

FILED
02-14-2020
CIRCUIT COURT
DANE COUNTY, WI
2020CV000440
Honorable Stephen E
Ehlke
Branch 15

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

DANE COUNTY

JOHN HARTMEYER ESTATE PARTNERSHIP, LLP,
a Wisconsin Limited Liability Partnership,
1000 Guadalupe Street, Apt. 4D
Kerrville, TX 78028

J.R. PIKE CORPORATION,
a Wisconsin Corporation,
1000 Guadalupe Street, Apt. 4D
Kerrville, TX 78028

HARTMEYER, INC.,
an Indiana Corporation,
P.O. Box 833374
Richardson, TX 75083

HOVEN CORPORATION,
a Wisconsin Corporation,
P.O. Box 833374
Richardson, TX 75083

GINTHER HOLDINGS, LLC,
a Wisconsin Limited Liability Company,
7111 W. Bethel Avenue
Muncie, IN 47304

Case No:

Case Code: 30301

Plaintiffs,

v.

KRAFT HEINZ FOODS COMPANY,
a Pennsylvania Limited Liability Company,
1 PPG Place
Pittsburgh, PA 15222

910 MAYER, LLC,
a Wisconsin Limited Liability Company,
21 Locust Avenue, Suite 1
Mill Valley, CA 94941-2852

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each Defendant named above:

You are hereby notified that the Plaintiffs named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent, e-filed, or delivered to the Court, whose address is Clerk of Circuit Court, Dane County Courthouse, Room 1000, 215 South Hamilton Street, Madison, WI 53703, and to Ronald R. Ragatz, Plaintiffs' attorney, whose address is DeWitt LLP, Two East Mifflin Street, Suite 600, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call (608) 266-4311 and ask for the Court ADA Coordinator.

Dated this 14th date of February, 2020.

DEWITT LLP

By: Electronically signed by Ronald R. Ragatz

Ronald R. Ragatz (# 1017501)

Timm P. Speerschneider (#1012525)

Two East Mifflin Street, Suite 600

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Attorneys for Plaintiffs

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Defendants.

COMPLAINT

Plaintiffs, by their undersigned counsel, as and for a Complaint against above-named Defendants, allege and show the Court as follows:

PARTIES

1. Plaintiff John Hartmeyer Estate Partnership, LLP (the “Partnership”) is a Wisconsin limited liability partnership with a mailing address of 1000 Guadalupe Street, Apartment 4D, Kerrville, Texas, 78028.

2. Plaintiff J.R. Pike Corporation, is a Wisconsin corporation, with a mailing address of 1000 Guadalupe Street, Apartment 4D, Kerrville, Texas, 78028 and is one of the partners in the Partnership.

3. Plaintiff Hartmeyer, Inc. is an Indiana corporation with a mailing address of P.O. Box 833374, Richardson, Texas, 75083 and is one of the partners in the Partnership.

4. Plaintiff Hoven Corporation is a Wisconsin corporation with a mailing address of P.O. Box 833374, Richardson, Texas, 75083 and is one of the partners in the Partnership.

5. Plaintiff Ginther Holdings, LLC is a Wisconsin limited liability company with a mailing address of 7111 W. Bethel Avenue, Muncie, Indiana, 47304 and is one of the partners in the Partnership.

6. Plaintiffs J.R. Pike Corporation, Hartmeyer, Inc., Hoven Corporation, and Ginther Holdings, LLC are all of the partners (the “Partners”) of the Partnership.

7. Defendant Kraft Heinz Foods Company (“Kraft Heinz”) is a Pennsylvania Limited Liability Company with its principal place of business located at 1 PPG Place, Pittsburgh, Pennsylvania, 15222. Its Registered Agent is CT Corporation System.

8. Defendant 910 Mayer, LLC (“Mayer”) is a Wisconsin limited liability company with its principal place of business located at 21 Locust Avenue, Suite 1, Mill Valley, California, 94941. Its Registered Agent is Paracorp, Inc.

LEASE AND PROPERTY

9. The Partners are the owners of certain property in the City of Madison, Wisconsin which was the subject of a lease. Attached as Exhibit 1 is a June 1, 1994 Ground Lease.

10. Attached as Exhibit 2 is a 2005 Amendment to the Ground Lease.

11. Attached as Exhibit 3 is a 2008 Amendment to the Ground Lease.

12. Attached as Exhibit 4 is a 2019 Amendment to the Ground Lease.

13. Exhibits 1-4 are referred to collectively as the “Lease.”

14. The subject property owned by the Partners is described in Exhibit A to Exhibit 1 as modified by Exhibit A to Exhibit 2 (the “Property”).

15. The original landlord in the Lease was “John Hartmeyer Estate” but, the Estate was subsequently closed and the Partnership, as authorized agent of the Partners, is the Landlord.

16. A portion of the Property had been leased to Oscar Mayer & Co. Inc. pursuant to a May 1954 lease and the remaining portion was included in a December 1966 lease.

17. In 1988, Oscar Mayer & Co. Inc. merged with Oscar Mayer Foods Corporation and Oscar Mayer Foods Corporation was the survivor.

18. Exhibit 1 identifies the Tenant as “Oscar Mayer Foods Corporation.”

19. Exhibit 3 states: “Effective December 30, 1995, Oscar Mayer Foods Corporation was merged into Kraft Foods, Inc., which is now known as Kraft Foods Global, Inc.”

20. Exhibits 2 and 3 identify Kraft Foods Global, Inc. as the Tenant.

21. Exhibit 4 identifies the Tenant as “Kraft Heinz Foods Company ... as successor-in-interest to the initial tenant.”

22. Kraft Heinz Foods Company is successor to all previously identified tenants and all are referred to herein collectively as “Kraft Heinz.”

23. Kraft Heinz was a tenant on the Property since at least 1954.

BACKGROUND FACTS

A. Contamination of Property

24. Kraft Heinz installed and used above-ground tanks on the Property to store fuel oil.

25. Piping associated with those tanks leaked and released thousands of gallons of fuel oil to the environment.

26. That release was reported to Wisconsin Department of Natural Resources (“DNR”) in 1989. Kraft Heinz failed to notify the Landlord of the release and the Landlord did not learn of it for approximately 17 years.

27. DNR listed the release on its Bureau for Remediation and Redevelopment Tracking System (“BRRTS”).

28. In 2001, one of the above-ground storage tanks was removed by Kraft Heinz.

29. In 2016, Kraft Heinz removed the other above-ground storage tank.

30. Additional environmental contamination from fuel oil was discovered.

31. That fuel oil release was reported to DNR and DNR assigned a separate BRRTS listing to it.

32. While Kraft Heinz took certain steps to investigate and remediate the contamination associated with both releases, as of the expiration of the Lease on November 30,

2019, residual contamination in excess of applicable State of Wisconsin soil clean-up standards remained on the Property.

33. Kraft Heinz also stored coal on the Property.

34. The coal was placed on the ground, with no liner or other protective barrier.

35. As of the expiration of the Lease on November 30, 2019, residual coal and soil impacts from coal storage remained in a large area of the Property.

36. As a result of the historical coal storage, there is soil contamination in the coal-storage area that is in excess of applicable State of Wisconsin soil clean-up standards.

B. Above-Ground Natural Gas Line

37. Prior to the Lease, but during the time Kraft Heinz leased all or part of the Property under prior leases, an above-ground line carrying natural gas (the "Gas Line") was installed that extends from a point on the east side of the Property to property to the east then owned by Kraft Heinz.

38. To carry the Gas Line over the railroad tracks to the property east of the Property, Kraft Heinz constructed a metal structure (the "Bridge").

39. To house the gas meters, Kraft Heinz built a small brick structure on the Property ("Gas House").

40. The Gas Line (beyond the meter), the Bridge, and Gas House serve no beneficial purpose to the Property.

41. Rather, they were installed and have been maintained entirely for the benefit of land and improvements to the east of the Property, which were formerly owned by Kraft Heinz and are currently owned by Mayer.

42. The Gas House is on the Property and the Bridge and Gas Line are connected to the Gas House and are located, in part, on the Property.

C. Incorporation

43. The allegations in this BACKGROUND section are incorporated into each of the Claims below.

FIRST CLAIM (Against Kraft Heinz – Rent)

44. Pursuant to Exhibit 4, Kraft Heinz was obligated to pay rent in the amount of \$6,195 per month on the first day of each month beginning June 1, 2019.

45. Kraft Heinz failed to make the first two monthly payments and the Partnership served a Notice of Default on Kraft Heinz on July 30, 2019, after which those rent payments were made, along with the August 1 payment

46. However, Kraft Heinz failed to pay either the September 1 or October 1 rent payments, and the Partnership served a Notice of Default on Kraft Heinz on October 3, 2019, a copy of which is attached as Exhibit 5.

47. More than 30 days have passed and Kraft Heinz failed to cure the rent defaults.

48. Kraft Heinz has also defaulted in the payment of rent due November 1, 2019. Given the prior defaults, no additional notice of default was required.

49. Kraft Heinz is in default of its obligation to pay rent for September, October, and November 2019 and owes such amounts to the Partnership, together with interest.

SECOND CLAIM (Against Kraft Heinz – Breach of Article VII of Lease)

50. Pursuant to Article VII of the Lease, Kraft Heinz was obligated to investigate and remove, treat, and dispose of any Hazardous Material (as defined in Section 7.1) present in the

soil on the Property expiration of the Lease in violation of applicable State of Wisconsin soil clean-up standards and due to the tenancy of Kraft Heinz.

51. The residual fuel oil contamination and contamination from historical coal storage on the Property constitute “Hazardous Material” within the meaning of Sections 7.1 and 7.7 of the Lease.

52. There is residual contamination from fuel oil releases and releases from historical coal storage in excess of applicable State of Wisconsin soil clean-up standards and directly due to Kraft Heinz’s use of the Property.

53. In the Notice of Default attached as Exhibit 5, the Partnership gave notice to Kraft Heinz of a default, among other things, stemming from “soil contamination due to tenant’s use of the Property” and demanded that the soil contamination be cured by no later than the expiration of the Lease on November 30, 2019.

54. In response to the Notice of Default, Kraft Heinz took the position that it was not obligated to remediate the residual contamination until the expiration of the Lease.

55. While not conceding Kraft Heinz’s assertion, the Partnership nonetheless served another Notice of Default on December 16, 2019, a copy of which is attached as Exhibit 6.

56. Exhibit 6, while reserving all rights from previous Notices of Default, provided another Notice of Default due to, among other things, “soil contamination due to tenant’s use of the Property” and provided Kraft Heinz another 30 days to cure the default.

57. More than thirty days have passed since service of Exhibit 6, and Kraft Heinz has not cured the default regarding the soil contamination.

58. Although Kraft Heinz has undertaken some investigation, it has undertaken no active remediation since long before the Lease expired.

59. Kraft Heinz is in default of its obligations under Article VII of the Lease.

60. Kraft Heinz is liable for damages in an amount to be determined in this action.

**THIRD CLAIM
(Against Kraft Heinz – Indemnity)**

61. Pursuant to Section 7.3 of the Lease, Kraft Heinz agreed to indemnify the Landlord against costs and other expenses “associated with the presence or release of Hazardous Material on the Premises caused directly by Tenant”

62. The Partnership has incurred costs and expenses associated with the presence or release of Hazardous Materials and will continue to do so, including without limitation attorneys’ fees and expenses in evaluating the contamination and efforts of investigation and/or remediation and in enforcing Section 7.3.

63. Plaintiffs are entitled to an award of all such costs, expenses, and attorneys’ fees in an amount to be determined in this action.

**FOURTH CLAIM
(Against Kraft Heinz – Breach of Article VI of Lease)**

64. Section 6.2 of the Lease includes the following: “Tenant shall not commit, or permit to be committed, any waste or nuisance on the Premises.”

65. The residual contamination on the Property constitutes “waste” that Kraft Heinz and/or its predecessors committed or permitted to be committed on the Property and has allowed such waste to continue beyond the expiration of the Lease.

66. Kraft Heinz has breached Section VI of the Lease and is liable for damages in an amount to be determined in this action.

FIFTH CLAIM
(Against Kraft Heinz – Common Law and/or Statutory Waste)

67. Kraft Heinz possessed all or portions of the Property pursuant to the Lease and previous leases for over sixty-five years.

68. During that time, Kraft Heinz engaged in unreasonable conduct in creating contamination and/or allowing residual contamination to continue on the Property beyond the expiration of the Lease.

69. The contamination has resulted in physical damage to the Property and a substantial diminution in the value of the fee-simple ownership of the Property by the Partners.

70. Kraft Heinz is liable to Plaintiffs for damages due to waste both under common law and pursuant to Wis. Stat. Ch. 844.

71. Such claims are within the scope of Article VI of the Lease.

72. Pursuant to Wis. Stat. § 844.19(2), Plaintiffs are entitled to double damages arising from the waste.

SIXTH CLAIM
(Against Kraft Heinz –Nuisance)

73. The conduct of Kraft Heinz in undertaking activities that caused environmental contamination and/or allowing the contamination to persist beyond the expiration of the Lease was intentional and unreasonable.

74. Such conduct is a breach of Section 6.2 of the Lease.

75. That conduct by Kraft Heinz has unduly interfered with the Partners' private use and enjoyment of the Property and thus is a private nuisance under common law and such a claim is within the scope of Article VI.

76. Kraft Heinz is liable for damages in an amount to be determined in this action.

**SEVENTH CLAIM
(Against Kraft Heinz – Breach of Article I of Lease)**

77. Section 1.4 of the Lease provides, in part: “In removing all Improvements which Tenant may be obligated to remove or elects to remove at the expiration or termination of this Lease, Tenant shall leave the Premises in good condition and shall remove all waste, rubbish, and debris and fill all excavations, holes, and depressions.”

78. When Kraft Heinz removed the above-ground storage tanks and associated piping, it left behind residual contamination in excess of applicable Wisconsin soil clean-up standards and, accordingly, failed to leave the Property in “good condition” and to remove “all waste.”

79. Kraft Heinz breached Article I of the Lease.

80. Kraft Heinz is liable for damages in an amount to be determined in this action.

**EIGHTH CLAIM
(Against Kraft Heinz and Mayer – Trespass)**

81. The above-ground Gas Line, Bridge, and Gas House were installed for the sole benefit of the land and improvements to the east of the Property once owned by Kraft Heinz and now owned by Mayer.

82. The Gas Line, Bridge, and Gas House encroach on the Property and there is no easement, license, or other interest that permits such encroachment.

83. The October 3, 2019 Notice of Default (Exhibit 5) notified Kraft Heinz of a default in causing or permitting, among other conditions, a “gas line over the railroad tracks and associated structures, including a metal bridge and gas house encroaching on the Property,” and demanded that default be cured by no later than the expiration of the Lease on November 30, 2019.

84. The encroachment was not cured by November 30, 2019.

85. The December 16, 2019 Notice of Default (Exhibit 6) states that Kraft Heinz is in default in causing or permitting a “gas line over the railroad tracks and associated structures, including a metal bridge and gas house encroaching on the Property” and demanded that the default be cured within thirty days.

86. Thirty days have passed and Kraft Heinz has not cured the default.

87. In October 2017, Kraft Heinz conveyed the land and improvements to the east of the Property to Mayer.

88. Kraft Heinz has taken the position that it has no responsibility for the encroachments on the Property.

89. In June 2019, counsel for Plaintiffs contacted counsel for Mayer and asked whether it claimed to have any easement, license, or other interest that would allow it to have structures associated with the Gas Line encroaching on Plaintiffs’ Property and, if not, how Mayer intended to address the encroachment.

90. Mayer identified no such easement, license, or other interest permitting such encroachment and provided no proposal to address the encroachment.

91. The Gas Line, Bridge, and Gas House constitute a trespass which diminishes the value of the Property.

92. Kraft Heinz and Mayer are jointly and severally liable to the Partners for damages arising from the trespass.

NINTH CLAIM
(Against Mayer – Wis. Stat. Chs. 840, 841, 843, and 844)

93. As explained above, structures from the land and improvements currently owned by Mayer encroach on the Property, including the Gas House, the Gas Line (beyond the meter), and Bridge.

94. Plaintiffs ask the Court to declare, pursuant to Wis. Stat. § 840.03 that Plaintiffs are entitled to exclusive possession of the Property and that Mayer must take steps necessary to remove the encroachments.

95. Plaintiffs are entitled to a declaration of their interest in the Property pursuant to Wis. Stat. § 841.01.

96. Plaintiffs are entitled to a judgment pursuant to Wis. Stat. Ch. 843 that they are entitled to exclusive possession of the Property and for damages arising from Mayer's encroachment on the Property.

97. Plaintiffs are also entitled to a judgment pursuant to Wis. Stat. Ch. 844 for damages arising from the injury to and/or interference with the Property by the encroachment.

WHEREFORE, Plaintiffs demand judgment as follows:

- A. On the First Claim against Kraft Heinz for damages in the amount of \$18,585.00 plus interest for unpaid rent for September, October, and November 2019;
- B. On the Second and Fourth through Seventh Claims, against Kraft Heinz for damages due to contamination on the Property, including without limitation damages for loss of value, use, and enjoyment of the Property and the cost of remediating the contamination, and on the Fourth Claim, that such damages be doubled pursuant to Wis. Stat. § 844.19(2);

- C. On the Third Claim, for an award of costs and expenses incurred or to be incurred by Plaintiffs associated with the presence of or release of Hazardous Materials on the Property, including without limitation the reasonable attorneys' fees in enforcing Kraft Heinz's obligations under Section 7.3 of the Lease;
- D. On the Eighth Claim, jointly and severally against Kraft Heinz and Mayer for damages due to trespass;
- E. On the Ninth Claim, for judgment against Mayer as follows:
- i. A declaration pursuant to Wis. Stat. §§ 840.03 and 840.01 and Ch. 843, that Plaintiffs are entitled to exclusive possession of the Property and an order requiring that Mayer remove the encroachment and restore the Property; and
 - ii. For damages pursuant to Wis. Stat. Chs. 843 and 844 due to the encroachment;
- F. Against Kraft Heinz, for an award of Plaintiffs' expenses, including reasonable attorneys' fees, in instituting and prosecuting this action, pursuant to Section 10.4 of the Lease; and
- G. For Plaintiffs' costs and disbursements in this action and whatever other relief the Court deems just and equitable.

Dated this 14th date of February, 2020.

DEWITT LLP

By: *Electronically signed by Ronald R. Ragatz* _____

Ronald R. Ragatz (# 1017501)

Timm P. Speerschneider (#1012525)

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Attorneys for Plaintiffs

GROUND LEASE

by and between

John Hartmeyer Estate

and

Oscar Mayer Foods Corporation

June 1, 1994

EXHIBIT

1

exhibitster.com

GROUND LEASE

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I - GRANT AND TERM	1
Section 1.1. Premises	1
Section 1.2. Original Term	2
Section 1.3. Options to Extend	2
Section 1.4. Surrender of Premises; Removal of Improvements by Tenant	2
ARTICLE II - RENT	4
Section 2.1. Rent During Original Term; Place of Payment	4
Section 2.2. Procedure for Establishing Rent for Each Extended Term of Lease	4
Section 2.3. Alternative Methods of Establishment of Rent for Extended Terms	5
Section 2.4. Past Due Rent	6
ARTICLE III - CONSTRUCTION OF NEW IMPROVEMENTS, ALTERATIONS FIXTURES, EQUIPMENT	6
Section 3.1. Plans and Specifications for New Improvements; Removal of Obligations of Tenant	6
Section 3.2. Construction, Alterations, Improvements and Changes	7
Section 3.3. Fixtures and Equipment	8
ARTICLE IV - MAINTENANCE, REPAIR, AND DESTRUCTION	8
Section 4.1. Maintenance and Repair by Tenant	8

	<u>Page</u>
Section 4.2. Damage or Destruction	9
ARTICLE V - UTILITIES AND TAXES	9
Section 5.1. Utilities and Expenses	9
Section 5.2. Real Property Taxes	9
ARTICLE VI - CONDUCT OF BUSINESS	10
Section 6.1. Condition and Use	10
Section 6.2. Waste and Nuisance	10
Section 6.3. Right of Entry	10
ARTICLE VII - COMPLIANCE BY TENANT WITH ENVIRONMENTAL LAWS AND REGULATIONS; INSPECTION OF PREMISES UPON TERMINATION OF LEASE	11
Section 7.1. Definitions	11
Section 7.2. Tenant’s Representations and Warranties	12
Section 7.3. Hold Harmless and Indemnification by Tenant	12
Section 7.4. Breach of Environmental Covenant	13
Section 7.5. Access of Landlord for Environmental Inspection	13
Section 7.6. Environmental Inspection at Termination of Lease	14
Section 7.7. Environmental Remediation at Termination of Lease	14
ARTICLE VII - INSURANCE AND INDEMNITIES	15
Section 8.1. Casualty Insurance	15
Section 8.2. Public Liability Insurance	15

	<u>Page</u>
Section 8.3. Evidence of Insurance	15
Section 8.4. Loss and Damage	16
Section 8.5. General Indemnification and Hold Harmless Commitment by Tenant	16
ARTICLE IX - EFFECT OF CONDEMNATION	17
Section 9.1. Total Condemnation	17
Section 9.2. Partial Condemnation	17
Section 9.3. Condemnation Award	17
ARTICLE X - DEFAULT	17
Section 10.1. Notice of Default to Tenant	17
Section 10.2. Tenant’s Default	18
Section 10.3. Notice of Landlord’s Default	20
Section 10.4. Parties May Remedy Defaults	20
ARTICLE XI - ASSIGNMENT AND SUBLETTING	21
Section 11.1. Tenant’s Assignment	21
Section 11.2. Tenant’s Subleasing	21
Section 11.3. Landlord’s Assignment	22
ARTICLE XII - MISCELLANEOUS	22
Section 12.1. Accord and Satisfaction	22
Section 12.2. Entire Agreement	23
Section 12.3. No Partnership	23

	<u>Page</u>
Section 12.4. Force Majeure	23
Section 12.5. Waiver	23
Section 12.6. Notices	23
Section 12.7. Partial Invalidity	24
Section 12.8. Memorandum of Lease	24
Section 12.9. Consent not to be Unreasonably Withheld	25
Section 12.10. Quite Title	25
Section 12.11. Zoning	25
Section 12.12. Remedies Cumulative	26
Section 12.13. Binding Effect	26
Section 12.14. Applicable Law	26
Section 12.15. Holding Over	26
Section 12.16. Counterparts	26
ARTICLE XIII - RIGHT OF FIRST OFFER	26
Signatures	28

GROUND LEASE

This Lease is made, executed and delivered as of the 1st day of June, 1994, by and between **John Hartmeyer Estate**, a partnership, c/o **J.R. Pike Corporation**, 433 Woodward Drive, Madison, Wisconsin 53704 ("Landlord") and **Oscar Mayer Foods Corporation**, a Delaware corporation, located at 910 Mayer Avenue, Madison, Wisconsin 53704 ("Tenant").

P R E F A C E

The Landlord has previously leased the Premises (as hereinafter defined) which are the subject of this Ground Lease to the Tenant by virtue of a lease dated May 28, 1954, which covered a portion of the Premises and a lease dated December 8, 1966, which covered a portion of the Premises (the two leases are referred to herein as "Prior Leases"). The Prior Leases expired on May 31, 1994. It is the intention of both Landlord and Tenant that the use and occupancy of the Premises by Tenant shall be uninterrupted and continuous with the execution of this Lease which is to be effective immediately upon the expiration of the Prior Leases, which together cover the entire Premises.

ARTICLE I GRANT AND TERM

Section 1.1. Premises. In consideration of rents, terms, covenants and agreements to be performed and observed by Tenant, as hereinafter set forth, Landlord leases to Tenant, and Tenant leases from Landlord, certain real estate located in the City of Madison, Dane County, Wisconsin, described in **Exhibit A**, attached hereto, together with all rights and appurtenances belonging or appertaining thereto and all improvements now or hereafter located thereon ("Premises"). The Premises are outlined on **Exhibit B** attached hereto.

Section 1.2. Original Term. The original term of this Lease shall be for ten (10) years. The original term shall commence as of June 1, 1994, and shall end at 12:00 midnight on May 31, 2004, unless otherwise extended or terminated earlier hereunder.

Section 1.3. Options to Extend. Tenant is hereby granted the option to extend the term of this Lease for two (2) additional five (5) year terms, the first to begin upon the expiration of the original term of this Lease, and the second to begin upon the expiration of the first five (5) year extension; and all terms, covenants and provisions of this Lease shall apply to the extended terms with the exception that Tenant shall not have any further option to extend following the exercise of the second option to extend, and the rent for each extended term shall be determined as provided herein. If the Tenant does not opt to extend the lease at the end of the original term, then at the end of the original term this Lease shall terminate. Tenant shall give Landlord notice in writing of its intention to either extend the lease or permit the lease to expire not later than twelve (12) months prior to the expiration of the original term or first extended term as the case may be.

Section 1.4. Surrender of Premises; Removal of Improvements by Tenant. The term "AST Improvements" shall mean the two above-ground storage tanks situated on the Premises on the date of this Lease and accessory equipment and facilities for such tanks including support foundations and/or footings, piping, pumps and concrete block structures to house such accessory equipment (the "AST Improvements"). The term "New Improvements" shall mean additional improvements that Tenant may construct or install on the Premises during the term of this Lease in accordance with Article III of this Lease (herein referred to as "New Improvements"). The term "Improvements" shall mean all improvements which have been made

to the Premises prior to or during the term of this Lease. During the term or terms of this Lease, all Improvements shall be the exclusive property of Tenant and Landlord shall have no interest in them.

By the later of (i) the date which is twelve (12) months after Tenant notifies Landlord in writing that Tenant will not renew this Lease or (ii) the date this Lease expires, according to its terms, or within six (6) months after this Lease is otherwise terminated, the Tenant, at its expense, shall remove the AST Improvements and any New Improvements that the Tenant is required to remove pursuant to Article III of this Lease. Landlord may, in its sole discretion, by written notice to Tenant signed by Landlord's designated agent, relieve the Tenant of its obligation to remove a New Improvement at the termination or expiration of this Lease. Upon receipt from Landlord of such a notice by Tenant, the removal or non-removal of the particular New Improvement identified by Landlord shall be in the sole discretion of Tenant. Tenant shall have the option to either remove or to let remain on the Premises all Improvements except for the AST Improvements and the New Improvements which Tenant is obliged to remove. In removing all Improvements which Tenant may be obliged to remove or elects to remove at the expiration or termination of this Lease, Tenant shall leave the Premises in good condition and shall remove all waste, rubbish and debris, and fill all excavations, holes and depressions. All Improvements to the Premises which Tenant is not obliged to remove and which Tenant elects not to remove at the expiration or after the termination of this Lease shall, upon expiration or termination of this Lease, become the property of the Landlord without any obligation of Landlord to compensate Tenant therefor.

**ARTICLE II
RENT**

Section 2.1. Rent During Original Term; Place of Payment. Beginning on the commencement date of this Lease and continuing during the original term of this Lease, Tenant covenants and agrees to pay to Landlord, without demand therefor, annual rent in the amount of Forty Five Thousand Dollars (\$45,000.00) in two (2) installments of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) each, the first to be paid on June 1 of each lease year and the second to be paid on December 1 of each lease year.

Tenant shall pay rent by check, made payable to Landlord, for deposit to account #229814 at M&I Bank Madison, Madison, Wisconsin. Each rent check shall be mailed by Tenant, first class postage prepaid, to:

M&I Bank Madison
Attention: Teller Support
P.O. Box 7989
SP 131-431
Madison, WI 53707-7989

Landlord may, from time to time, change the payment and deposit instructions by giving written notice to Tenant as provided for in Section 12.6 of this Lease.

Section 2.2. Procedure for Establishing Rent for Each Extended Term of Lease. If Tenant elects to extend this Lease as permitted herein, then the rent for each extended term shall be the fair market rental value of the Premises, which shall be the net rental, effective as of the commencement of the extended term, for the Premises (excluding the Improvements constructed thereon) for a five year term that would be agreed to by a landlord and a tenant, each of whom is willing but neither is compelled, to enter into a lease transaction for the Premises. Landlord and Tenant shall attempt in good faith to agree on the rent for the extended

term. If Landlord and Tenant cannot agree on mutually acceptable rent for an extended term pursuant to this section at least eight (8) months prior to the commencement of the extended term, then the rent for each extended term shall be established using the alternative procedure provided for in Section 2.3 of this Lease.

The rent agreed upon by Landlord and Tenant or the rent determined pursuant to Section 2.3 shall be incorporated into this Lease by appropriate amendment executed by both parties.

Section 2.3. Alternative Methods of Establishment of Rent for Extended Terms. If Landlord and Tenant cannot determine rent in accordance with the procedures of Section 2.2., then rent for an extended term of this Lease shall be established separately for extended terms as follows:

(a) By November 1, 2003, for the first extended term and by November 1, 2008, for the second extended term, Landlord and Tenant shall each select an independent qualified appraiser to render a written appraisal of the fair market rental value of the Premises excluding all improvements thereon constructed by Tenant. The two appraisers shall select a third appraiser to render a written appraisal of the fair market rental value of the Premises excluding all improvements thereon constructed by Tenant. The appraisals shall be submitted jointly to Landlord and Tenant on or before April 1, 2004, for the first extended term and on or before April 1, 2009, for the second extended term. Landlord and Tenant shall pay the costs and expenses charged by the respective appraisers

selected by them and shall equally share the costs and expenses of the third appraiser.

(b) The average of the two of the three appraisals which are closest to each other shall constitute the agreed upon "fair market rental value" of the real estate. In the event that either party neglects or refuses to select an appraiser, the agreed upon "fair market rental value" of the real estate shall be the appraised value as established by the appraiser selected by the other party.

Section 2.4. Past Due Rent. If Tenant fails to pay rent within fifteen (15) days after the date when the same is due, the unpaid amount shall, at Landlord's option and without waiving any other right of Landlord, bear interest from the due date to the date of payment at a rate of interest equal to the prime interest rate then in effect from time to time. The term "prime rate" shall mean the announced corporate base rate of interest charged by Citibank, N.A., New York. If Citibank, N.A. does not publish a corporate base rate of interest, the prime rate shall be a similar index reflecting the yield obtained by sophisticated investors on short-term high-grade commercial debt investments.

ARTICLE III CONSTRUCTION OF NEW IMPROVEMENTS, ALTERATIONS, FIXTURES, EQUIPMENT

Section 3.1. Plans and Specifications for New Improvements; Removal Obligations of Tenant. Tenant shall, at its own expense, prepare plans and specifications for any New Improvements to be constructed on the Premises. Tenant shall submit the plans and specifications to Landlord's agent for review at least thirty (30) days prior to the commencement

of construction. Landlord's consent shall not be required for any New Improvements and Landlord shall not have the right to refuse Tenant from making the New Improvements. Tenant, at the expiration or termination of this Lease and pursuant to Section 1.4, shall be obliged to remove the AST Improvements, and except as otherwise consented to in writing by Landlord or otherwise provided herein, shall be obliged to remove all New Improvements and any subsequent alternations, improvements or changes made to New Improvements pursuant to Section 3.2 herein. The Tenant's general obligation to remove all New Improvements at the expiration or termination of the Lease shall not include ground level bituminous (black top) parking facilities constructed subsequent to the commencement of this Lease. The current agent for Landlord to receive copies of plans and specifications for New Improvements is John R. Pike.

Section 3.2. Construction, Alterations, Improvements and Changes. Tenant, at its own expense, may construct New Improvements on the Premises pursuant to the plans and specifications submitted to Landlord's agent under Section 3.1 for the use set forth in Section 6.1. After the completion of such initial construction of a New Improvement, Tenant shall have the right to make such alterations, improvements and changes to such building and/or other improvements as Tenant may deem necessary. All New Improvements (including initial construction) shall be constructed in full compliance with any and all laws, ordinances, rules and regulations which may govern the same and shall be constructed substantially in accordance with plans and specifications submitted to Landlord. Tenant shall be solely liable for obtaining and paying the costs of all governmental permits, licenses and/or approvals necessary to construct the New Improvements and/or to operate Tenant's business therein. Tenant shall promptly pay

all contractors and materialmen for work and supplies and shall not permit any lien to be attached to the Premises. Should any lien be made, Tenant shall bond against or discharge the same within thirty (30) days and hold Landlord harmless against any loss or damage by reason of Tenant's construction of any New Improvements on the Premises.

Section 3.3. Fixtures and Equipment. Tenant may, at its own expense, furnish and install such business and trade fixtures and equipment in and on the Premises as may be necessary or desirable for Tenant's business. Such trade fixtures and equipment shall remain the personal property of Tenant and shall be removed by Tenant at the expiration or termination of this Lease. Upon removal of such trade fixtures and equipment, Tenant shall repair any damage to the Premises caused by such removal. Tenant's obligation hereunder shall survive the expiration or termination of this Lease.

ARTICLE IV MAINTENANCE, REPAIR, AND DESTRUCTION

Section 4.1. Maintenance and Repair by Tenant. Tenant shall, at its own cost and expense, keep, maintain and repair the Premises, including New Improvements of every kind which may be a part thereof, (whether interior or exterior, structural or non-structural); all heating, electrical, air conditioning, ventilating and plumbing equipment therein; and all appurtenances thereto, including sidewalks, driveways and parking areas adjacent thereto, in good condition and repair, reasonable wear and tear excepted; and shall repair, restore and replace or demolish any such improvements which may be destroyed or damaged by fire, casualty or any other cause. Tenant shall comply with all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the Premises and

improvements thereon, or any activity or condition on or in the Premises. Tenant shall, at its own expense, keep the Premises in sanitary, clean and neat order and keep the sidewalks, driveways and parking areas free of snow and trash.

Section 4.2. Damage or Destruction. The damage, destruction or partial destruction of any New Improvements on the Premises shall not release Tenant from any obligation under this Lease.

ARTICLE V UTILITIES AND TAXES

Section 5.1. Utilities and Expenses. Tenant shall, during the term of this Lease, fully and promptly pay for all water, sewer, gas, heat, light, power, telephone services and other public utilities of every kind furnished to the Premises and used by Tenant. Tenant shall also pay for hook-up and/or lateral changes, if any, required to bring utilities from public streets and access ways. Landlord shall not be liable to Tenant for any interruption in the aforesaid utility service.

Section 5.2. Real Property Taxes. Tenant shall during the term of this Lease pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, special assessments, rates, license fees, municipal liens, levies, excises or imports of every nature and kind levied, assessed, charged or imposed on or against the Premises, Tenant's leasehold interest in the Premises, personal property of any kind owned or placed in the Premises by Tenant, or, except for taxes measured by Landlord's total income, the rents from, or privilege of renting, the Premises. All such taxes and charges (with the exception of personal property taxes on Tenant's personal property) shall be prorated if necessary at the commence-

ment and expiration of the Lease term. Upon written request from Landlord, Tenant shall promptly provide Landlord with copies of paid tax receipts. Notwithstanding the foregoing, Tenant shall be obligated to pay installments of special assessments (using the longest amortization schedule available) coming due during the term of this Lease.

Tenant shall have the right at its own cost and expense to initiate and prosecute any proceedings permitted by law for the purpose of obtaining an abatement of or otherwise contesting the validity or amount of taxes assessed to or levied upon the Premises and required to be paid against Landlord's estate and, if required by law, Tenant may take such action in the name of Landlord who shall cooperate with Tenant to such extent as Tenant may reasonably require, provided, however, that Tenant shall fully indemnify and save Landlord harmless from all loss, cost, damage and expense incurred by or to be incurred by Landlord as a result thereof.

ARTICLE VI CONDUCT OF BUSINESS

Section 6.1. Condition and Use. Tenant shall use the Premises for any lawful purpose permitted under the zoning code of the City of Madison.

Section 6.2. Waste and Nuisance. Tenant shall comply with all applicable laws, ordinances, regulations and/or deed and plat restrictions affecting the use and occupancy of the Premises. Tenant shall not commit, or permit to be committed, any waste or nuisance on the Premises.

Section 6.3. Right of Entry. Tenant shall permit Landlord and its agents and employees, upon prior notice, to enter into and upon the Premises at all reasonable times during business hours for the purpose of inspecting the same; provided, however, that Landlord shall

be entitled to enter the Premises no more frequently than once every six (6) months pursuant to this Section 6.3. If a material issue of concern is discovered by Landlord during an inspection made pursuant to this Section 6.3, Landlord shall have the right to enter the Premises during the ensuing six (6) months at reasonable times upon prior notice for the sole purpose of addressing the issue of concern.

**ARTICLE VII
COMPLIANCE BY TENANT WITH
ENVIRONMENTAL LAWS AND REGULATIONS;
INSPECTION OF PREMISES UPON TERMINATION OF LEASE**

Section 7.1. Definitions. As used in this Lease, the following terms shall have the following meaning:

(a) "Environmental Law" shall mean any federal, state or local law, statute, ordinance, rule of common law or regulation which pertains to health, safety, any Hazardous Material (as hereinafter defined) or the environment, and shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§2601 et seq., the Clean Water Act, 33 U.S.C. §§1251 et seq., as amended, and the Clean Air Act, 42 U.S.C. §§7401 et seq., as amended.

(b) "Hazardous Material" shall mean any substance, whether solid, liquid or gaseous, which is listed, defined or regulated as a "hazardous substance," or "hazardous waste," or otherwise classified as hazardous or toxic, in or pursuant to any

Environmental Law, or which is or contains asbestos, polychlorinated biphenyls, or motor fuel or other petroleum hydrocarbons.

Section 7.2. Tenant's Representations and Warranties. Tenant warrants and represents as follows:

- (a) Tenant does not anticipate changing its use of the Premises.
- (b) Tenant will comply with all Environmental Laws in use of the Premises and maintain all Improvements on the Premises in compliance with all Environmental Laws.
- (c) Tenant shall provide Landlord with copies of any written notice of violation of any Environmental Law pertaining to Tenant's use of the Premises, and with copies of any government notice or proceeding relating to Environmental Laws affecting Tenant in its use of the Premises.
- (d) Tenant shall provide Landlord with copies of any information and environmental reports and filings submitted by Tenant to governmental agencies regarding any Hazardous Material which may be stored or used on the Premises, or pertaining to Tenant's use of the Premises.
- (e) Tenant shall develop and implement such emergency response plans as may be required by law to respond to any violation or potential violation of any Environmental Law, and train its employees in accordance with any such emergency response plans.

Section 7.3. Hold Harmless and Indemnification by Tenant. Tenant shall indemnify Landlord and hold it harmless against all actual costs and charges, fines, penalties and

other expenses associated with the presence or release of any Hazardous Material on the Premises caused directly by Tenant, its agents, employees and subtenants, in Tenant's use of the Premises or resulting from Tenant's breach of any representation or warranty set forth in Section 7.2. Tenant agrees to indemnify and hold Landlord harmless from any and all claims, obligations and liabilities, actual costs and expenses, and attorneys' fees (including attorneys' fees for enforcement of this Section 7.3) suffered by Landlord under or imposed by or as a result of the enforcement of any Environmental Law arising from the presence or release of any Hazardous Material on the Premises caused directly by Tenant, its agents, employees and subtenants in Tenant's use of the Premises. This indemnity shall survive five (5) years beyond the expiration or termination of this Lease.

Section 7.4. Breach of Environmental Covenant. In the event that Tenant becomes aware of a breach of Tenant's environmental representations and warranties (as set forth in Section 7.2 hereof) or Tenant's indemnification obligation (as set forth in Section 7.3 hereof), Tenant shall notify Landlord and take such reasonable steps as may be necessary to cure such breach, and shall provide Landlord with documentation thereof. If Tenant fails to commence such activities and to thereafter pursue same, such breach shall constitute a default under this Lease entitling Landlord to all remedies described in Section 10.4 hereof.

Section 7.5. Access of Landlord for Environmental Inspection. At the same time that Landlord exercises the right of access provided Landlord in Section 6.3, during the term of this Lease, Tenant shall permit Landlord and its agents and employees access to the Premises, but not more frequently than once every six (6) months, upon reasonable written notice and at Landlord's obligation and expense, to perform environmental assessments,

inspections and audits. Environmental inspections and audits shall include the right to physical inspection of the Premises and review of relevant records. Environmental inspections and audits shall include soil or groundwater testing only if Landlord has a reasonable and verifiable belief (written evidence of which shall be submitted to Tenant) that Tenant has breached the provisions of this Article VII, or if any governmental notice of an environmental claim pertaining to Tenant's use of the Premises has been issued during the term of this Lease. Landlord shall use its best efforts to minimize the interruption of Tenant's business during the conducting of environmental inspections, audits and sampling.

Section 7.6. Environmental Inspection at Termination of Lease. During the ninety (90) day period preceding the termination date of this Lease, Tenant, at its expense, shall engage a qualified environmental engineer to conduct and document an environmental assessment ("Environmental Assessment") of the Premises to determine if any applicable State of Wisconsin soil clean-up standard is exceeded. Tenant shall furnish Landlord a copy of a report of the Environmental Assessment, including all laboratory test results and any recommendations for further inspections or testing of soil, within thirty (30) days prior to the termination date of this Lease.

Section 7.7. Environmental Remediation at Termination of Lease. Tenant shall, at Tenant's sole risk and expense, and under Tenant's sole discretion and control, take such actions as Tenant deems necessary and appropriate, considering the recommendations of its consultant, and in accordance with all applicable Environmental Laws, to remove, treat, and dispose of any Hazardous Material present in the soil on the Premises at the expiration of the Lease in violation of any applicable State of Wisconsin soil clean-up standard and due directly

and solely to Tenant's use of the Premises. Tenant shall provide Landlord with reasonable evidence of any such activities.

ARTICLE VIII INSURANCE AND INDEMNITIES

Section 8.1. Casualty Insurance. Landlord shall have no duty or obligation to insure Improvements on the Premises against casualty loss. Tenant, at its sole option may, (i) through appropriate insurance carriers, keep all Improvements, which are now or hereafter a part of the Premises, insured against loss or damage by fire and extended coverage hazards, with loss payable to Tenant, or (ii) may self-insure against such risks, or (iii) may elect not to insure against such risks.

Section 8.2. Public Liability Insurance. Tenant shall, at all times during the term of this Lease, at Tenant's sole expense, keep in full force and effect a policy of public liability and property damage insurance with respect to the Premises and all business operated thereon, with limits of public liability not less than Two Million Dollars (\$2,000,000) for injury or death to any one person, and Two Million Dollars (\$2,000,000) for injury or death in any one occurrence, and property damage liability insurance in the amount of Two Million Dollars (\$2,000,000). The policies shall name Landlord as an additional insured. Tenant shall have the right to self-insure the risks required to be insured hereunder.

Section 8.3. Evidence of Insurance. At Landlord's request, Tenant shall, with respect to public liability insurance coverage required in this Lease, furnish Landlord either with certificates of insurance stating that Landlord will be notified in writing thirty (30) days prior

to cancellation, material change or non-renewal of insurance or written evidence of self insurance.

Section 8.4. Loss and Damage. Landlord shall not be liable for any damage to or loss of property of Tenant or others located on the Premises.

Section 8.5. General Indemnification and Hold Harmless Commitment by Tenant. Landlord shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person whatsoever may at any time be using or occupying or visiting the Premises or be in, or about the same, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Tenant or of any occupant, subtenant, visitor, or user of any portion of the Premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth, and Tenant shall indemnify Landlord against all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death or damage. Tenant hereby waives all claims against Landlord for damages to the building, if any, and Improvements that are now on or hereafter placed or built on the Premises and to the property of Tenant in, on, or about the Premises, and for injuries to persons or property in or about the Premises, from any cause arising at any time. The two preceding sentences shall not apply to loss, injury, death, or damage arising by reason of the negligence or misconduct of Landlord, its agents, or employees. Landlord shall indemnify Tenant against all claims, liability, loss or damage whatsoever on account of any loss, injury, death or damage caused by the negligence or intentional misconduct of Landlord.

**ARTICLE IX
EFFECT OF CONDEMNATION**

Section 9.1. Total Condemnation. In the event that the entire Premises, or such part of the Premises as in Tenant's reasonable judgment will render the remainder untenable shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of taking.

Section 9.2. Partial Condemnation. In the event of partial condemnation, not rendering the remainder of the Premises untenable, this Lease shall remain in full force and effect, with the exception that the rent shall be reduced in proportion to the area of the Premises lost by condemnation.

Section 9.3. Condemnation Award. In the event of any condemnation and notwithstanding any provision of this Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the expiration of the term hereof, the loss of all Improvements paid for by Tenant, the loss of Tenant's leasehold estate, and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority, if a separate claim therefor is allowable under applicable law, or the basis of Tenant's claim to a portion of the total award if only one award is made.

**ARTICLE X
DEFAULT**

Section 10.1. Notice of Default to Tenant. Tenant shall not be deemed to be in default hereunder in the payment of rent or in the payment of any other charges or with respect to the performance of any other terms, covenants or conditions as herein required unless

Landlord shall first give Tenant thirty (30) days' written notice of such default, and Tenant fails to cure the default within thirty (30) days, or if the default is of such a nature that it cannot reasonably be cured within thirty (30) days, Tenant fails to commence to cure the default within thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence. Notwithstanding the foregoing, if Tenant has previously failed to pay rent when due and Landlord shall have given written notice of such failure for both of the two (2) immediately prior rent payments with respect to a failure of Tenant to pay rent when due, then no further notice or right to cure for the failure to pay rent when due shall be required.

Section 10.2. Tenant's Default. In the event of Tenant's default in the payment of rent or any other charges or with respect to a default in the performance of any other terms, covenants or conditions as herein required, and Tenant's failure to cure, Landlord, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant. Should Landlord elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may either terminate this Lease or it may from time to time, without terminating this Lease, re-let the Premises, or any part thereof, for such term or terms and at such rental or rentals and on such other terms and conditions as Landlord, in its sole discretion, may deem advisable, with the right to make reasonable alterations and repairs to the Premises. On each such re-letting:

(a) Tenant shall be immediately liable to pay to Landlord, in addition to any indebtedness other than rent due hereunder, the expenses of such re-letting and of such alterations and repairs incurred by Landlord; or

(b) At the option of Landlord, rents received by Landlord from such re-letting shall be applied first, to the payment of any indebtedness, other than rent due hereunder from Tenant to Landlord; second, to the payment of any expenses of such re-letting and of such alterations and repairs (to the extent not paid by Tenant); third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

If rentals received from such re-letting during any six month period is less than that to be paid during said period by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid semi-annually.

No such re-entry or taking possession of the Premises by Landlord shall be constructed as an election on the part of Landlord to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, Landlord may, at any time thereafter, elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedy it may have, Landlord may recover from Tenant all damages incurred by reason of such breach, including the cost of recovering the Premises and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease

for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be discounted to present value at the prime rate and which shall be immediately due and payable from Tenant to Landlord.

Section 10.3. Notice of Landlord's Default. Landlord shall not be deemed to be in default hereunder with respect to the performance of any of the terms, covenants, or conditions of this Lease unless Tenant shall first give to Landlord thirty (30) days' written notice of such default, and Landlord fails to cure the default within the thirty (30) days, or if the default is of such a nature that it cannot reasonably be cured within thirty (30) days, Landlord fails to commence to cure such default within such period of thirty (30) days or fails thereafter to proceed to the curing of such default with all possible diligence.

Section 10.4. Parties May Remedy Defaults. In the event of any breach hereunder by either party (and in lieu of Landlord's terminating this Lease as hereinbefore provided), Landlord and Tenant respectively, may immediately or at any time thereafter, after having given the other party the requisite notice to cure the same and the time for such correction having elapsed, cure such breach for the account and at the expense of the other party. If Landlord or Tenant at any time, by reason of such breach, are compelled to pay, or elect to pay, any sum of money, or incur any expense, including reasonable attorney's fees, in instituting or prosecuting any action or proceeding to enforce such party's rights hereunder, the sum or sums so paid or incurred by such party, if paid or incurred by Landlord shall be deemed to be rent hereunder and shall be due from Tenant to Landlord on the first day of the month following the payment of such respective sums, and, if paid or incurred by Tenant shall be deductible, with interest at the prime rate, to the extent thereof from subsequent payments of

rent. This option given to the parties is intended for their protection and its existence shall not release the parties from the obligation to perform the terms and covenants herein provided or deprive Landlord or Tenant of any legal rights which they may have by reason of other party's default.

**ARTICLE XI
ASSIGNMENT AND SUBLETTING**

Section 11.1. Tenant's Assignment. Tenant shall not assign or transfer this Lease without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, however, that Landlord's consent shall not be required for any assignment of this Lease by Tenant to Kraft General Foods, Inc. (or its successor) or to any direct or indirect subsidiary or affiliate of Tenant, Kraft General Foods, Inc. (or its successor) or Philip Morris Companies, Inc. (or its successor).

Section 11.2. Tenant's Subleasing. Tenant shall have the right to sublease portions of the Premises without Landlord's prior approval provided that such subleasing meets the following requirements:

- (a) The term of the sublease shall not exceed the original term of this Lease; and
- (b) The sublessee shall, upon Landlord's written request, execute and deliver to Landlord a document in form and content acceptable to Landlord, acknowledging this Lease and agreeing that a termination or expiration of this Lease shall at Landlord's sole option constitute a termination or expiration of the sublease; and

(c) The sublessee's use of the Premises shall be limited to use in conformance with Sections 6.1 and 6.2.

Any sublease which does not meet all of the above-stated requirements shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Landlord hereby approves the existing subleases affecting the Premises. Upon Landlord's written request, Tenant shall promptly provide Landlord with copies of all executed subleases affecting the Premises. No sublease shall operate to relieve Tenant of any obligation under this Lease.

Section 11.3. Landlord's Assignment. Landlord shall have the right to assign or transfer its interests in this Lease at any time, provided that the assignee or transferee assumes and agrees to be bound by the terms of this Lease and further provided that Landlord notifies Tenant of such assignment and provides Tenant with an executed copy of the agreement whereby the assignee or transferee agrees to be bound by the terms hereof.

ARTICLE XII MISCELLANEOUS

Section 12.1. Accord and Satisfaction. No payment received by Landlord of a lesser amount than the rent or other charges due hereunder shall be deemed to be other than on account of the earliest stipulated rent or other charges nor shall any statement on a check or any letter accompanying a payment of rent or other charges be deemed an accord and satisfaction. Landlord may accept payment without prejudice to Landlord's right to recover the balance of rent or other charges or pursue any remedy in this Lease.

Section 12.2. Entire Agreement. This Lease and Exhibits attached hereto set forth all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties hereto other than as herein set forth. No subsequent change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

Section 12.3. No Partnership. Landlord does not in any way become a partner, joint venturer or member of a joint enterprise with Tenant.

Section 12.4. Force Majeure. If either party is delayed from the performance of any act required hereunder (except the payment of money) by reason of labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, riots, insurrection, war or like reasons not the fault of the party delayed, then the period for performance of the act shall be extended for a period equivalent to the period of the delay.

Section 12.5. Waiver. The waiver by Landlord or Tenant of any breach of any term, covenant, or condition herein shall not be deemed a waiver of the term, covenant or condition. The acceptance of rent by Landlord shall not be deemed a waiver of any preceding breach by Tenant of any covenant herein, other than the failure of Tenant to pay the rent so accepted. No covenant, term or condition of this Lease shall be waived by Landlord or Tenant, unless the waiver be in writing.

Section 12.6. Notices. Any notice given or required to be given to Landlord shall be sent or personally delivered as follows:

John R. Pike
c/o J.R. Pike Corporation
433 Woodward Drive
Madison, WI 53704

Any notices given or required to be given to Tenant shall be sent or personally delivered as follows:

Oscar Mayer Foods Corporation
910 Mayer Avenue
Madison, WI
Attention: General Counsel

with a copy to:

Kraft General Foods, Inc.
Three Lakes Drive
Northfield, Illinois 60093
Attention: Industrial Real Estate Department

Notices shall be deemed given when deposited in the U.S. Mail, postage prepaid and correctly addressed, certified mail, to the respective parties or when personally delivered. Either party may change its respective above-stated address by written notice to the other party.

Section 12.7. Partial Invalidity. If any provision of this Lease or any specific application shall be invalid or unenforceable, the remainder of this Lease, or the application of the provision in other circumstances, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 12.8. Memorandum of Lease. At the commencement of the lease term, Landlord and Tenant upon the request of either party shall execute a Memorandum of Lease in a form approved for recording by the laws of the State of Wisconsin. Either party at its sole cost shall be entitled to record the Memorandum of Lease with the Office of the Register of Deeds for Dane County, Wisconsin.

Section 12.9. Consent Not to be Unreasonably Withheld. Where any provision of this Lease requires prior written consent by either party, such consent shall not be unreasonably withheld nor unduly delayed.

Section 12.10. Quiet Title. Landlord covenants and warrants that to the best of its knowledge, Landlord is seized in fee title to the Premises, and except as otherwise noticed or provided herein, free and clear of all encumbrances, easements, right of way, reservations, restrictions, covenants, limitations and conditions which might prohibit or materially restrict or affect the construction, maintenance or operation of Tenant's business as stated in Sections 6.1 with its necessary appurtenances; and that for so long as Tenant fulfills the conditions and covenants required of Tenant under this Lease, Tenant shall have peaceful and quiet possession of the Premises subject only to the provisions hereof and of any encroachments revealed by a survey and of recorded restrictions, covenants, and easements, such as those identified on Exhibit A, including, without limitation, Landlord's right to install utilities and other permitted improvements in easement areas. Landlord further covenants and warrants that Landlord has good right, full power and lawful authority to enter into this Lease for the full term and extensions hereof.

Section 12.11. Zoning. The Premises are currently zoned M-1, M-2 and W (Wetland). Landlord and Tenant each may petition the Madison Common Council to rezone the Wetland area to M-1 or M-2. Tenant agrees to cooperate with Landlord and Landlord agrees to cooperate with Tenant in connection with any petition for rezoning the Premises which may be advanced by Landlord or Tenant, as the case may be.

Section 12.12. Remedies Cumulative. All remedies conferred on Landlord and Tenant by this Lease shall be deemed cumulative and no one exclusive of the other or of any other remedy conferred by law.

Section 12.13. Binding Effect. The covenants and agreements contained in this Lease shall bind the respective successors, heirs and legal representatives of the parties hereto.

Section 12.14. Applicable Law. This Lease shall be governed by the laws of the State of Wisconsin.

Section 12.15. Holding Over. Any holding over after the expiration of the term or any extended term of this Lease with Landlord's consent shall be construed to be a tenancy from month to month at one and one-half (1½) times the rental and otherwise on the same terms and conditions hereof.

Section 12.16. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

ARTICLE XIII RIGHT OF FIRST OFFER

If at any time during the term of this Lease, or any extension hereof, Landlord, at its initiative, decides to offer the Premises for sale, the Landlord shall first offer to sell the Premises to Tenant, by giving written notice to the Tenant. If, within sixty (60) days after the Landlord has offered to sell the Premises to Tenant, the parties cannot agree upon a sale and purchase price, the Landlord may proceed to offer the Premises to a third party for a price and/or upon other significant terms which are more favorable to Landlord than the price and

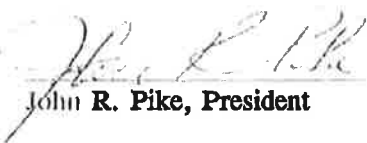
terms offered by Tenant. If the third party offer is at the same price offered by Tenant or a lower price but on terms more favorable to Landlord, Tenant shall have the right to match the terms offered by the third party and acquire the Premises from Landlord on such terms. The right of first offer provided for herein shall not be applicable to sales by members of the Landlord's group among themselves or to a transfer by the Landlord or any one of them of their interest in the Premises to a partnership, corporation, limited liability company or other business entity which will be owned by the persons who comprise the Landlord's group. If Landlord receives an unsolicited offer to purchase the Premises from a third party which in the first instance or after negotiation is acceptable to Landlord, Landlord shall not accept such offer unless (i) Landlord offer the Premises for sale to Tenant on the same terms and conditions, and (ii) Tenant fails to accept such offer within twenty (20) days after its receipt of such offer, in which event the Premises may be sold by the Landlord to such third party without granting Tenant any further opportunity to purchase the Premises. If Landlord rejects such offer and enters into subsequent negotiations, such negotiations shall be subject to the right of first offer granted under this Article XIII.

IN WITNESS WHEREOF, this Lease has been made, executed, and delivered as of the date and year first set forth above.

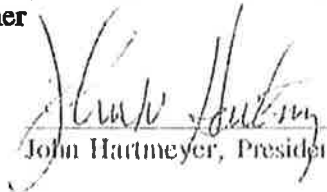
LANDLORD

JOHN HARTMEYER ESTATE, a general partnership

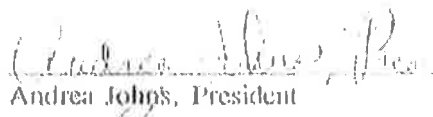
By: J.R. Pike Corporation, a Wisconsin corporation, its Partner

By:  John R. Pike, President

By: Hartmeyer, Inc., an Indiana corporation, its Partner

By:  John Hartmeyer, President


By: Hoven Corp., a WISCONSIN corporation, its Partner

By:  Andrea Johns, President


Jane Ginther, its Partner

TENANT

OSCAR MAYER FOODS CORPORATION, a Delaware corporation

By:  Its: Vice President

LANDLORD ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 14 day of January, 1995, John R. Pike, President of J.R. Pike Corporation, a Wisconsin corporation, as partner of John Hartmeyer Estate, a general partnership, to me known to be the person who executed the foregoing instrument, and that he executed the foregoing instrument on behalf of such general partnership.

Thomas J. Long
NOTARY PUBLIC, State of Wisconsin
My Commission is permanent

STATE OF INDIANA)
) ss.
COUNTY OF DELAWARE)

Personally came before me this 13 day of JAN, 1995, John Hartmeyer, President of Hartmeyer, Inc., an Indiana corporation, as partner of John Hartmeyer Estate, a general partnership, to me known to be the person who executed the foregoing instrument, and that he executed the foregoing instrument on behalf of such general partnership.

Susan K. Young
NOTARY PUBLIC, State of Indiana
My Commission _____
SUSAN K YOUNG
NOTARY PUBLIC STATE OF INDIANA
DELAWARE COUNTY
MY COMMISSION EXP. DEC. 9,1997

INDIANA
STATE OF ~~TEXAS~~ INDIANA)
) ss.
COUNTY OF DELAWARE)

Personally came before me this 13 day of JAN, 1995, Andrea Johns, President of Hoven Corp., a WISCONSIN corporation, as partner of John Hartmeyer Estate, a general partnership, to me known to be the person who executed the foregoing instrument, and that she executed the foregoing instrument on behalf of such general partnership.

Susan K. Young
NOTARY PUBLIC, State of ~~Texas~~ INDIANA
My Commission _____
SUSAN K YOUNG
NOTARY PUBLIC STATE OF INDIANA
DELAWARE COUNTY
MY COMMISSION EXP. DEC. 9,1997

STATE OF INDIANA)
) ss.
COUNTY OF Delaware)

Personally came before me this 13 day of January, ¹⁹⁹⁵1994, Jane Ginther, known to me to be the person who executed the foregoing instrument, and that she executed the same for the purposes therein stated.

Cindy E. Yafato
NOTARY PUBLIC, State of Indiana
My Commission Expires 02/11/18

TENANT ACKNOWLEDGMENT

STATE OF Wisconsin)
) ss.
COUNTY OF Dane)

Personally came before me this 19th day of December, 1994, Harold G. Smith, of Oscar Mayer Foods Corporation, a Delaware corporation, to me known to be the person who executed the foregoing instrument as Vice President and of said corporation, and acknowledged that (s)he executed the foregoing instrument as such officers on behalf of said corporation.

Vivian L. Pipes
NOTARY PUBLIC, State of Wisconsin
My Commission Expires 11/11/17

This Document was Drafted by:
Thomas D. Zilavy, Esq.
DeWitt Ross & Stevens, S.C.
Two East Mifflin Street, Suite 600
Madison, WI 53703-2865

EXHIBIT A**LEGAL DESCRIPTION**

A parcel of land located in the SW 1/4 of Section 31, T8N, R10E and part of Outlot One (1), Burke Assessor's Plat No. 1, all in the City of Madison, Dane County, Wisconsin, more particularly described as follows:

Commencing at a City of Madison Monument marking the SW corner of said Section 31;
Thence N 89° 32' 52" E, along the South line of said Section 31, 1184.64 feet to the West right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad and the point of beginning of this description;
Thence N 10° 14' 20" E, along said West right-of-way line, 1551.85 feet to the South right-of-way line of Roth Street;
Thence N 83° 34' 15" W, along said South right-of-way line, 20.00 feet;
Thence along the arc of a 60.00 foot radius curve whose long chord bears S 78° 08' 45" W, 111.20 feet to a point of reverse curve;
Thence along the arc of a 100.00 foot radius curve, whose long chord bears N 58° 46' 15" W, 83.20 feet to a point on the South right-of-way line of Roth Street;
Thence N 83° 34' 15" W, along said South line, 1087.25 feet;
Thence S 0° 04' 25" W, 140.69 feet;
Thence S 89° 15' 25" E, 13.50 feet;
Thence S 0° 04' 05" W, 40.00 feet;
Thence N 89° 28' 25" W, 33.00 feet;
Thence S 0° 04' 25" W, 199.98 feet;
Thence N 89° 27' 55" W, 150.07 feet to the centerline Sherman Ave.;
Thence S 0° 05' 25" W, along the centerline of Sherman Ave., 89.54 feet to the Northeasterly right-of-way line of the Chicago and Northwestern Railroad;
Thence S 24° 25' 10" E, along said Northeasterly line, 437.73 feet;
Thence N 88° 59' 30" E, 462.91 feet to the West right-of-way line of Ruskin Street;
Thence S 03° 37' 10" E, along said West line, 537.00 feet;
Thence N 88° 56' 45" E, 66.05 feet to a point on the East right-of-way line of Ruskin Street;
Thence N 03° 37' 10" W, along said East line, 350.12 feet;
Thence N 88° 57' 05" E, 249.56 feet;
Thence S 03° 39' 45" E, 634.16 feet to a point on the South line of said Section 31;
Thence N 89° 32' 52" E, along said South line, 162.97 feet to the point of beginning of this description.

The above described parcel contains 29.95 acres.

Subject to existing public highway over the Southerly 33 feet thereof known as Commercial Avenue.

Subject to Grant of Easement for ingress and egress in Volume 452 of Misc., Page 364, #1171559, as amended in Vol. 484, Rec. p. 82 #1383555.

Subject to easement to Madison Gas and Electric Company in Volume 22 of Records, Page 534, #1211659.

Subject to Agreement to Wisconsin Telephone Company in Volume 19 of Misc., Page 558, #267689.

Subject to an unrecorded existing right-of-way for storm/sewer main, and sanitary sewer.

Subject to existing public highway over the West 33 feet thereof known as Sherman Ave.

Subject to a 66 foot right-of-way from Ruskin Street to Roth Street described as follows:

Commencing at the aforementioned SW corner of Section 31;
Thence N 89° 32' 52" E, along the South line of Section 31, 705.14 feet;
Thence N 03° 37' 10" W, along the West right-of-way line of Ruskin Street; 280.71 feet to the point of beginning;
Thence continue N 03° 37' 10" W, 1350.14 feet to the South line of Roth Street;
Thence S 83° 34' 15" E, along said South line, 67.05 feet;
Thence S 03° 37' 10" E, 1341.39 feet;
Thence S 88° 56' 45" W, 6605 feet to the point of beginning.

D. L. Evans & Co. APPRAISAL COMPANY

2702 MONROE STREET • PHONE 608-238-8626 • MADISON, WISCONSIN 53711

WILLYVAULT
CASUALTY DEPT

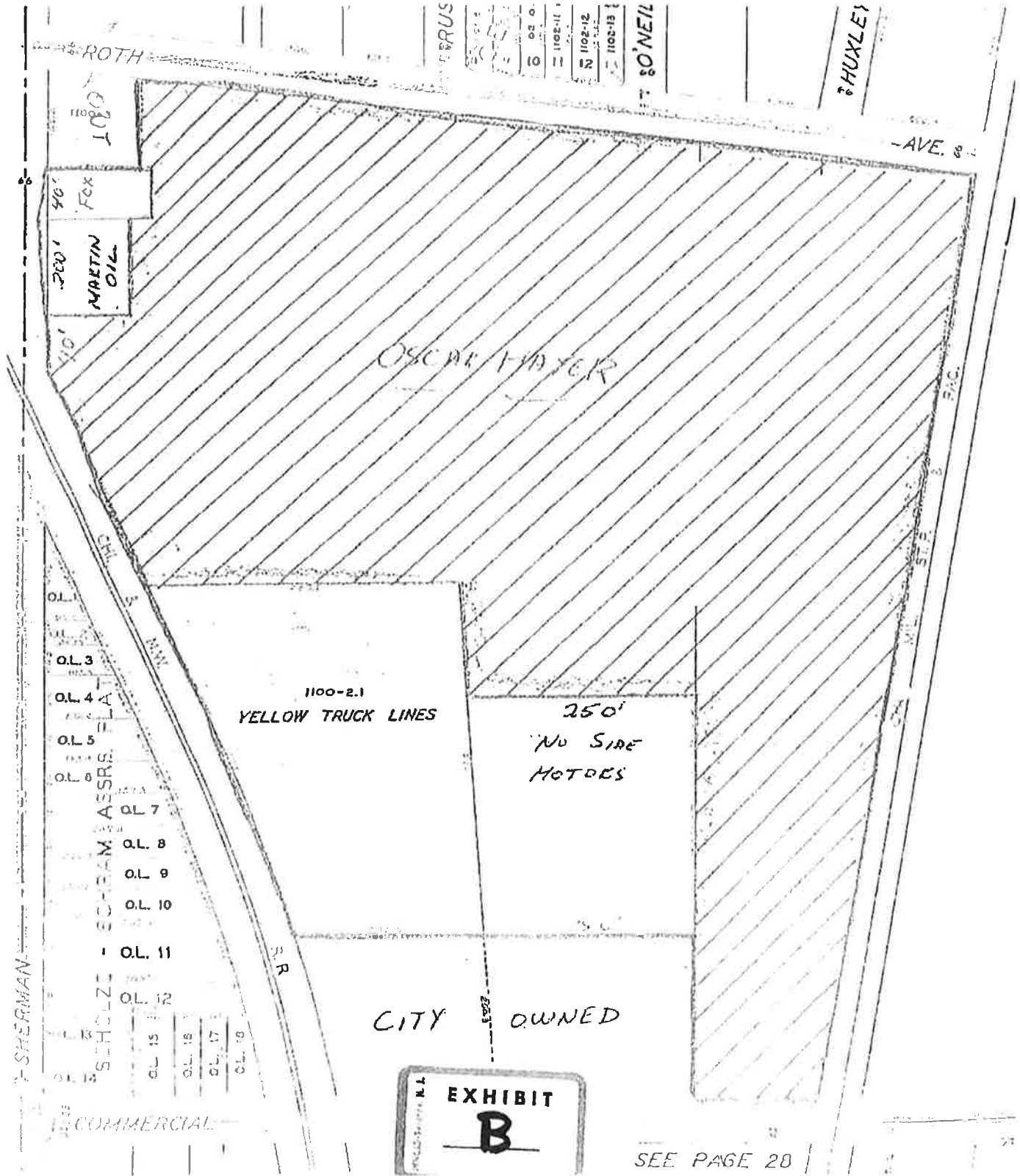


EXHIBIT
B

SEE PAGE 28

AMENDMENT TO GROUND LEASE

This **AMENDMENT TO GROUND LEASE** (the "Amendment") is made as of the ___ day of July, 2005, by and between JOHN HARTMEYER ESTATE, a partnership ("Landlord"), and KRAFT FOODS GLOBAL, INC., a Delaware corporation ("Tenant"), as successor in interest to Oscar Mayer Foods Corporation, a Delaware corporation ("Oscar Mayer").

Recitals

A. Landlord and Oscar Mayer entered into that certain Ground Lease dated as of June 1, 1994 (the "Lease") with respect to those certain premises in Madison, Wisconsin more fully described in the Lease (the "Premises"). Initially capitalized terms used but not expressly defined in this Amendment have the respective meanings given them in the Lease.

B. Tenant is the successor in interest to Oscar Mayer as tenant under the Lease.

C. Landlord and Tenant desire to amend the Lease in accordance with the provisions of this Amendment.

Agreements

In consideration of the foregoing Recitals, which by this reference are made a part of this Amendment, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Premises.** Effective as of the date of this Amendment, the property outlined on **EXHIBIT A** attached to this Amendment (the "Excluded Property") shall not constitute a part of the Premises. Exhibit A and Exhibit B to the Lease are amended to exclude the Excluded Property therefrom, so that the Premises shall consist of the property described and depicted on such Exhibits, less the Excluded Property.

2. **Full Force and Effect.** The Lease, as amended by this Amendment, shall remain in full force and effect.

3. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

Landlord and Tenant have executed this Amendment as of the date first above written

LANDLORD

TENANT

JOHN HARTMEYER ESTATE,
a partnership

KRAFT FOODS GLOBAL, INC.,
a Delaware corporation

By: John R Pike
Name: JOHN R PIKE
Title: PARTNER

By: Douglas D. Baddolito
Name: DOUGLAS D. BADDOLITO
Title: DIRECTOR, CORPORATE REAL ESTATE

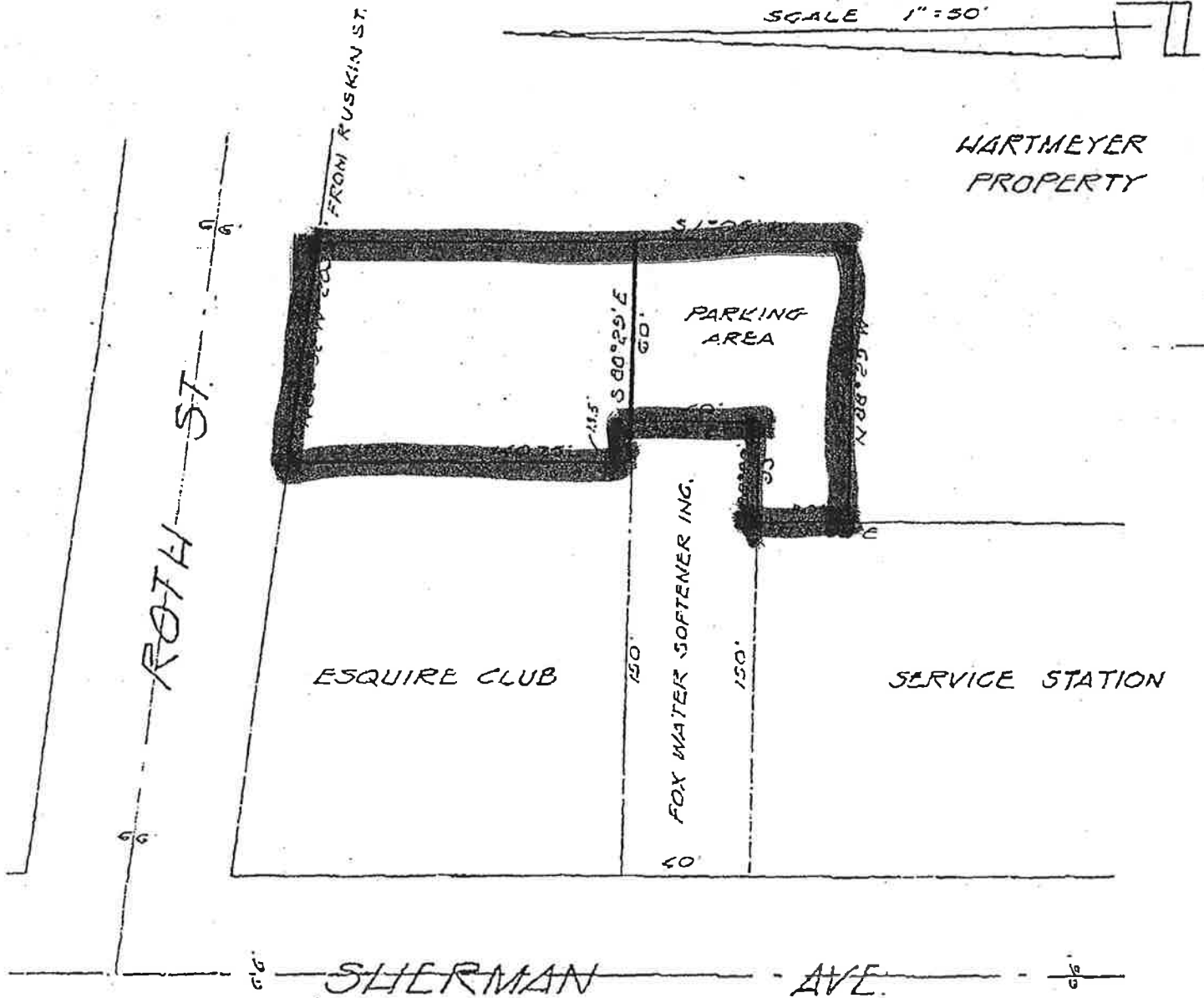
JUN-29-2005 08:50 From:ESQUIRE CLUB

608 249 1530

To:847 646 8900

P.2/3

EXHIBIT A



TOTAL AREA - PARKING
 $= \frac{5190 \sqrt{2}}{2} = .1191 \text{ Acre}$

DRAWING PREPARED FROM RECORDS
 KARNIS & ASSOCIATES
 5510 MAHITOWISH WAY
 MADISON, WI 53704

AMENDMENT OF GROUND LEASE

This Amendment of Ground Lease is made, executed and delivered this 5th day of November, 2008, and its terms are to commence the first day of June, 2009, by and between John Hartmeyer Estate Partnership, LLP, a Wisconsin limited liability partnership, c/o J.R. Pike Corporation, 1000 Guadalupe Street, Apt. 4D, Kerrville, Texas 78028 ("Landlord"), and Kraft Foods Global, Inc., a Delaware corporation located at 910 Mayer Avenue, Madison, Wisconsin 53704 ("Tenant").

Preface

Landlord and Tenant entered into a certain Ground Lease (the "Lease") which was made, executed and delivered as of the first day of June, 1994. Effective December 30, 1995, Oscar Mayer Foods Corporation was merged into Kraft Foods, Inc., which is now known as Kraft Foods Global, Inc. Pursuant to the Lease, the Landlord leased to Tenant certain real estate located in the City of Madison, Dane County, Wisconsin, which is described on Exhibit A attached to the Lease (the "Premises"). The initial term of the Lease commenced June 1, 1994 and terminated on May 31, 2004. Pursuant to the terms of the Lease, Tenant exercised an option to extend the Lease for an additional five (5) year term beyond the expiration of the initial term. The first extended term of the Lease will terminate on May 31, 2009. Landlord and Tenant have agreed to amend the Lease so as to provide for an extension of the Lease from June 1, 2009 through May 31, 2019 (the "New Extended Term"), to provide Tenant with two options to further extend the Lease, first from June 1, 2019 through May 31, 2024, and second from June 1, 2024 through May 31, 2029, and to preserve Landlord's rights regarding certain environmental matters described herein.

Therefore, it is agreed by and between Landlord and Tenant as follows:

1. New Extended Term. The Lease between Landlord and Tenant, dated as of June 1, 1994, is hereby extended from June 1, 2009 through May 31, 2019. Except as otherwise provided herein, all terms of the original Lease dated as of June 1, 1994 and the provisions of this Amendment shall be applicable during the New Extended Term.
2. Rent During New Extended Term. Beginning on the commencement date of the New Extended Term, namely, June 1, 2009 and continuing through May 31, 2014, Tenant covenants and agrees to pay to Landlord, without demand therefore, annual rent in the amount of \$70,800 in two (2) installments of \$35,400 each, payable on June 1 and December 1 of each lease year. The first payment of semi-annual rent during the first extended lease year shall be made by Tenant to Landlord on June 1, 2009. Rent for the second five (5) years of the New Extended Term shall be determined in accordance with the procedures of Section 2.2 and 2.3 of the Lease. If Landlord and Tenant cannot agree upon a mutually acceptable rent for the second five (5) years of the New Extended Term by September 30, 2013, then such rent shall be determined in accordance with Section 2.3 of the Lease. If rent during the last five (5) years of the New Extended Term is to be determined pursuant to Section 2.3 of the Lease, then Landlord and Tenant shall select the requisite appraiser by November 1, 2013, and the requisite appraisal shall be submitted to the Landlord and Tenant by April 1, 2014.

EXHIBIT

3

exhibitsticker.com

3. Option for Additional Extended Terms. Tenant is hereby granted options to extend the term of this Lease for two (two) additional five (5) year terms ("Additional Extended Terms"), the first to begin upon the expiration of the New Extended Term and the second to begin upon the expiration of the first Additional Extended Term. Except as otherwise provided herein, all terms of the original Lease dated June 1, 1994 and the provisions of this Amendment shall be applicable during each Additional Extended Term. The provisions of Section 1.3 of the Lease shall be applicable to the Additional Extended Terms, provided that Tenant's required notice in writing to Landlord regarding the first Additional Extended Term shall be due on or before May 31, 2018, and on or before May 31, 2023 for the second Additional Extended Term. Rent for both Additional Extended Terms shall be determined in accordance with the procedures of the Lease; provided that with respect to the first Additional Extended Term (June 1, 2019-May 31, 2024), if Landlord and Tenant cannot agree upon a mutually acceptable rent by September 30, 2018, then such rent shall be determined in accordance with Section 2.3 of the Lease. If Section 2.3 of the Lease becomes applicable, then the Landlord and Tenant shall select the requisite appraiser by November 1, 2018, and the requisite appraisal shall be submitted to the Landlord and Tenant by April 1, 2019. With respect to the second Additional Extended Term (June 1, 2024 - May 31, 2029), if Landlord and Tenant cannot agree upon a mutually acceptable rent by September 30, 2023, then such rent shall be determined in accordance with Section 2.3 of the Lease. If Section 2.3 of the Lease becomes applicable, then the Landlord and Tenant shall select the requisite appraiser by November 1, 2013, and the requisite appraisal shall be submitted to the Landlord and Tenant by April 1, 2024.
4. Prior Environmental Incident. Tenant acknowledges that it was leasing the Premises from Landlord prior to the execution of the June 1, 1994 Lease (the "Prior Leases"), and that in 1989, while Tenant was occupying the Premises under the Prior Leases, a spill of fuel oil occurred, which impacted soil and groundwater located on the Premises. Subsequent to the fuel oil spill Tenant, under the supervision of the Wisconsin Department of Natural Resources, engaged in efforts to address soil and groundwater contamination. On January 23, 2008, the Wisconsin Department of Natural Resources, at the request of Tenant and pursuant to Chapter NR726, Wisconsin Administrative Code, provided Tenant a closure letter.
5. Right of Landlord. At this time and during all Extended Terms of the Lease, Landlord is willing to acquiesce and accept the decision of the Wisconsin Department of Natural Resources to issue the January 23, 2008 closure letter, based upon Landlord's expectation that natural attenuation may further reduce any soil and groundwater contamination. In consideration of Landlord's forbearance by not at this time attempting to require Tenant to take further action regarding the fuel oil spill on the Premises, Tenant agrees that at the termination of the last Extended Term of the Lease and for a period of one (1) year thereafter, in the event of a dispute with Landlord over the application of the law and terms of the Lease to the results of the fuel oil spill, Tenant will not assert as defenses either laches, the statute of limitations, waiver or estoppel by virtue of Landlord's delay in seeking to enforce its rights under the Lease.
6. Binding Effect of Lease. The Lease and this Amendment of the Lease shall be binding upon and inure to the benefit of both Landlord and Tenant and their respective successors


and assigns. As a result of this Amendment, certain provisions of the Lease will be applicable to Landlord and Tenant following the end of the last Extended Term.

- 7 Recorded Memorandum of Amendment of Lease. Either party may request that the other party execute a memorandum regarding the existence of the Lease and this Amendment for purposes of recording the memorandum with the Dane County, Wisconsin Office of the Register of Deeds.

LANDLORD


JOHN HARTMEYER ESTATE PARTNERSHIP, LLP,
a Wisconsin limited liability partnership

By: J.R. PIKE CORPORATION,
a Wisconsin corporation, its Partner

By: 
John R. Pike, President

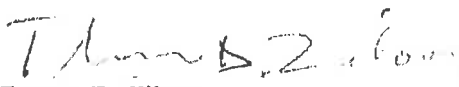
TENANT

KRAFT FOODS GLOBAL, INC.,
a Delaware corporation

By: 
Printed Name: Douglas A. Baddeloo
Its: Director – Corporate Real Estate

AUTHENTICATION

Signature of John R. Pike authenticated on November 10, 2008.


Thomas D. Zilavy
Member, State Bar of Wisconsin

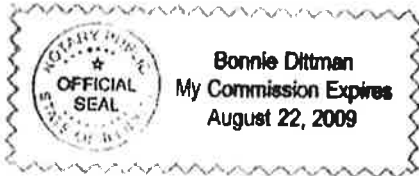
STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this ____ day of _____, 20____, John R. Pike, to me known to be the President of J.R. Pike Corporation, who acknowledged that he executed the foregoing instrument as such officer of said corporation, by its authority, and by the authority of the John Hartmeyer Estate Partnership, LLC.

Printed Name: _____
Notary Public, State of Wisconsin
My Commission: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Personally came before me this 31 day of NOVEMBER, 2008, DOUGLAS BADDELOO, to me known to be the DIRECTOR CORPORATE REAL ESTATE of Kraft Foods Global, Inc., who acknowledged that (he)(she) executed the foregoing instrument as such officer of said corporation, by its authority.



Bonnie Dittman

Printed Name: BONNIE DITTMAN
Notary Public, State of Wisconsin ILLINOIS
My Commission: EXPIRES AUGUST 22, 2009

Drafted by:
Thomas D. Zilavy
DeWitt Ross & Stevens SC
2 East Mifflin Street, Suite 600
Madison, WI 53703

AMENDMENT OF GROUND LEASE

THIS AMENDMENT OF GROUND LEASE (this “Amendment”) is made effective as of May 31, 2019, and its terms are to commence effective June 1, 2019, by and between John Hartmeyer Estate Partnership, LLP, a Wisconsin limited liability partnership, as authorized agent of the entities which own the Property (defined below), by its partner J.R. Pike Corporation, a Wisconsin business corporation (“Landlord”), and Kraft Heinz Foods Company, a Pennsylvania limited liability company (“Tenant”). Landlord and Tenant may be referred to herein individually as a “Party”, or collectively as the “Parties”.

WHEREAS, Landlord and Tenant, as successor-in-interest to the initial tenant, entered into that certain Ground Lease dated June 1, 1994, as amended in July 2005, and on November 5, 2008 (collectively, the “Lease”), with respect to certain real estate located in the City of Madison, Dane County, Wisconsin, which is more particularly described in the Lease (the “Premises”);

WHEREAS, following certain extensions of the term, the Lease is set to expire on May 31, 2019;

WHEREAS, prior to expiration of the Lease, Tenant retains certain obligations including, without limitation, the payment of prorated real estate taxes for the year 2019 and with respect to certain environmental matters as described in the Lease (the “Environmental Matters”);

WHEREAS, Landlord and Tenant desire to amend the Lease to provide for an extension of the term through November 30, 2019, and as otherwise provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference in this Amendment.

2. **Extension of Term; Termination of Extension Options.** The term of the Lease is hereby extended from June 1, 2019, through November 30, 2019 (the “Extended Term”). During the Extended Term, Tenant covenants and agrees, without demand therefor, to pay to Landlord rent of Six Thousand One Hundred Ninety-Five and 00/100 Dollars (\$6,195.00) per month on the first day of each month beginning June 1, 2019, and to pay all other expenses and comply with all other obligations of Tenant as provided in the Lease. All options for additional extensions by Tenant as provided under the Lease are hereby terminated.

3. **Resolution of Environmental Matters and Structures.** During the Extended Term, the Parties agree to (i) cooperate in good faith to allow Tenant to comply with its obligations under the Lease with respect to the Environmental Matters, and (ii) engage in good faith discussions concerning Landlord’s request that certain structures located on the Premises (comprised of a gas house, adjoining steel bridge and utilities that connect to the neighboring property) be removed or relocated, subject to the terms and obligations of the Lease and applicable Wisconsin law.

4. **Payment of Real Estate Taxes.** Tenant's prorated share of 2019 real estate taxes per Paragraph 5.2 of the Lease shall be paid no later than January 31, 2020.

5. **No Further Amendment.** Except as specifically provided herein, all terms and conditions of the Lease shall remain in full force and effect.

6. **Notices.** Paragraph 12.6 of the Lease is amended by inserting the following individuals for notice. Notice may be provided by mail, personal delivery, or electronic mail with evidence of receipt:

Notice to Landlord:
Attorney Thomas D. Zilavy
DeWitt LLP
2 E. Mifflin St., Suite 600
Madison, WI 53703

With a copy to:
Attorney Ronald R. Ragatz
DeWitt LLP
2 E. Mifflin St., Suite 600
Madison, WI 53703

Notice to Tenant:
Kraft Heinz Foods Company
200 E. Randolph Street, Suite 7600
Chicago, IL 60601
Attention: Real Estate Department

With a copy to:
Kraft Heinz Foods Company
200 E. Randolph Street, Suite 7600
Chicago, IL 60601
Attention: Law Department

7. **Miscellaneous.**

(a) **Captions.** Captions to the sections in the Amendment are included for convenience only and do not modify any of the terms of this Amendment.

(b) **Signatures.** Facsimile and/or PDF electronic format signatures on this Amendment shall have the same force and effect as original ink signatures.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be made effective as of May 31, 2019.

LANDLORD:

JOHN HARTMEYER ESTATE PARTNERSHIP, LLP
a Wisconsin limited liability partnership, as Authorized Agent for owners of the Property

By: J.R. Pike Corporation, a Wisconsin business corporation, a Partner of the Authorized Agent

By: John R. Pike
John R. Pike, President

Date: JUNE 7, 2019

TENANT:

KRAFT HEINZ FOODS COMPANY

By: _____

Name: _____

Title: _____

Date: _____, 2019

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be made effective as of May 31, 2019.

LANDLORD:

JOHN HARTMEYER ESTATE PARTNERSHIP, LLP
a Wisconsin limited liability partnership, as Authorized Agent for owners of the Property

By: J.R. Pike Corporation, a Wisconsin business corporation, a Partner of the Authorized Agent

By: _____
John R. Pike, President

Date: _____, 2019

TENANT:

KRAFT HEINZ FOODS COMPANY

By: Aditi Sant

Name: ADITI SANT

Title: HEAD OF REAL ESTATE & FACILITIES

Date: June 3rd, 2019



Direct Dial: 608-252-9351
Email: rrr@dewittllp.com

October 3, 2019

VIA US CERTIFIED MAIL

Kraft Heinz Foods Company
200 E. Randolph Street, Suite 7600
Chicago, IL 60601
Attention: Real Estate Department

RE: Notice of Default under Lease with John Hartmeyer Estate Partnership, LLP

Dear Sir or Madam:

Pursuant to the Amendment of Ground Lease between Kraft Heinz Foods Company, a Pennsylvania limited liability company ("Tenant") and John Hartmeyer Estate Partnership, LLP, a Wisconsin limited liability partnership, as authorized agent of the entities that own the subject property ("Landlord"), you are notified pursuant to Article X of the Lease as amended that Tenant is in default of its obligation to pay rent due on September 1, 2019 and October 1, 2019 as required under Paragraph 2 of the 2019 Amendment of Ground Lease. The rent for each month is \$6,195.00. Landlord demands that the rent defaults be cured within 30 days.

You are further notified that you are in default in causing or permitting the following conditions on the leased property (the "Property"):

- a) Soil contamination due to Tenant's use of the Property;
- b) A gas line over the railroad tracks and associated structures, including a metal bridge and gas house encroaching on the Property; and
- c) The presence of waste on the Property, including tires.

The above items a), b), and c) have been the subject of communications over recent months. You have failed to address them and/or advise the Landlord of your specific plans and intentions to address them, despite request. You are in violation of the Lease, including without limitation, Sections 1.4 and 6.2 and Article VII. Landlord demands that items a), b), and c) above be cured by no later than November 30, 2019 when the Lease expires by its terms.

Very truly yours,

DeWitt LLP

Ronald R. Ragatz
RRR/rl

EXHIBIT

5

exhibitsticker.com



October 3, 2019
Page 2

cc: Jennifer Nijman (via email) to: jn@nijmanfranzetti.com
Kraft Heinz Foods Company (via US Certified Mail) to:
200 E. Randolph Street, Suite 7600
Chicago, IL 60601
Attention: Law Department



Direct Dial: 608-252-9351
Email: rrr@dewittllp.com

December 16, 2019

VIA US CERTIFIED MAIL

Kraft Heinz Foods Company
200 E. Randolph Street, Suite 7600
Chicago, IL 60601
Attention: Real Estate Department

RE: Notice of Default under Lease with John Hartmeyer Estate Partnership, LLP

Dear Sir or Madam:

Pursuant to the Amendment of Ground Lease between Kraft Heinz Foods Company, a Pennsylvania limited liability company ("Tenant") and John Hartmeyer Estate Partnership, LLP, a Wisconsin limited liability partnership, as authorized agent of the entities that own the subject property ("Landlord"), you are notified pursuant to Article X of the Lease as amended that Tenant is in default in causing or permitting the following conditions on the leased property (the "Property"):

- a) Soil contamination due to Tenant's use of the Property; and
- b) A gas line over the railroad tracks and associated structures, including a metal bridge and gas house encroaching on the Property.

The Landlord served a Notice of Default on October 3, 2019 demanding that items (a) and (b) be cured by no later than November 30, 2019 when the Lease expired by its terms. In response, Tenant claimed, in part, that it had no obligation to cure the above-specified defaults while the Lease remained in effect. While Landlord disagrees, it is nonetheless reiterating those defaults and provides Tenant another 30 days to cure them. The default includes, but is not limited to, the residual contamination documented in the November 25, 2019 letter to the Wisconsin Department of Natural Resources from Ramboll US Corporation regarding its investigation of the Property.

The Landlord reserves all rights against Tenant under the Lease or otherwise regarding any defaults or claims, including, but not limited to, items (a) and (b) above.

Very truly yours,


DeWitt LLP
Ronald R. Ragatz
RRR/rl





December 16, 2019
Page 2

cc: Jennifer Nijman (via email) to: jn@nijmanfranzetti.com
Kraft Heinz Foods Company (via US Certified Mail) to:
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Attention: Law Department