

VIRGINIA :

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

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2017 MAR 22 PM 2:50  
JOHN T. GREY  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

JACKSON'S MFF RTC, LLC,  
11927 Democracy Drive  
Reston, VA 20190

Plaintiff,

Case No. \_\_\_\_\_

2017 04267

v.

BP SOUTH OF MARKET LLC,  
d/b/a South of Market LLC  
11951 Freedom Drive, Suite 100  
Reston, VA 20190

Serve:

CT Corporation System  
Registered Agent  
4701 Cox Road, Suite 285  
Glen Allen, VA 23060

SOUTH OF MARKET GARAGE LLC,  
11951 Freedom Drive, Suite 100  
Reston, VA 20190

Serve:

CT Corporation System  
Registered Agent  
4701 Cox Road, Suite 285  
Glen Allen, VA 23060

Defendants.

### COMPLAINT

Jackson's MFF RTC, LLC, by counsel, files this Complaint against BP South of Market LLC and South of Market Garage LLC seeking injunctive and declaratory relief, an award of damages, and an award of attorneys' fees in enforcing its rights under a lease between Jackson's MFF RTC, LLC and BP South of Market LLC and enforcing its easement. In support of its Complaint, Jackson's alleges:

1. Jackson's MFF RTC, LLC is a limited liability company that owns the Jackson's Mighty Fine Food & Lucky Lounge restaurant operating in Reston Town Center.

2. Jackson's is one of twelve restaurants and an artisan bakery operated under the Great American Restaurants, Inc. umbrella. Great American has been operating restaurants in Northern Virginia since 1976, including Artie's, Coastal Flats, Carlyle, Mike's American, Ozzie's, Silverado, Sweetwater Tavern, and Best Buns Bread Company. Great American has received recognition and acclaim by *Washingtonian* magazine and other publications for its casual dining restaurants, including recognition for Best New Restaurants on multiple occasions, *The Washington Post's* Top Workplaces, Favorite Restaurant by the Metropolitan Restaurant Association, and named in the top three restaurants in the D.C. region.

3. Defendant BP South of Market LLC is a limited liability company that does business in Virginia under the fictitious name "South of Market LLC." Plaintiff will refer to this Defendant as South of Market LLC in this Complaint. Upon information and belief, it is wholly-owned or controlled by Boston Properties, Inc., a large publicly traded real estate investment trust engaged in real estate development. Defendant is a single-purpose LLC formed and operated for the purposes of developing and operating a portion of property included within the Reston Town Center.

4. Defendant South of Market Garage LLC is a limited liability company likewise formed and owned by Boston Properties for purposes of its development of a portion of Reston Town Center.

5. In 2006 and 2007, Boston Properties was undertaking the development of a block of Reston Town Center referred to by Boston Properties as "South of Market" in reference to its location by Market Street. The development would be comprised of two parcels, and included

the building of a ten-story above and below grade parking structure that would also include first floor retail space on one parcel, an office building constructed above the parking structure, and three other buildings for office and retail use on the second parcel. This parking structure is referred to as the South of Market garage.

6. Boston Properties owned the two parcels for the South of Market development through the single purpose, wholly controlled Defendant entities.

7. South of Market LLC owns what is referred to as the "Building Parcel" at Block 14, Section 91A, as per the Deed of Resubdivision recorded in Deed Book 11636 at Page 1936, Tax Map Number 017-3-10-0014 in Reston. The Building Parcel consists of a three building office complex with first floor retail space and two levels of below grade parking.

8. South of Market Garage LLC owns what is referred to as the "Garage Parcel" at Block 15, Section 91A, as per the Deed of Resubdivision recorded in Deed Book 11636 at Page 1936, Tax Map Number 017-3-10-0015 in Reston. The Garage Parcel consists of a parking structure that has eight levels of above grade parking and two levels of below grade parking and first floor retail space. Jackson's is located in this retail space.

9. In October 2006, South of Market LLC and South of Market Garage LLC executed a Declaration of Easements in which South of Market Garage LLC, as grantor, gave certain easement rights in the Garage Parcel to South of Market LLC and other specifically described persons or entities. The Declaration of Easements is recorded at Book 18931, Page 0105 in the Fairfax County Land Records (the "Declaration").

10. In 2007, Boston Properties sought out Great American to discuss the potential opening of a Great American restaurant in its South of Market development in Reston Town Center. Boston Properties explained that based upon public and market feedback, the operation

of a Great American restaurant in Reston Town Center was viewed as a prime amenity for the town center. Because of Boston Properties' desire to have Great American restaurants in the town center, Boston Properties was willing to make certain concessions to entice Great American to open a casual dining restaurant in the town center.

11. Great American and Boston Properties began negotiating terms for Great American to lease approximately 11,000 square feet of restaurant/retail space within the complex then being developed by Boston Properties, operating as South of Market LLC, for purposes of opening Jackson's in the town center.

12. Among the lease terms Great American negotiated and insisted upon were provisions regarding parking rights for Jackson's customers and employees. Great American insisted upon provisions that assured all Jackson's patrons and employees would be entitled to free parking at Reston Town Center.

13. Great American and Boston Properties agreed to specific lease provisions which provided that parking for Jackson's customers in the structure on the Garage Parcel would be free, that any parking access and control system would not unduly impede Jackson's right to "free parking and access," and that, if the landlord ever sought to implement paid parking, it would "at its sole cost and expense" provide a system that allowed Jackson's to validate tickets "so that parking for [Jackson's] customers and employees shall be free and without charge at all times and in all instances."

14. After the material terms of the lease had been negotiated and the lease was prepared for execution, the Boston Properties' representatives who had negotiated the lease advised Great American that the parking provisions had not been approved by Boston Properties' home office, that the provisions were contrary to Boston Properties' standard requirements

giving it essentially absolute control over parking at its developments, and that the provisions had to be removed from the final lease documents.

15. Great American then advised Boston Properties that it would refuse to go forward with the lease without the key parking provisions specifically negotiated by the parties.

16. Boston Properties, knowing that a Great American restaurant was a prime amenity for its development, then relented and agreed that the negotiated provisions would remain. South of Market LLC and Jackson's MFF RTC, LLC executed a lease on November 19, 2007 (hereinafter the "Lease"). A copy of the Lease, with certain provisions redacted in light of certain confidentiality provisions, is attached as Exhibit 1.

17. The Declaration referenced in paragraph 9 above provides that among other parties the "tenants," "customers," and "invitees" of South of Market LLC are included in the definition of Building Owner Parties in Section 3a of the Declaration and, as such, are designated beneficiaries of the parking rights and easements granted with respect to the South of Market garage on the Garage Parcel. Pursuant to Section 3b of the Declaration, the Garage Parcel owner – South of Market Garage LLC – burdened the Garage Parcel with specific "perpetual, irrevocable and non-exclusive" rights and easements for the benefit of the designated beneficiaries, including parking rights for the use of the 1,416 parking spaces to be constructed on the Garage Parcel, and provided that the exercise of the parking rights by the Building Owner Parties "shall be free of charge." A copy of the Declaration of Easements is attached as Exhibit 2.

18. In conjunction with the execution of the Lease, South of Market LLC, South of Market Garage LLC, and Jackson's MFF RTC, LLC executed a Recognition and Attornment Agreement. A copy of this Recognition Agreement is attached as Exhibit 3. Paragraph 7 of the

Recognition Agreement covenants, among its provisions, that South of Market LLC and South of Market Garage LLC will not modify or amend the Declaration, including the easement and parking rights granted thereunder, in any manner that materially adversely affects Jackson's rights and benefits with respect to the parking structure or rights to use the same, without Jackson's express prior written consent.

19. Under Paragraph 3 of the Recognition Agreement, South of Market Garage LLC further expressly recognized and consented to the parking rights granted to Jackson's in its Lease and agreed that "it shall do nothing to disturb or otherwise affect such rights."

20. Jackson's opened in Reston Town Center in 2008, was named "Best New Restaurant" by *Washingtonian* magazine in 2009, and became a central dining amenity within the Reston Town Center and a highly successful restaurant under the Great American Restaurant's flag.

21. In 2015, Boston Properties executed a multi-million dollar land deal with Beacon Capital Partners to acquire Fountain Square—this acquisition made Boston Properties effectively the owner and landlord for almost all of the Reston Town Center.

22. From the time Jackson's opened through 2016, its customers enjoyed free parking at Reston Town Center in all of the Reston Town Center garages. There were no gates, no charges for parking, and customers and employees had the benefit of the free parking Great American had insisted upon in the Lease.

23. In spring 2016, Boston Properties announced that it planned to eliminate free parking at Reston Town Center and would impose a pay-to-park system at all parking garages and street parking spaces at Reston Town Center and that the parking fees and garage controls would be implemented primarily through the use of a software application patrons would

download and use to pay for parking. Boston Properties announced that paid parking would be implemented in August 2016.

24. After thoroughly examining the proposed parking procedures, Great American addressed in detail its concerns with Boston Properties and detailed the manner in which Boston Properties' pay-to-park system would infringe on Jackson's lease rights assuring that its customers were entitled to parking that was free and without charge at all times and in all instances. Boston Properties recognized the severe deficiencies and twice delayed implementation of its paid parking regime.

25. Boston Properties, through Defendants, then imposed its pay-to-park system at all Reston Town Center garages, including the South of Market garage, on January 2, 2017.

26. The "pay-to-park" system imposed by Boston Properties offers patrons equally unsatisfactory options to pay; all require the patron to pay in advance. First, patrons can download a software application to their smartphone or tablet called Park RTC and use the app to pay. Alternatively, patrons can locate one of only a handful of poorly attended pay stations and utilize a credit card to pay for parking or pay by cash. Lastly, patrons can go online and visit the Park RTC website and pay online, or call a phone number and pay over the phone with a credit card.

27. The Park RTC app is confusing and has been met with wide-spread complaints. The app requires a patron to download a software application onto the patron's smartphone or device, agree to "Terms and Conditions," enter and maintain credit card information with the parking app vendor, enter and maintain cell phone or e-mail information with the parking app vendor, receive a text or e-mail verification from the parking app vendor, enter a verification code into the app, create a pin for the app, enter parking location information into the app, enter

and maintain car and license plate information with the parking app vendor, pre-select the amount of parking time needed, and requires a patron to pay in advance for the parking. Parking attendants often times direct guests to use the Wi-Fi at Jackson's in order to download the app and go through the process, so that time spent as part of the dining experience is spent dealing with the parking situation. In addition, the app specifically advises customers that they are potentially subject to data and usage charges when downloading and using the app. The inherent confusion of using the app is exacerbated by parking attendants giving incorrect information about the use of the app.

28. The app forces retailers to use cumbersome procedures to provide validation or credit for parking charges through the app. This situation is likewise exacerbated by parking attendants giving incorrect or misleading information about parking validation. As implemented, the validation procedures require a patron at Jackson's to tell the hostess how long the customer expects to be at the restaurant, the hostess then provides a written individual validation code that matches the corresponding amount of time. After dining, the patron has to open the app and go through several steps to enter the validation code which results in a reimbursement on the patron's already charged credit card if the patron's pre-selected time has not run out.

29. The pay stations likewise have been met with widespread complaints by patrons, as the pay stations are often closed or out-of-order, the instructions likewise confusing, require patrons to pay for parking in advance and remember and enter their license plate numbers, and have no easy manner in which to validate parking if the patron is entitled to free parking.

30. Patrons who choose to pay for parking in cash or over the phone cannot receive validation or a refund from the parking vendor, and Boston Properties has prominently posted on the pay station machines that there is "no validation" for cash payments. Boston Properties has

suggested that, if Jackson's wants to validate its patrons who paid for parking in cash, then Jackson's should either give those patrons a credit on their meal check or give them a cash reimbursement and then ask Boston Properties for later reimbursement. Boston Properties' approach imposes undue burden and expense on Jackson's, and the suggestion that Jackson's reduce a customer's meal bill could adversely and unfairly impact Jackson's wait staff, who rely in part on tips typically calculated on the total bill.

31. Many patrons simply do not want to download an app, use their cell phone data to download and run an app, agree to terms and conditions for use of the app that are not easily available for review, give the app vendor the right to maintain credit card information or other personal information that might be subject to poor on-line security measures, permit the app to access their location services, and simply refuse to do so. Other patrons who may have employer issued devices are not permitted to download the app onto those devices, or have other concerns about using the app. Those who have free data usage limitations with their providers may have to pay to download and use the app to the extent it is in excess of their free data limits. And those patrons who attempt to use the app frequently complain about the inconvenience and confusing operation.

32. Boston Properties' pay-to-park system resulted in immediate widespread public criticism and complaints. The merchants and restaurants within Reston Town Center have universally complained about the confusion created by the poor parking system, the constant stream of customer and public complaints, the resulting disruption to business, and loss of foot traffic and loss of business.

33. The parking system at Reston Town Center has resulted in news coverage in local newspapers and local TV news stations reporting on the poor pay-to-park system, the confusing

app, customer complaints with the app and with Boston Properties, and the negative impact Boston Properties' imposition of a poorly implemented parking system has on Reston Town Center. The negative publicity surrounding Boston Properties' pay-to-park system further adversely impacts Jackson's and the other merchants and businesses at Reston Town Center.

34. The activities of the parking vendor and parking attendants utilized by Defendants have exacerbated the inherent deficiencies in the pay-to-park system. For example, among the parking rights provided in the Lease, Boston Properties, through Defendants, is required to cordon off 350 parking spaces in the South of Market garage each morning in a vicinity close to Jackson's so that those parking spaces are not filled by early morning vehicular traffic and are available for use by Jackson's and other retail tenants of the building. The spaces then are to be released for public use; 50 made available at 10:00 a.m. and the remaining 300 spaces available only at 11:00 am. These provisions were specifically negotiated to help assure parking availability to Jackson's customers and employees. Defendants, through their parking vendor, have on multiple occasions failed to cordon off the parking spaces or, as garage parking fills, opened the spaces for public use early so that the spaces and garage become filled and are unavailable for use by Jackson's customers. Parking attendants have also improperly directed Jackson's customers to garages for which Jackson's does not have free parking rights, thereby further subverting the requirement in the Lease that Jackson's customers will have free parking at all times and in all instances.

35. Jackson's has incurred significant disruption to its operation and incurred significant expense attempting to alleviate the problems and harm inflicted by Boston Properties acting through Defendants. Jackson's has employed additional desk staff as well as placed both the VP of Operations and Director of Operations on site full time to specifically address

customer complaints and problems with parking and the utilization of the Park RTC app, and has been forced to station employees outside of the restaurant to assist its customers with obtaining appropriate parking validation. Jackson's has incurred expenses to advise customers on the use of the Park RTC app, has had to prominently announce and apologize to its patrons for the poor parking system, and include print-outs on every table, signage at the restaurant entrance, and a notice on the front of its website addressing the problems caused by Boston Properties' imposition of its pay-to-park system at Reston Town Center.

36. Great American and Jackson's representatives have met with representatives of Boston Properties to attempt to alleviate the severe problems caused by Boston Properties' imposition of its pay-to-park system. Boston Properties has been inflexible, insists that the pay-to-park system is functioning well, that no tenants or retailers have been harmed or suffered any loss of business, and essentially asserts the right to impose a pay-to-park system as it sees fits. Boston Properties has further exacerbated the problems by having its security personnel instruct Jackson's that Jackson's cannot have its employees assist patrons in the garage or outside the restaurant at the pay stations, asserting that Jackson's assistance somehow amounts to some unpermitted "solicitation" of customers.

37. Jackson's has incurred and will continue to incur irreparable injury in the form of loss of goodwill, loss of its property rights under the Declaration, and loss of its legal rights under the Lease, which can be enforced only through injunction or specific performance, and past and future loss of business that may be incalculable.

38. Boston Properties has acted through Defendants to impose and operate the pay-to-park system at Reston Town Center.

COUNT I – BREACH OF CONTRACT

(Against South of Market LLC and South of Market Garage LLC)

39. Jackson's incorporates the allegation in paragraphs 1 through 38 as if set forth in full.

40. The Lease between South of Market LLC and Jackson's and the Recognition Agreement between South of Market LLC, South of Market Garage LLC, and Jackson's are legally enforceable agreements establishing Jackson's Lease rights, particularly as the Lease addresses its parking rights.

41. Under paragraphs 24.1 through 24.8 of the Lease, and particularly paragraph 24.5, South of Market LLC agreed that parking for Jackson's customers and employees would be free, that any parking access and control system would not unduly impede Jackson's right to "free parking and access," and that if South of Market LLC ever sought to implement paid parking, South of Market LLC would, "at its sole cost and expense," provide a system that allowed Jackson's to validate tickets "so that parking for [Jackson's] customers and employees shall be free and without charge at all times and in all instances." South of Market Garage LLC likewise consented to these rights and covenanted that it would do nothing to disturb or affect these rights.

42. The "pay to park" system imposed by Boston Properties through its control of Defendants violates Jackson's legal rights under its Lease by: (1) charging Jackson's customers in advance for parking; (2) unduly impeding the customers' rights to access and free parking; (3) failing to provide a system that easily allows for customer validation to avoid any charge for parking; (4) failing to provide a system that allows customer validation for all permitted payment methods; (5) failing to provide a system that assures Jackson's customers have parking that is "free and without charge at all times and in all instances;" (6) improperly filling the garage to capacity rather than setting-aside spaces not open for public use before prescribed times, thereby

reducing or eliminating the availability of free parking for Jackson's customers; (7) shifting the burden and expense of parking validation to Jackson's by, among other things, having parking attendants direct any validation questions or issues to Jackson's; and (8) imposing a system for parking and validation that is not at South of Market LLC's sole cost and expense but instead imposes costs and expenses on Jackson's.

43. Defendants have breached the parties' contract by violating Jackson's legal rights under the Lease.

44. Jackson's has been and continues to be damaged by Defendants' breach of their legal obligations to Jackson's, has incurred monetary damages and expenses addressing this breach, has lost significant sales, and has suffered and will continue to suffer irreparable injury.

COUNT II – DECLARATORY JUDGMENT  
(Against South of Market LLC and South of Market Garage LLC)

45. Jackson's incorporates the allegations in paragraphs 1 through 44 above as if set forth in full.

46. Jackson's is a designated beneficiary of the easement and parking rights granted in the Declaration.

47. Defendants' imposition of the pay-to-park system interferes with the easement and parking rights granted to Jackson's.

48. Defendants' imposition of the pay-to-park system materially and adversely impacts Jackson's rights, and was imposed without Jackson's consent.

49. The imposition of the pay-to-park system is an antagonistic assertion of rights and there is an actual and justiciable controversy regarding Jackson's easement and rights entitling it to free of charge parking under the Declaration and its rights under the Lease, specifically as to whether the "pay to park" system imposed by Boston Properties through Defendants is consistent

with the terms of the Lease and Jackson's rights under the Declaration, and whether Defendants can impose any system that requires Jackson's customers to pay for any amount in advance, or requires Jackson's or its customers to incur any costs or expenses associated with a validation system, or charge for parking in the South of Market garage. A declaration by this Court regarding the rights of Jackson's under its Lease and its easement and parking rights under the Declaration will guide the parties in their future conduct.

50. In addition to declaring the parties' rights, Jackson's rights can be adequately protected only through an accompanying injunction enjoining Defendants' imposition of the pay-to-park system.

### COUNT III – INTERFERENCE WITH EASEMENT

(Against South of Market LLC and South of Market Garage LLC)

51. Jackson's incorporates the allegations in paragraphs 1 through 38 above as if set forth in full.

52. The Declaration burdens the Garage Parcel with the right and easement of the designated beneficiaries to enter upon, access, and park "free of charge" within the South of Market garage thereon.

53. Jackson's is a designated beneficiary of the easement and parking rights granted in the Declaration.

54. Defendants are aware of Jackson's easement and parking rights.

55. Defendants have a legal duty to refrain from interfering with Jackson's easement and parking rights.

56. Defendants' imposition of the pay-to-park system interferes with Jackson's easement and parking rights.

57. Defendants have accordingly breached their duty to refrain from interfering with Jackson's easement and parking rights by imposing the pay-to-park system.

58. Jackson's has been and continues to be damaged by Defendants' interference with Jackson's easement and parking rights, has incurred monetary damages and expenses as a result of Defendants' actions, and has suffered and will continue to suffer irreparable injury.

WHEREFORE, Jackson's prays that the Court enter judgment in its favor and award the relief set forth below.

A. As to Count 1, the relief set forth in paragraphs (1), (4), (5), and (6) below;

B. As to Count II, the relief set forth in (1), (2), (3), (5), and (6) below;

C. As to Count III, the relief set forth in (1), (4), and (6) below:

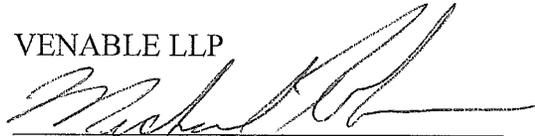
(1) A temporary and permanent injunction enjoining South of Market LLC and South of Market Garage LLC from utilizing the current pay-to park system in the South of Market garage, and in particular utilizing any system that requires Jackson's customers to use the Park RTC app, requires them to pay any amount in advance, and which does not provide a validation system at South of Market LLC's sole cost and expense that assures that Jackson's customers receive parking that is free and without charge at all times and in all instances;

(2) A declaration that that the system imposed violates Jackson's legal rights under the parties' Lease by (1) failing to provide a system of validation at South of Market LLC's sole cost and expense that assures that Jackson's customers and employees receive parking that is free and without charge at all times and in all instances; (2) imposing costs and expenses on Jackson's; and (3) unduly impeding Jackson's rights to free parking and access;

- (3) A declaration that the system imposed interferes with and violates Jackson's parking rights and easement rights under the Declaration to parking that is free of charge;
- (4) An award of damages of \$500,000 or other specific amount to be established at trial;
- (5) An award of attorneys' fees incurred in this action pursuant to §15.2(b) and §19.8 of the Lease; and
- (6) Such other relief as the Court deems just and proper.

Dated: 3/22, 2017

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