An injunction should issue requiring the Church to return *The Trinity Root* to the

Courtyard.

**FIFTH CAUSE OF ACTION – VIOLATION OF VARA
DAMAGE TO HONOR AND REPUTATION**

56. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

57. The Church's removal of *The Trinity Root* from the Courtyard, including the manner of its removal in the dead of night without ceremony, notice or explanation to the public or Tobin, has caused great prejudice to Tobin's honor and to his reputation.

58. The Church's removal of *The Trinity Root* from the Courtyard, including the manner of its removal in the dead of night without ceremony, notice or explanation to the public or Tobin constitutes a willful violation of Tobin's rights under VARA.

59. Tobin is entitled to recover damages in an amount to be determined by the Court and not less than the maximum statutory damages of \$100,000.

**SIXTH CAUSE OF ACTION – VIOLATION OF VARA
DESTRUCTION OF *THE TRINITY ROOT***

60. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

61. Representatives of the Church were present when *The Trinity Root* was delivered by truck within its special-designed wooden cage and cradle to the vicinity of the Courtyard and was unloaded and installed by crane during daylight hours under the supervision of Tobin and his team of expert riggers.

62. Upon information and belief, the Church knew that removal of *The Trinity Root* from the Courtyard, its transportation to and installation in its first location in Connecticut, and its subsequent removal, transportation to and installation in its second location in Connecticut

required special equipment, special expertise and a high degree of care to lift, transport and lower it without damage.

63. Upon information and belief, the Church knew that *The Trinity Root* was a faithful and precise reproduction in bronze of the actual sycamore tree's root structure and was composed of hundreds of branches, some tapering down to tendrils as thin as an inch.

64. The actual sycamore tree's stump and root structure are no longer in existence and cannot become models for replacing damaged components of *The Trinity Root*.

65. As noted above, Tobin told Mr. Brockman that Tobin's specialized shipper had the ability to move the sculpture.

66. As noted above, the Church has admitted that *The Trinity Root* was damaged when it was moved by Church.

67. The Church's conduct in moving *The Trinity Root* without first consulting Tobin; without engaging Tobin's shipper to perform the moves; upon information and belief, without utilizing the specially-designed wooded cage and cradle or its functional equivalent during the transportation phases of the moves; in removing the sculpture from the churchyard at night, and in its performance of the removal and moves themselves, was grossly negligent.

68. The Church's grossly negligent conduct caused the damage to the sculpture that the Church has admitted.

69. The damage caused by the Church has destroyed the physical and aesthetic integrity of *The Trinity Root*.

70. The destruction of the physical and aesthetic integrity of *The Trinity Root* constitutes a violation of Tobin's rights under VARA.

71. Tobin is entitled to recover damages in an amount to be determined by the Court

and not less than the maximum statutory damages of \$100,000.

SEVENTH CAUSE OF ACTION – BREACH OF CONTRACT

72. Tobin repeats and re-alleges each and every preceding paragraph as if fully set forth herein.

73. Tobin offered to create *The Trinity Root* at his own expense and to deliver and donate it to the Church if the Church would agree that it would be located permanently at the site in the Church's Courtyard depicted on the proposal sketch that Tobin submitted to the Church.

74. As evidenced by the Church's approval of the sketch and later in the August 2005 Parish Administration edition of *The Living Church* noted above and the additional statements and documents noted above, the Church accepted Tobin's offer and thereby contracted with Tobin that *The Trinity Root* would be located permanently in the Church's Courtyard.

75. By removing *The Trinity Root* from the Courtyard, the Church has breached its contract with Tobin.

76. Tobin is entitled to recover damages in an amount no less than the cost in excess of one million dollars incurred by Tobin in creating *The Trinity Root*, plus applicable interest.

WHEREFORE, Plaintiff demands judgment as follows:

- (a) Declaring that Tobin has not waived his rights under VARA with respect to *The Trinity Root*;
- (b) Declaring that the permanent location for *The Trinity Root* is the Trinity Courtyard;
- (c) Enjoining the Church to return *The Trinity Root* to the Courtyard;
- (d) For violation of Tobin's rights under VARA by causing prejudice to Tobin's honor and reputation, awarding damages to Tobin in an amount to be determined by the

Court and not less than the maximum statutory damages of \$100,000;

(e) For destruction of the physical and aesthetic integrity of *The Trinity Root* in violation of Tobin's rights under VARA, awarding damages to Tobin in an amount to be determined by the Court and not less than the maximum statutory damages of \$100,000;

(f) In the alternative, for breach of the Church's contract that *The Trinity Root* would be located permanently in the Courtyard, awarding damages to Tobin in an amount to be determined by the Court but no less than the cost in excess of one million dollars incurred by Tobin in creating *The Trinity Root*, plus applicable interest;

(g) Awarding Tobin his attorneys' fees pursuant to 17 U.S.C. §505 and costs of the action; and

(h) Awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 12, 2017

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