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## **An appraisal of Anding Enterprises partnership interest in the sandwich lease position of the property known as Ponderosa and Arby's located at 1605 and 1609 South Park Street, Madison, Wisconsin. De...**

Landmark Research, Inc.

[s.l.]: [s.n.], December 25, 1986

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AN APPRAISAL OF  
ANDING ENTERPRISES PARTNERSHIP  
INTEREST IN THE  
SANDWICH LEASE POSITION  
OF THE PROPERTY  
KNOWN AS PONDEROSA AND ARBY'S  
LOCATED AT  
1605 AND 1609 SOUTH PARK STREET  
MADISON, WISCONSIN

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Research  
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KNOWN AS PONDEROSA AND ARBY'S  
LOCATED AT  
1605 AND 1609 SOUTH PARK STREET  
MADISON, WISCONSIN

AS OF  
DECEMBER 25, 1986

PREPARED FOR  
THE ESTATE OF ALFRED E. ANDING

PREPARED BY  
LANDMARK RESEARCH, INC.

THIS APPRAISAL OF PONDEROSA AND ARBY'S SANDWICH LEASE POSITION,

LOCATED IN MADISON, WISCONSIN,

HAS BEEN REVIEWED AND APPROVED BY

\_\_\_\_\_  
(Loan Officer)

FOR FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION

AS OF \_\_\_\_\_  
(Date)

IN COMPLIANCE WITH FEDERAL HOME LOAN BANK R-41c



Landmark  
Research  
Inc.

James A. Graaskamp, Ph.D., S.R.E.A., C.R.E.

Jean B. Davis, M.S.

September 1, 1987

Alfred E. Anding, Jr.  
A. E. Anding Estate  
5900 Monona Drive, Suite 401  
Monona, WI 53716

RE: Market Value of Ponderosa and Arby's Leasehold for Anding Enterprises

Dear Mr. Anding:

At your request we have estimated the Market Value of the sandwich lease position owned by Anding Enterprises, a general partnership in which the late A.E. Anding, Sr., was a partner with a 25 percent interest. Value has been estimated as of December 25, 1986.

As you are aware, Anding Enterprises is the beneficiary of a ground lease to a fee owned by the S & A Corporation which terminates February 27, 2000. Anding Enterprises has located two buildings on this leased fee. One structure is a built-to-suit facility for Ponderosa Systems, Inc., where the lease could terminate on February 28, 1990, if the renewal option is not exercised. A second structure is for a fast food enterprise known as Arby's operated by Don M. Casey of Waukesha. Arby's lease could terminate in August of 1995 if the renewal option is not exercised. Both Ponderosa and Arby's have five-year renewal options with increases in base rents indexed to changes in the Consumer Price Index (CPI) and a potential for overage rent which is unlikely to materialize or produce significant revenue. The appraiser has assumed negotiated renewal of both leases and has further assumed that the mismatch between termination of the ground lease at the end of February 2000 and the continuance of the Arby's lease until August 2000 will be accommodated by S & A Corporation with a six month extension of the ground lease due to some identity of interests between Anding Enterprises, the partnership, and S & A Corporation, the owner of the land.

Subject to these critical assumptions above, the limiting conditions and assumptions contained in the report, the financial analysis and related legal documents which define the vested interests of the Anding Enterprises Partnership, we have concluded that the Market Value of the Anding Enterprises interest in the subject property as of December 25, 1986, is:

TWO HUNDRED THIRTY THOUSAND DOLLARS

(\$230,000)

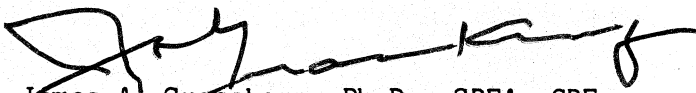
Alfred E. Anding, Jr.  
Page 2  
September 1, 1987

This value conclusion assumes a buyer would need to obtain financing based on credit, character, and capacity rather than the collateral value of leases where there is significant uncertainty as to renewal or terms of a negotiated renewal, or the possibility that ground lease obligations would remain even though current leases were terminated.

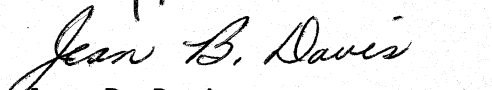
It should be pointed out that the ground lease was originally subordinated to the mortgage financing that was necessary to construct the improvements known as Arby's and Ponderosa. Presumably, the amended ground lease, which increased the ground rent to \$18,000 per year, would still be subordinated to the debt which is collateralized by the sandwich lease position. If this interpretation is legally correct, the ground rent payments could be diverted to protect the lender collateralized by the sandwich lease. The present value of the \$18,000, paid monthly in advance at the rate of \$1,500 per month from December 25, 1986, through the end of the ground lease on February 28, 2000, and discounted at 13 percent, is \$114,500 of additional collateral value.

We are pleased to have been of service to you and remain available to answer questions you may have regarding this appraisal.

FOR LANDMARK RESEARCH, INC.,



James A. Graaskamp, Ph.D., SREA, CRE  
Urban Land Economist



Jean B. Davis  
Real Estate Analyst/Appraiser

Enclosures

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I. PURPOSE AND DATE OF THE APPRAISAL

The purpose of the appraisal is to determine the Fair Market Value of the defined property interests in the real estate described herein as of the date of death of Alfred E. Anding, Sr., on December 25, 1986. The property interests, as encumbered on that date, were owned by the Anding Enterprises, a general partnership in which the late A.E. Anding, Sr., was a partner with a 25 percent interest.

II. DEFINITION OF FAIR MARKET VALUE

The definition of Fair Market Value applicable to the appraisal is as follows: [1]

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self interest, and assuming that neither is under undue duress.

Fundamental assumptions and conditions presumed in this definition are:

1. Buyer and seller are motivated by self interest.
2. Buyer and seller are well informed and are acting prudently.
3. The property is exposed for a reasonable time on the open market.
4. Payment is made in cash, its equivalent, or in specified financing terms.
5. Specified financing, if any, may be the financing actually in place or on terms generally available for the property type in its locale on the effective appraisal date.
6. The effect, if any, on the amount of market value of atypical financing, services, or fees shall be clearly and precisely revealed in the appraisal report.

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[1] American Institute of Real Estate Appraisers, The Appraisal of Real Estate, Eighth Edition, Chicago, IL, 1983, p. 33.

III. DEFINITION OF INTERESTS TO BE APPRAISED

A. Location of Subject Property

The subject properties are a Ponderosa Restaurant building located at 1605 South Park Street and an Arby's fast food building at 1609 South Park Street as shown on a map in Exhibit 1 and subject to a leasehold interest in a site further described in Exhibit 2. The site is owned by S & A Corporation, wholly owned by the Estate of A.E. Anding, Sr., as of December 25, 1986.

B. Legal Description

The property interests are a sandwich position between triple net leases by Anding Enterprises as lessor to the benefit of the Ponderosa and Arby franchises and a ground lease in which Anding Enterprises is the lessee to the benefit of S & A Corporation as lessor. Therefore the legal description of the subject property interest is the legal description of the plot of the land leased from S & A Corporation. (See Exhibit 3.)

C. Tax Assessment as of January 1, 1986

The lessees of the two buildings are responsible for the property taxes on their respective improvements and a proportion of the taxes levied on the land parcel subject to the ground lease and legally described above.

Parcel Tax Number: 0709-264-0803-4

Assessed Valuation - Land	\$208,000
- Improvements	<u>329,000</u>
TOTAL	\$537,000

The ground lease to S & A Corporation requires full payment of taxes and special assessments by Anding Enterprises. The building leases call for proration of these taxes to the tenants in the buildings according to allocated improvement value and with six-tenths (6/10) of land value assessment to be paid by Ponderosa and five-elevenths (5/11) of the land value by Arby's. Since the assessment does not allocate the improvement value between Arby's and Ponderosa, the total tax bill is allocated in accordance to the land value formula. (Negotiation power leads to recovery in excess of 100 percent.) The 1986 taxes, payable in 1987, totalled a net after state credits of \$15,270.62 based on a total net tax rate of 0.0284369.

D. Owner of Record

The owner of the leasehold interest to be valued at the above location is Anding Enterprises, a Wisconsin partnership.

E. Encumbrances

The leasehold property is first obligated on a ground lease to S & A Corporation, a Wisconsin corporation, initially dated March 1, 1970, running for a term just short of 30 years until February 27, 2000. In 1985 the lease was amended to provide for an increase of annual rental, payable monthly at the first of each month, from \$800 per month to \$1,500 per month so that the current annual triple net rental of the ground is \$18,000 per year.

The leasehold position in the ground is subject to a lease between S & A Corporation as lessor and Arby's, Inc., as lessee for a built-to-suit structure known as 1609 South Park Street, originally dated October 8, 1969, and then assigned to Anding Enterprises, dated October 23, 1973, but not recorded and later acknowledged November 9, 1973, by a letter from Arby's, Inc., a debtor-in-possession. Lessee Arby's later assigned the lease with consent of Anding Enterprises to SWD - Milwaukee Company and Franchise Management Corporation. That assignment was then transferred to Don M. Casey as lessee on June 19, 1985, with Anding Enterprises, as lessor. As part of this reassignment Anding Enterprises expanded and renovated the Arby's facility and established a new base rent in the amount of \$2,750 per month as of July 1, 1985, to reflect amortization of special improvements. One five year renewal would carry the lease to August 31, 2000, which conflicts with the term of the ground lease by six months. This overhang period is not considered a problem due to the relationship between Anding Enterprises and S & A Corporation, but Anding Enterprises technically does not have a vested interest in rents during the overhang period. (See Appendix for full text of lease and lease amendments.)

The leasehold position is further encumbered by the lease of a building which was built-to-suit for Ponderosa Systems, Inc. and located at 1605 South Park Street. The original lease is dated September 12, 1969, and runs for a term of 20 years as of the date of completion which was March 1, 1970. Therefore the date of termination is February 28, 1990. According to the original lease there was one five-year renewal option, but the lease was amended as of January 1, 1981, to increase the renewal opportunities to three successive five-year options coupled with an increase in the base rent of \$150 per month. Exercise of each renewal option requires six months notice and there are reasons to doubt the probability of a first renewal. The triple net rent base rental is \$2,000 per month or \$24,000 per year payable on the first of the month plus five percent of defined sales in excess of \$475,000. The first renewal option states the base rent would be adjusted by a cost of living index based on the increase from 1970 to 1990, an increase which already exceeds 180 percent of the current base rent plus another increase of \$150 per month. (See Appendix for full text of lease and lease amendment.)

Both food operations share the paved parking lot which is accessed from both South Park Street and Beld Street. In addition, an



adjacent tire retreading plant apparently enjoys a license to park its trucks at the southern edge of the subject property, except during rush hours, for the fast food businesses.

F. Mortgages Liens

The ground rent, payable by the owner of the subject interests, is a form of debt which finances the capital value of the land for a cost of \$1,500 per month and reversion of any salvage values in the buildings and improvements to the lessor of the fee. The appraiser has assumed no other debt on the property in the valuation although there is a blanket mortgage of record to National Guardian Life Insurance Company encumbering the subject property and several other properties as of December 25, 1986. This loan must be paid by the estate. The short term remaining on the Ponderosa lease as well as the B quality of the Arby's lease makes it doubtful that any buyer of this interest would be able to achieve positive leverage from an institutional loan. Therefore the leasehold interest is assumed to be free of any mortgage.

IV. APPRAISAL METHODOLOGY

The appraisal process seeks as a conclusion a defensible benchmark of value or the most probable price at which the property would sell on a given date through the application of three possible approaches to value: the Market Comparison Approach, the Cost Approach, and the Income Approach. In the case of the subject property, the sandwich leasehold position is purely a financial ploy because interest in the land and the buildings revert to the underlying fee ownership of the land held by S & A Corporation. The only benefit for the leasehold position is the remaining net income from payments made by Ponderosa Systems, Inc., and by Arby's, net of real estate taxes paid, ground rent paid, and minimum management expenses. There are no good comparable sales for this type of interest. The Cost Approach does provide a weak check on the Income Approach if the cost to replace is properly depreciated for both functional and economic obsolescence, two major elements in this case which are susceptible to subjective judgement. Therefore, primary reliance is placed on discounting the before tax cash flow remaining to the sandwich lease position by an appropriate discount rate for equity venture capital.

V. SITE DESCRIPTION

A survey of the subject site is provided in Exhibit 2 and it represents part of a larger parcel owned by S & A Corporation on which are also located a two-bay operational filling station and a tire retread plant.

VI. BUILDING DESCRIPTION

Both the Arby's building and the Ponderosa building were built, beginning in late 1969, by Anding Enterprises to suit the plans and specifications provided by the operators. Both reflect construction details prior to the energy crunch although Arby's was partially insulated during its renovation from 1985 to 1986. Both buildings are highly stylized to



reflect a logo or image related to their national marketing strategy. The Arby's national effort failed and the Arby's logo remains as a vestigial remnant in a Wisconsin owned fast foods operation. Ponderosa remains as a national factor but the subject property is the oldest facility in their Madison cluster of three units and the only one with low and declining sales. Pictures of each of the building units are found in Exhibits 4 and 5. Basic dimensions and construction specifications are provided in a Marshall and Swift cost estimating sheet for each building in Exhibits 6 and 8 and Marshall and Swift cost to replace figures are provided in Exhibit 7 and 9. Kitchen equipment and related food service items remain the property of the tenant although the buildings, including the HVAC systems, remain the property of the lessor and ultimately the ground lessor.

#### VII. MOST PROBABLE USE AND MOST PROBABLE BUYER

The current franchise uses are locked in by existing leases, possibly until the year 2000, and the location is in a weak commercial transition zone bordered by automobile repair, servicing, and light manufacturing. The most probable buyer would purchase the subject property as part of an assemblage, including both the underlying fee and adjacent structures thereon, for current income and for future speculation that the total site with its accessibility from three streets would be an attractive investment by the year 2000. Therefore, potential buyers would discount current income since future values would have to be purchased from the owner of the ground fee. Therefore, the Income Approach is the calculus the most probable buyer would utilize and the benchmark the seller would utilize in determining a point of indifference to owning the remaining income stream or capitalizing the future benefits for sale as of December 25, 1986.

#### VIII. VALUATION OF THE SUBJECT PROPERTY

##### A. The Income Approach for Ponderosa Systems, Inc., Lease

The preferred method for valuing a sandwich leasehold position is a discounted cash flow of the vested income available for distribution to the leasehold investor. For the subject property there are two sources of revenue of somewhat different quality: 1) a lease for Ponderosa building described earlier as part of a national corporation and 2) a lease from Donald M. Casey for a regional fast food operation called Arby's.

Exhibit 10 provides a calculation of net monthly cash revenue to Anding Enterprises from the Ponderosa. The base rent is \$2,000 per month to which is added one-twelfth (1/12) of the estimated annual overage rent and to which is subtracted six-tenths (6/10) of the ground rent (\$900) payable monthly to S & A Corporation.

Although the twenty-year Ponderosa lease expires at the end of February, 1990, there is a provision for a first five-year renewal option with adjustment for the base rent to reflect the change in CPI index since the March opening of the restaurant in 1970 plus an increase of \$150 per month in the base rent. However, it is doubtful

that Ponderosa would renew on the contract terms since the index already suggests an increase of 180 percent of base rent.

There are three Ponderosa restaurants in Madison located at 4622 East Washington Avenue, 515 South Gammon Road, and the subject property. The lease on the East Washington Avenue property was renegotiated to facilitate refinancing by the owner prior to the lease expiration where sales are currently in the neighborhood of \$750,000 and the floor for participation on a five percent overage, is \$675,000. At the East Washington Avenue site, increased real estate taxes will be applied to reduce overage rents. The Gammon Road site had sales in 1986 in excess of \$950,000 with a floor for overage rent at five percent of sales in excess of \$825,000. However, this lease requires real estate taxes and insurance totalling \$14,000 in 1986 be offset against overage rents so that there was little rent paid above the base rent of approximately \$31,500, according to the owner of the fee. The owner on Gammon Road is indifferent to any renewal beyond the current lease that expires in 1995 as he feels land value has significantly appreciated in the area and there is a higher and better use for the site.

The subject property has declining sales as reported by Ponderosa and are tabulated below:

PONDEROSA SALES  
1605 SOUTH PARK STREET

<u>PONDEROSA LEASE TERM</u>	<u>ANNUAL GROSS SALES</u>	<u>% ANNUAL CHANGE</u>	<u>OVERAGE RENT AS 5% OF SALES IN EXCESS OF \$475,000</u>
1981-1982	\$541,892	N/A	\$3,344.60
1982-1983	\$535,301	(1.2%)	\$3,015.05
1983-1984	\$592,752	10.7%	\$5,887.60
1984-1985	\$674,469	13.8%	\$9,973.45
1985-1986	\$628,692	(6.8%)	\$7,684.60
1986-1987	\$570,401	(9.3%)	\$4,770.05

The sharp decline in 1986 to 1987 was partially due to road repairs on Park Street making access somewhat difficult for the summer months, but the decline occurred despite some interior remodeling, upgrading of menus and salad bar features, and an increase in price. Unlike the East Washington Avenue or Gammon Road outlets which are adjacent to major retail, motel and entertainment centers, the subject property on South Park Street is in a marginal commercial

area which is not identified with a major shopping center, office district, or a wide variety of food operations. We project that a continued decline of five percent per year in sales less the minimum requirement of \$475,000 will eliminate percentage rents by the last year of the lease.

The operator/tenant, Ponderosa System, Inc., will be unwilling to renew the rent subject to an increase in base rent which would reflect at least 180 percent change in the CPI since 1970. Moreover, the current leasing objectives of Ponderosa Systems Inc., include an offset of increased taxes and liability insurance premiums against possible overage rents. The most favorable outcome for Anding Enterprises would be renewal at the current base rent of \$2,000 per month with no overage rents for a 120 month term so that the lease in Madison for Ponderosa Systems, Inc., would expire at the end of the ground lease February 28, 2000.

Ponderosa Systems, Inc., might find February 2000 consistent with renewal periods for their other two restaurants, electing to withdraw from Madison sometime after the year 2000 or to create new facilities at more appropriate sites. Alternatively, Anding Enterprises would be better off to concede to lease renegotiation to extend the term without adjustment for the CPI or overage rents rather than face the difficulty of leasing a special use structure for 10 years (120 months) until the end of the ground lease in the year 2000. Should Ponderosa withdraw, net revenues to Anding Enterprises would be less than \$2,000 per month after adjustment for vacancy, tenant improvement, rental commissions, and limited reuse possibilities for the property. Therefore, the highest probable price assumes a modified renewal by Ponderosa Systems, Inc.

The schedule of revenue to Anding Enterprises and provided in Exhibit 10 is converted to a series of present value of distributable cash in Exhibit 11 using a discount rate of 13 percent to determine the value of the remaining income stream as of January 1, 1987, as a proxy for the December 25, 1986, date of calculation. The discount rate of 13 percent represents a five percent loading on the average five-year treasury rate as of January 1, 1987, of eight percent to reflect the risk as to the amount of rents to be collected and the probability of renewal to February 28, 2000.

Exhibit 11 concludes that the Ponderosa lease has a net present value as of January 1, 1987, (and by extension, December 25, 1986) of \$91,234, which the appraiser has rounded to \$91,000, assuming favorable lease renewal negotiations with Ponderosa Systems, Inc.

B. The Income Approach for Arby's (Don M. Casey) Lease

As previously described, the original Arby's lease has undergone a number of assignments and amendments since its inception with major revisions in 1985 to facilitate expansion, insulation, and other improvements totaling \$70,000 by Anding Enterprises. The basic

monthly triple net rent was recalculated to amortize these special improvements over 120 monthly payments of \$994.34 each to be included in the triple net monthly rent payable in advance. The lease further provided for an increase in the base rent of \$250 per month beginning in February of 1987 and continuance of the base rent of \$3,000 per month beginning on July 1, 1995, for the two months remaining in the lease after the improvements are fully amortized. One five year renewal would start September 1, 1995, and extend through August 31, 2000, at a base rent of \$4,000. The lease term of the renewal apparently conflicts with expiration of the land lease in February of 2000 to S & A Corporation. Because of the relationship between Anding Enterprises and the S & A Corporation, the appraiser has assumed that Anding Enterprises could enjoy a temporary extension for six months with the current ground rent prorated to Arby's at \$600 per month.

The amended lease provides for overage rent in the amount of five percent of the defined annual sales in excess of \$550,000 and this floor would jump to \$650,000 if the lease is renewed as of September 1, 1995. However, there is no reason to believe that any overage rent will be collectible as the tenant, Don Casey, reported in a letter of May 7, 1987, on the annual sales as follows:

<u>YEAR ENDING</u>	<u>ANNUAL SALES</u>
12/31/83	\$338,242
12/31/84	414,807
12/31/85	478,507 [1]
12/31/86	468,268 [2]

[1] Unit remodeled June 1, 1985.

[2] Park Street closed during 1986 for reconstruction and thereby congesting access to Arby's.

Therefore, the appraiser has not included any expectation of overage rents as a vested benefit to the partnership as of January 1, 1987, or December 25, 1986. Nor has the appraiser included any net revenue from mismatching of tax prorations to tenants (6/10 for Ponderosa and 5/11 for Arby's). The dollar value is insignificant, unpredictable, and more than offset by the appraisal decision to avoid charging income for an asset management fee.

The schedule of revenues and capital charges against revenues for special improvements to retain Casey as lessee and ground rent to S & A Corporation is provided in Exhibit 12 and converted to present value discounted at 13 percent as in the Ponderosa situation and is provided in Exhibit 13. The appraiser has concluded that the sum of

the series of present values of distributable cash is \$141,329, or rounded to \$141,000 net income value for the Arby's lease.

C. Total Income Value of the Sandwich Lease Position

The income values assigned to the Ponderosa Systems, Inc., and Arby's (Don M. Casey) sandwich lease are \$91,000 and \$141,000, respectively, for a total of \$232,000.

D. Relevance of the Cost Approach

When a built-to-suit project is first leased, triple net rents are often a direct function of cost to construct a very specific set of plans and specifications furnished by the tenant to the lessor. However, after 15 or 20 years the special use buildings are subject to significant functional and economic obsolescence as well as physical deterioration related to age. The rents reflect the original stipulation or renegotiated leases driven by product sales and changing expectations for the business.

However, depreciated cost of the buildings as of December 25, 1986, may have marginal relevance to the value of the property if tenants should default on their lease and Anding Enterprises needed to re-lease the properties for the remaining 14 years on the ground lease. Therefore, the appraiser has chosen to provide a minimum weight of 10 percent of the depreciated cost to replace the buildings as a proxy for recognizing salvage value prior to the determination of the ground rent. Exhibits 6 and 7 provide input assumptions and depreciated replacement cost estimates for the Ponderosa building using the Marshall & Swift Calculator Method for fast food structures. The net depreciated value of the Ponderosa building was determined to be \$121,000. Exhibit 8 and 9 provide input assumptions and depreciated replacement cost estimates for the Arby's building. It should be noted that 76 percent of the building was 17 years old while the 1985 addition represented 24 percent of the building that was two years old so that the effective age of the building was a weighted average of 13.5, or 14 years rounded. The net depreciated cost of Arby's building was determined to be \$94,000 using the Marshall & Swift classifications. Total depreciated replacement costs of the two buildings as of December 25, 1986, was \$215,000, but it must be remembered that each is highly stylized in layout, decor, and structural elements so that conversion costs to some other use are impossible to estimate and direct relevance to existing leases is tenuous.

E. Reconciliation and Final Value Determination

As pointed out in appraisal methodology the direct Market Comparison Approach is not available for this sandwich lease situation and the Cost Approach has minimum relevance. A sandwich lease where there is no long term future value for the owner of the sandwich lease is an

income investment. As a result the appraisers have weighted the Cost Approach estimated value at 10 percent of value and the Income Approach estimated value at 90 percent of investment value to solve for Market Value and to reflect the dominant importance of the income for whomever would buy the subject property.

These computations as of December 25, 1986, appear as follows:

Ponderosa Cost Approach	\$121,000 * 10%	=	\$ 12,100
Ponderosa Income Approach	91,000 * 90%	=	<u>81,900</u>
TOTAL			\$ 94,000
ROUNDED			\$ 94,000
Arby's Cost Approach	\$ 94,000 * 10%	=	\$ 9,400
Arby's Income Approach	141,000 * 90%	=	<u>126,900</u>
TOTAL		=	\$136,300
ROUNDED			\$136,000
Total Values Estimates			
Cost Approach	\$215,000 * 10%	=	\$ 21,500
Income Approach	232,000 * 90%	=	<u>208,800</u>
TOTAL VALUE OF THE SANDWICH LEASE POSITION		.	\$230,300
ROUNDED		=	\$230,000
			=====

Therefore we conclude that Market Value for the highest probable price at which the sandwich lease interest would sell on December 25, 1986, for cash with the buyer to obtain credit based on character and capacity rather than collateral and leverage opportunities on the property is:

TWO HUNDRED THIRTY THOUSAND DOLLARS  
(\$230,000)

subject to the limiting conditions and assumptions continued in this report.

EXHIBITS

FOR

PONDEROSA AND ARBY'S



EXHIBIT 1

LOCATION MAP FOR PONDEROSA AND ARBY'S  
ON SOUTH PARK STREET IN MADISON, WISCONSIN



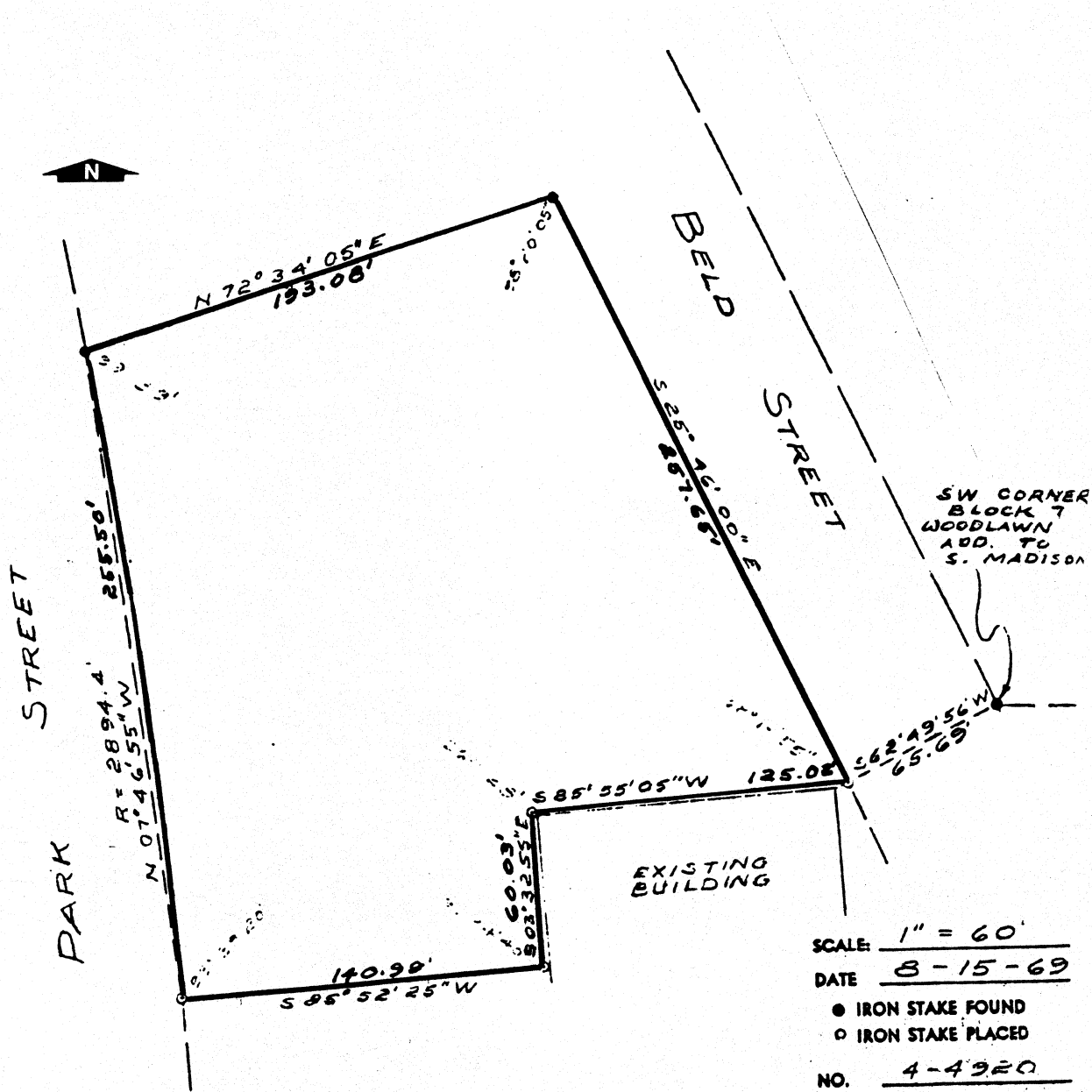


EXHIBIT 2

SITE PLAN OF LEASED LAND  
FOR PONDEROSA AND ARBY'S

**PLAT OF SURVEY**

ANTHONY THOUSAND  
LAND SURVEYOR



Although S & A Corporation owns the lands to the south, only the delineated portion is covered by the ground lease to Anding Enterprises.

EXHIBIT 3

LEGAL DESCRIPTION OF SITE LEASED FROM S & A CORPORATION  
FOR PONDEROSA AND ARBY'S

A parcel of land located in the W 1/2 of the SE 1/4 of Section 26, T7N, R9E, City of Madison, Dane County, Wisconsin, to-wit:

Commencing at the Southwest corner of Block 7, Woodlawn Addition to South Madison; thence S 62 degrees 49' 56" W, 65.69 feet; thence S 85 degrees 55' 05" W, 125.02 feet; thence S 03 degrees 32' 55" E, 60.03 feet; thence S. 85 degrees 52' 25" W, 140.99 feet to a point on a curve; thence Northwesterly on a curve to the left which has a radius of 2894.40 feet and a chord which bears N 07 degrees 46' 55" W, 255.50 feet; thence N 72 degrees 34' 05" E, 193.08 feet; thence S 25 degrees 46' 00" E. 257.65 feet to the point of beginning.

EXHIBIT 4

PHOTOGRAPHS OF PONDEROSA



Looking southeast from across South Park Street toward Ponderosa. Note Arby's in the background. Also note partial view of Protread (white roof line) and Wright's Service Station (light red roof).



Looking at the south side of the Ponderosa restaurant from parking lot between Arby's and Ponderosa.



EXHIBIT 4 (Continued)



Looking at north side of Ponderosa building from north property line. Note HVAC equipment on extended platform at rear of Ponderosa.



Looking across rear parking lot which serves both Arby's and Ponderosa. Note Protread (Firestone building) in background.

EXHIBIT 5

PHOTOGRAPHS OF ARBY'S



Looking northeast at Arby's from across South Park Street. Note Ponderosa in left back of photograph. The large Arby's sign blocks the north bound motorists' view of the Ponderosa sign.



The south side of Arby's as seen from parking lot adjacent to Wright's Service Station.



EXHIBIT 5 (Continued)



North side of Arby's with new drive-up order post and new drive-up window. Arby's expanded its food service capacity both with the drive-up service and increased seating space in 1985.

EXHIBIT 6

PONDEROSA REPLACEMENT COST ESTIMATE  
INPUT FORM - MARSHALL AND SWIFT

COMMERCIAL/INDUSTRIAL FIELD FORM - CAL  
Computerized Service based on  
MARSHALL AND SWIFT VALUATION SERVICE

1) COST ESTIMATE FOR Ponderosa  
2) PROPERTY OWNER A.E. Anding Estate & Anding Enterprises  
3) ADDRESS 1605 S. Park St. Madison, WI  
4) SURVEYED BY Landmark Research, Inc.  
5) DATE OF SURVEY 12/25/86

6) REGION: 1 Western CLIMATE: ① Extreme  
② Central 2 Moderate  
3 Eastern 3 Mild

7) OCCUPANCY CODE 349 (Refer to back of Form)

8) CONSTRUCTION CLASS:  
A Fireproof Structural Steel Frame  
B Reinforced Concrete Frame  
③ C Masonry Bearing Walls  
D Wood or Steel Framed Exterior Walls

9) LOCAL MULTIPLIER 53715  
(Refer to Section 99, Marshall Valuation Service)

10) COST RANK:  
① Low 3 Above Average  
2 Average 4 High  
TOTAL FLOOR AREA 4848 SF

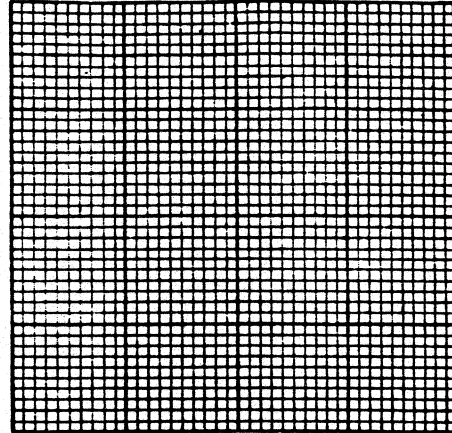
12) SHAPE or PERIMETER 2  
1 Approximately Square  
2 Slightly Irregular  
3 Irregular  
4 Very Irregular

13) NUMBER OF STORIES 1  
14) AVERAGE STORY HEIGHT 12  
15) EFFECTIVE AGE 17

16) CONDITION:  
1 Worn Out 4 Good  
2 Badly Worn 5 V. Good  
③ 3 Average 6 Excellent

17) EXTERIOR WALL:  
Masonry Walls  
1 Adobe Block  
2 Brick, Block Back-Up  
3 Common  
4 Cavity  
5 Face Brick (Add)  
⑥ 6 Concrete Block  
7 Concrete, Reinforced  
8 Concrete, Tilt-Up  
9 Str. Ashlar Veneer, Block  
10 Stone, Rubble  
11 Pilaster  
12 Bond Beams  
13 Insulation (Add)  
Curtain Walls  
14 Concrete, Precast  
15 Concrete/Glass Panels  
16 Metal/Glass Panels  
17 Stainless Steel/Glass  
18 Bronze and Glass  
19 Stone Panels  
20 Steel Studs/Stucco  
21 Tile, Clay  
22 Facing Tile (Add)

Wood or Steel Framed Walls  
23 Aluminum Siding  
24 Asbestos Siding  
25 Asbestos Shingles  
26 Shingles  
27 Shakes  
28 Stucco on Wire/Paper  
29 on Sheathing  
30 Wood Siding on Paper  
31 on Sheathing  
32 Veneer, Common Brick  
33 Face Brick  
34 Stone  
35 Used Brick  
36 Siding, Vinyl Surface  
37 Hardboard  
38 Textured Plywood  
39 Board/Batten Box Frame  
40 Log, Rustic  
41 Insulation (Add)  
Wood or Steel Skeleton Frames  
42 Aluminum Cover  
43 Sandwich Panels  
44 Corr. Steel on Steel Frame  
45 on Wood Frame  
46 Transite  
47 Siding, Post/Girder Frame  
48 Sheathing (Add)



18) HEATING, COOLING & VENTILATION:  
1 Elec. (Cable, Panel/Baseboard) 12 Steam, with Boiler  
2 Elec. Wall Heaters 13 Steam, without Boiler  
3 Forced Air 14 Air Cond. Hot/Chilled Water  
4 Floor Furnace 15 Air Cond. Warm/Cooled Air  
5 Gas Steam Radiator ① 16 Package Heating/Cooling  
6 Gravity Furnace 17 Heat Pump  
7 Heaters, Vented 18 Evaporative Cooling  
8 Hot Water 19 Refrigerated Cooling  
9 Hot Water, Radiant 20 Ventilation  
10 Space Heat, Gas 21 Wall Furnace  
11 Space Heat, Steam

19) ELEVATORS 0 Sq. Ft. Served  
20) SPRINKLERS 0 Sq. Ft.  
21) TOTAL  
BASEMENT 0 Sq. Ft.  
1 Unfinished 5 Utility  
2 Finished 6 Resident Units  
3 Parking 7 Display  
4 Storage 8 Office

MISCELLANEOUS COST

LAN: Not applicable Land  
SIT: \_\_\_\_\_ Site Improvements  
PHY: \_\_\_\_\_ Physical Depreciation  
FUN: \_\_\_\_\_ Functional Depreciation  
LOC: \_\_\_\_\_ Locational Depreciation  
EXC: \_\_\_\_\_ Insurance Exclusions

EXHIBIT 7

PONDEROSA REPLACEMENT COST ESTIMATE  
MARSHALL AND SWIFT CALCULATOR METHOD

COST ESTIMATE FOR: PONDEROSA  
PROPERTY OWNER: A.E. ANDING ESTATE & ANDING ENTERPRISES  
ADDRESS: 1605 S. PARK ST., MADISON, WI  
SURVEYED BY: LANDMARK RESEARCH, INC.  
DATE OF SURVEY: 12/26/86

DESCRIPTION:

OCCUPANCY: FAST FOOD RESTAURANT  
FLOOR AREA: 4,848 Square Feet  
CLASS: C Masonry  
COST RANK: 1.0 Low  
NUMBER OF STORIES: 1.0  
AVERAGE STORY HEIGHT: 12.0 Feet  
EFFECTIVE AGE: 17 Years  
CONDITION: 3.0 Average  
COST AS OF: 12/86

EXTERIOR WALL:  
Concrete Block..... 100%  
HEATING AND COOLING:  
Package Heating & Cooling..... 100%

	UNITS	COST	TOTAL
BASIC STRUCTURE COST:	4,848	43.09	208,917
LESS DEPRECIATION:			
Physical and Functional.....	<42.0%>		<87,745>
DEPRECIATED COST.....			121,172
ROUNDED TO NEAREST \$1,000			121,000

Cost Data by MARSHALL and SWIFT



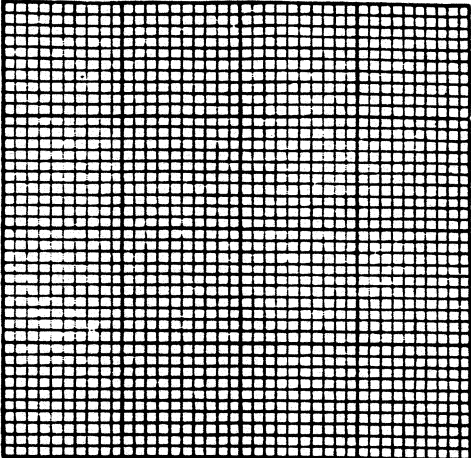
EXHIBIT 8

ARBY'S REPLACEMENT COST ESTIMATE  
INPUT FORM - MARSHALL AND SWIFT





COMMERCIAL/INDUSTRIAL FIELD FORM - CAL

Computerized Service based on  
MARSHALL AND SWIFT VALUATION SERVICE

- 1) COST ESTIMATE FOR Arby's
- 2) PROPERTY OWNER A.E. Anding Estate & Anding Enterprises
- 3) ADDRESS 1609 S. Park St. Madison, WI
- 4) SURVEYED BY Landmark Research, Inc.
- 5) DATE OF SURVEY 12/25/86
- 6) REGION: 1 Western      CLIMATE: ① Extreme  
          ② Central            2 Moderate  
          3 Eastern            3 Mild
- 7) OCCUPANCY CODE 349 (Refer to back of Form)
- 8) CONSTRUCTION CLASS:  
A Fireproof Structural Steel Frame  
B Reinforced Concrete Frame  
③ Masonry Bearing Walls  
D Wood or Steel Framed Exterior Walls
- 9) LOCAL MULTIPLIER 53715  
(Refer to Section 99, Marshall Valuation Service)



- 10) COST RANK:  
1 Low                            3 Above Average      ①.5 Low/Average  
2 Average                      4 High
- 11) TOTAL FLOOR AREA 2,186 SF plus 282 SF shed

- 12) SHAPE or PERIMETER 2
- |   |   |   |   |
|---|---|---|---|
| 1<br>Approximately<br>Square<br> | 2<br>Slightly<br>Irregular<br> | 3<br>Irregular<br> | 4<br>Very<br>Irregular<br> |
|---|---|---|---|

- 13) NUMBER OF STORIES \_\_\_\_\_
- 14) AVERAGE STORY HEIGHT 12
- 15) EFFECTIVE AGE 14 (built 1969-70; remodeled 1985)

- 16) CONDITION:  
1 Worn Out                    4 Good  
2 Badly Worn                5 V. Good  
③ Average                    6 Excellent

- 17) EXTERIOR WALL:
- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>Masonry Walls</li> <li>1 Adobe Block</li> <li>2 Brick, Block Back-Up</li> <li>3 Common</li> <li>4 Cavity</li> <li>5 Face Brick (Add)</li> <li>⑥ Concrete Block</li> <li>7 Concrete, Reinforced</li> <li>8 Concrete, Tilt-Up</li> <li>9 Stn. Ashlar Veneer, Block</li> <li>10 Stone, Rubble</li> <li>11 Pilaster</li> <li>12 Bond Beams</li> <li>⑬ Insulation (Add)</li> <li>Curtain Walls</li> <li>14 Concrete, Precast</li> <li>15 Concrete/Glass Panels</li> <li>16 Metal/Glass Panels</li> <li>17 Stainless Steel/Glass</li> <li>18 Bronze and Glass</li> <li>19 Stone Panels</li> <li>20 Steel Studs/Stucco</li> <li>21 Tile, Clay</li> <li>22 Facing Tile (Add)</li> </ul> | <ul style="list-style-type: none"> <li>Wood or Steel Framed Walls</li> <li>23 Aluminum Siding</li> <li>24 Asbestos Siding</li> <li>25 Asbestos Shingles</li> <li>26 Shingles</li> <li>27 Shakes</li> <li>28 Stucco on Wire/Paper</li> <li>29 on Sheathing</li> <li>30 Wood Siding on Paper</li> <li>31 on Sheathing</li> <li>32 Veneer, Common Brick</li> <li>33 Face Brick</li> <li>34 Stone</li> <li>35 Used Brick</li> <li>36 Siding, Vinyl Surface</li> <li>37 Hardboard</li> <li>38 Textured Plywood</li> <li>39 Board/Batten Box Frame</li> <li>40 Log, Rustic</li> <li>41 Insulation (Add)</li> <li>Wood or Steel Skeleton Frames</li> <li>42 Aluminum Cover</li> <li>43 Sandwich Panels</li> <li>44 Corr. Steel on Steel Frame</li> <li>45 on Wood Frame</li> <li>46 Transite</li> <li>47 Siding, Post/Girder Frame</li> <li>48 Sheathing (Add)</li> </ul> |
|--|--|

- 18) HEATING, COOLING & VENTILATION:
- |                                  |                                |
|----------------------------------|--------------------------------|
| 1 Elec. (Cable, Panel/Baseboard) | 12 Steam, with Boiler          |
| 2 Elec. Wall Heaters             | 13 Steam, without Boiler       |
| 3 Forced Air                     | 14 Air Cond. Hot/Chilled Water |
| 4 Floor Furnace                  | 15 Air Cond. Warm/Cooled Air   |
| 5 Gas Steam Radiator             | ⑬ Package Heating/Cooling      |
| 6 Gravity Furnace                | 17 Heat Pump                   |
| 7 Heaters, Vented                | 18 Evaporative Cooling         |
| 8 Hot Water                      | 19 Refrigerated Cooling        |
| 9 Hot Water, Radiant             | 20 Ventilation                 |
| 10 Space Heat, Gas               | 21 Wall Furnace                |
| 11 Space Heat, Steam             |                                |

- 19) ELEVATORS 0 Sq. Ft. Served
  - 20) SPRINKLERS 0 Sq. Ft.
  - 21) TOTAL
- |                           |  |
|---------------------------|--|
| BASEMENT <u>0</u> Sq. Ft. | 1 Unfinished                    5 Utility          |
|                           | 2 Finished                        6 Resident Units |
|                           | 3 Parking                         7 Display        |
|                           | 4 Storage                         8 Office         |

MISCELLANEOUS COST

- LAN: Not applicable Land
- SIT: \_\_\_\_\_ Site Improvements
- PHY: \_\_\_\_\_ Physical Depreciation
- FUN: \_\_\_\_\_ Functional Depreciation
- LOC: \_\_\_\_\_ Locational Depreciation
- EXC: \_\_\_\_\_ Insurance Exclusions

EXHIBIT 8 (Continued)  
**COST REFINEMENTS**

**Mezzanines**  
 (Sq. Ft. of Mezzanines)  
**MZM:** \_\_\_\_\_ Display  
**MZB:** \_\_\_\_\_ Office  
**MZC:** \_\_\_\_\_ Storage  
**MZD:** \_\_\_\_\_ Open

**Balconies**  
 (Sq. Ft. of Balconies)  
**BCA:** \_\_\_\_\_ Apartment Exterior  
**BCD:** \_\_\_\_\_ Auditorium  
**BCC:** \_\_\_\_\_ Church  
**BCT:** \_\_\_\_\_ Theater

**Decks**  
 (Sq. Ft. of Dock Area)  
**DLR:** \_\_\_\_\_ Loading with Roof  
**DLW:** \_\_\_\_\_ Loading without Roof  
**DOS:** \_\_\_\_\_ Shipping  
**DOF:** \_\_\_\_\_ Dock Height Floors

**Parking Lots**  
 (Sq. Ft. of Parking)  
**PAS:** \_\_\_\_\_ Paving, Asphalt  
**PCO:** \_\_\_\_\_ Paving, Concrete  
**LIG:** \_\_\_\_\_ Parking Lot Lighting (Sq. Ft. of Area Served)  
**BUM:** \_\_\_\_\_ Parking Bumpers (Lin. Ft.)

**Commercial and Institutional Built-ins**  
 (Total Sq. Ft. of Building Area)  
**UW:** \_\_\_\_\_ Bank Equipment  
 (counters, vault doors, etc.)  
**UX:** \_\_\_\_\_ Jail Equipment  
 (cell blocks, locking devices, etc.)  
**UY:** \_\_\_\_\_ Hospital Equipment (Groups II and III)  
**UAA:** \_\_\_\_\_ Hospital Pneumatic Conveyor System  
**UAB:** \_\_\_\_\_ College Commons Kitchen Equipment  
**UAC:** \_\_\_\_\_ Science Building Laboratory Equipment

**Bank Vaults**  
 (Sq. Ft. of Vault Area)  
**UAD:** \_\_\_\_\_ Money  
**UAG:** \_\_\_\_\_ Record Storage

**Stages & Permanent Fixtures**  
 (Sq. Ft. of Stage Area)  
**UAH:** \_\_\_\_\_ Live Performance  
**UAJ:** \_\_\_\_\_ Motion Picture Only  
**UAK:** \_\_\_\_\_ Speaker's Platform

**High Rise Apartment Miscellaneous**  
 (Number of Units)  
**APP:** \_\_\_\_\_ Appliance Allowance (enter # of apart. units)  
**UAM:** \_\_\_\_\_ Wall Air Conditioning (# of units)

**Barns and Sheds**  
 (Sq. Ft. of Loft)  
**LOF:** \_\_\_\_\_ Lofts for Barns or Sheds

**ADDITIONS**

ADD TO (SUperstructure, BASement, EXTra (Depreciated), MIScellaneous (Not Depreciated))

	BRIEF DESCRIPTIONS	(+ or -) COST
EXT :	282 SF storage shed @ \$10/SF	\$ 2820
_____ :	_____	\$ _____
_____ :	_____	\$ _____
_____ :	_____	\$ _____
_____ :	_____	\$ _____

**REMARKS**

REM: \_\_\_\_\_  
 REM: \_\_\_\_\_  
 REM: \_\_\_\_\_

**OCCUPANCY CODES**

- |                                  |                                  |                                    |                        |                                   |
|----------------------------------|----------------------------------|------------------------------------|------------------------|-----------------------------------|
| 300 Apartment (High Rise)        | 316 Dairy & Milking Barn         | 336 Laundromat                     | 357 Commons            | 399 Shed, Cattle                  |
| 301 Armory                       | 317 Dairy Sales Building         | 337 Library                        | 358 Gymnasium          | 400 Shed, Hay                     |
| 302 Auditorium                   | 318 Department Store             | 338 Loft                           | 359 Lecture Hall       | 403 Shower Building               |
| 303 Automobile Showroom          | 319 Discount Store               | 339 Lumber Stge., Horizontal       | 360 Library            | 378 Stable                        |
| 304 Bank                         | 320 Dispensary                   | 340 Lumber Stge., Vertical         | 361 Manual Arts        | 389 Storage, Equipment            |
| 304 Barber Shop                  | 303 Dormitories (Labor)          | 340 Market                         | 362 Multi-Purpose      | 391 Storage, Material             |
| 305 Barn                         | 321 Dormitory                    | 341 Medical Office                 | 363 Physical Education | 395 Storage, Potato or Vegetables |
| 306 Barn, Hog                    | 322 Fire Station                 | 342 Mortuary                       | 364 Science            | 379 Theater, Stage Presentation   |
| 307 Barn, Sheep                  | 323 Fraternal Building           | 343 Motel                          | 365 Entire Elementary  | 380 Theater, Motion Picture       |
| 308 Barn, Fruit Packing          | 324 Fraternity House             | 344 Office Building                | 366 Entire Secondary   | 383 Tobacco Barn                  |
| 306 Bowling Alley                | 325 Garage, Service              | 345 Parking Structure              | School, College        | 404 Utility Building, Farm        |
| 304 Cabins (Transient Labor)     | 326 Garage, Storage              | 388 Parking Structure, Underground | 367 Arts & Crafts      | 381 Veterinary Hospital           |
| 308 Church with Sunday School    | 327 Governmental Building        | 346 Post Office                    | 368 Classroom          | 382 Warehouse                     |
| 308 Church without Sunday School | 328 Hangar, Storage              | 347 Poultry House                  | 369 Commons            | 386 Warehouse, Mini               |
| 310 City Club                    | 329 Hangar, Maintenance & Office | 348 Rectory                        | 370 Gymnasium          | 387 Warehouse, Transit            |
| 311 Clubhouse                    | 330 Home for the Elderly         | 348 Restaurant, Drive-in           | 371 Lecture Hall       |                                   |
| 312 Coldwater Flat               | 331 Hospital                     | 350 Restaurant, Table Serv.        | 372 Library            |                                   |
| 313 Convalescent Hospital        | 332 Hotel                        | 353 Retail Store                   | 373 Manual Arts        |                                   |
| 314 Country Club                 | 402 Hotels, Resort               | School, Elem. & Sec.               | 374 Multi-Purpose      |                                   |
| 315 Creamery & Milk Process      | 334 Industrial, Manuf.           | 365 Arts & Crafts                  | 375 Physical Education |                                   |
|                                  | 392 Industrial, Engineering      | 366 Classroom                      | 376 Science            |                                   |
|                                  | 335 Jail                         |                                    | 377 Entire College     |                                   |

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EXHIBIT 9

ARBY'S REPLACEMENT COST ESTIMATE  
MARSHALL AND SWIFT CALCULATOR METHOD

COST ESTIMATE FOR: ARBY'S  
PROPERTY OWNER: A.E. ANDING ESTATE & ANDING ENTERPRISES  
ADDRESS: 1609 S. PARK ST., MADISON, WI  
SURVEYED BY: LANDMARK RESEARCH, INC.  
DATE OF SURVEY: 12/25/86

DESCRIPTION:

OCCUPANCY: FAST FOOD RESTAURANT  
FLOOR AREA: 2,186 Square Feet      AVERAGE STORY HEIGHT: 12.0 Feet  
CLASS: C Masonry      EFFECTIVE AGE: 14 Years  
COST RANK: 1.5 Low/Average      CONDITION: 3.0 Average  
NUMBER OF STORIES: 1.0      COST AS OF: 12/86

EXTERIOR WALL:  
Concrete Block..... 100%  
Insulation..... 100%  
HEATING AND COOLING:  
Package Heating & Cooling..... 100%

	UNITS	COST	TOTAL
BASIC STRUCTURE COST:	2,186	55.33	120,955
EXTRAS:			
STORAGE SHED 282 SF			2,820
REPLACEMENT COST NEW.....			123,775
LESS DEPRECIATION:			
Physical and Functional.....	<24.0%>		<29,706>
DEPRECIATED COST.....			94,069
ROUNDED TO NEAREST \$1,000			94,000

Cost Data by MARSHALL and SWIFT

EXHIBIT 10

SCHEDULE OF NET REVENUE  
FROM PONDEROSA SYSTEMS, INC., TO ANDING ENTERPRISES

DATE	MONTHLY TRIPLE NET RENT RECEIVED IN ADVANCE	ESTIMATED PERCENTAGE RENT RECEIVED PER MONTH	LESS SIX-TENTHS OF GROUND RENT TO S & A CORPORATION	NET MONTHLY CASH TO ANDING ENTERPRISES	NO. OF MONTHS IN TIME PERIOD
1/1/87 - 2/28/87	\$2,000 +	\$398 -	\$900 =	\$1,498	2
3/1/87 - 2/29/88	\$2,000 +	\$279 -	\$900 =	\$1,379	12
3/1/88 - 2/28/89	\$2,000 +	\$166 -	\$900 =	\$1,266	12
3/1/89 - 2/28/90	\$2,000 +	\$59 -	\$900 =	\$1,159	12
3/1/90 - 2/28/2000	\$2,000 +	\$0 -	\$900 =	\$1,100	120

EXHIBIT 11

INCOME APPROACH TO VALUE  
 PRESENT VALUE OF CASH FLOWS DISCOUNTED AT 13 PERCENT  
 FROM PONDEROSA TO ANDING ENTERPRISES

			PRESENT VALUE AS OF 1/1/87 [1]
Present value as of 1/1/87	\$1,498 for 2 months paid in advance =	\$2,980	\$2,980
Present value as of 3/1/87	\$1,379 for 12 months paid in advance =	\$15,607	\$15,275
Present value as of 3/1/88	\$1,266 for 12 months paid in advance =	\$14,328	\$12,410
Present value as of 3/1/89	\$1,159 for 12 months paid in advance =	\$13,117	\$10,054
Present value as of 3/1/90	\$1,100 for 120 months paid in advance =	\$74,470	\$50,515
			----- \$91,234
ESTIMATED PRESENT VALUE OF PONDEROSA AS OF 12/25/86			\$91,000
			ROUNDED =====

[1] Number of years between 1/1/87 and present value as of date  
 3/1/87 = 0.167 years  
 3/1/88 = 1.167 years  
 3/1/89 = 2.167 years  
 3/1/90 = 3.167 years

EXHIBIT 12

SCHEDULE OF NET REVENUE  
FROM ARBY'S (DON CASEY) TO ANDING ENTERPRISES

DATE	MONTHLY TRIPLE NET RENT RECEIVED IN ADVANCE	LESS AMORTIZATION OF SPECIAL IMPROVEMENTS [1]	LESS FOUR TENTHS OF GROUND RENT TO S & A CORPORATION	NET MONTHLY CASH TO ANDING ENTERPRISES	NO. OF MONTHS IN TIME PERIOD
1/1/87	\$2,750	- \$994	- \$600	= \$1,156	1
2/1/87 - 6/30/95	\$3,000	- \$994	- \$600	= \$1,406	101
7/1/95 - 8/31/95	\$3,000	- \$0	- \$600	= \$2,400	2
9/1/95 - 8/31/2000	\$4,000	- \$0	- \$600	= \$3,400	60

[1] Anding Enterprises spent \$70,000 remodeling Arby's in 1985 with a pay-back schedule of 120 monthly payments over a 10-year period at 12% interest and paid in advance. The monthly payment is \$994.34 and is included in the triple net monthly rent received in advance.

EXHIBIT 13

INCOME APPROACH TO VALUE  
 PRESENT VALUE OF CASH FLOWS DISCOUNTED AT 13 PERCENT  
 FROM ARBY'S (DON CASEY) TO ANDING ENTERPRISES

		PRESENT VALUE AS OF 1/1/87
Present value as of 1/1/87	\$1,156 for 1 month paid in advance =	\$1,156 \$1,156
Present value as of 2/1/87	\$1,406 for 101 months paid in advance =	\$87,006 \$86,078
Present value as of 7/1/95	\$2,400 for 2 months paid in advance =	\$4,774 \$1,691
Present value as of 9/1/95	\$3,400 for 60 months paid in advance =	\$151,049 \$52,404
		----- \$141,329
ROUNDED		\$141,000 =====

[1] Number of years between 1/1/87 and present value as of date:  
 2/1/87 = 0.083 years  
 7/1/95 = 8.478 years  
 9/1/95 = 8.648 years

CERTIFICATION OF VALUE

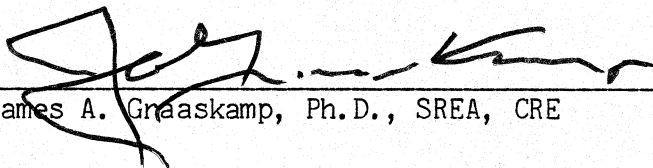
We hereby certify that we have no interest, present or contemplated, in the property and that neither the employment to make the appraisal nor the compensation is contingent on the value of the property. We certify that we have personally inspected the property and that according to our knowledge and belief, all statements and information in the report are true and correct, subject to the underlying assumptions and limiting conditions.

Based on the information and subject to the limiting conditions contained in this report, it is our opinion that the Market Value as defined herein, of the Anding Enterprises Partnership interest in the sandwich lease position of the subject property, located at 1605 and 1609 South Park Street, Madison, Wisconsin as of December 25, 1986, is:

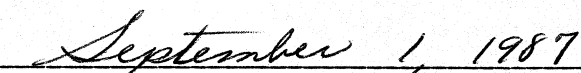
TWO HUNDRED THIRTY THOUSAND DOLLARS

(\$230,000)

assuming cash to the seller.

  
James A. Graaskamp, Ph.D., SREA, CRE

  
Jean B. Davis, Real Estate Appraiser and Analyst

  
Date



STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS

1. Contributions of Other Professionals

- . Information furnished by others in the report, while believed to be reliable, is in no sense guaranteed by the appraisers.
- . The appraiser assumes no responsibility for legal matters.
- . All information furnished regarding property for sale or rent, financing, or projections of income and expenses is from sources deemed reliable. No warranty or representation is made regarding the accuracy thereof, and it is submitted subject to errors, omissions, change of price, rental or other conditions, prior sale, lease, financing, or withdrawal without notice.
- . All direct and indirect information supplied by the client, agents of the client, or the lawyer of the client concerning the subject property is assumed to be true and accurate but may be modified by the appraiser as appropriate to the definition of value or purpose of the appraisal consistent with other standards specified herein.

2. Facts and Forecasts Under Conditions of Uncertainty

- . The comparable sales data relied upon in the appraisal is believed to be from reliable sources. Though all the comparables were examined, it was not possible to inspect them all in detail. The value conclusions are subject to the accuracy of said data.
- . Forecasts of the effective demand for space are based upon the best available data concerning the market, but are projected under conditions of uncertainty.
- . Engineering analyses of the subject property were neither provided for use nor made as a part of this appraisal contract. Any representation as to the suitability of the property for uses suggested in this analysis is therefore based only on a rudimentary investigation by the appraiser and the value conclusions are subject to said limitations.
- . Since the projected mathematical models are based on estimates and assumptions, which are inherently subject to uncertainty and variation depending upon evolving events, we do not represent them as results that will actually be achieved.
- . Sketches in the report are included to assist the reader in visualizing the property. These drawings are for illustrative purposes only and do not represent an actual survey of the property.
- . In this appraisal assignment, the existence of potentially hazardous material introduced on site or in proximity to the site as a result of nearby existing or former uses in the neighborhood, or the

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS (Continued)

existence of toxic waste or other building materials such as asbestos, formaldehyde insulation, radon, or other materials incorporated in property improvements must be disclosed by the owner to the appraiser. The appraiser is not qualified to detect such substances nor is he obliged to do so. Nevertheless, the existence of potentially hazardous material found on the subject property or in proximity to the site may have an adverse effect on the value and market price of the property. The property owner or those relying on this appraisal are urged to retain, at their discretion, an expert in this field of hazardous materials.

3. Controls on Use of Appraisal

- . Values for various components of the subject parcel as contained within the report are valid only when making a summation and are not to be used independently for any purpose and must be considered invalid if so used.
- . Possession of the report or any copy thereof does not carry with it the right of publication nor may the same be used for any other purpose by anyone without the previous written consent of the appraiser or the applicant and, in any event, only in its entirety.
- . Neither all nor any part of the contents of the report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent and approval of the author, particularly regarding the valuation conclusions and the identity of the appraiser, of the firm with which he is connected, or any of his associates.
- . The report shall not be used in the client's reports or financial statements or in any documents filed with any governmental agency, unless: (1) prior to making any such reference in any report or statement or any document filed with the Securities and Exchange Commission or other governmental agency, the appraiser is allowed to review the text of such reference to determine the accuracy and adequacy of such reference to the appraisal report prepared by the appraiser; (2) in the appraiser's opinion the proposed reference is not untrue or misleading in light of the circumstances under which it is made; and (3) written permission has been obtained by the client from the appraiser for these uses.
- . The appraiser shall not be required to give testimony or to attend any governmental hearing regarding the subject matter of this appraisal without agreement as to additional compensation and without sufficient notice to allow adequate preparation.

Contents of this appraisal report are governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Realtors.

QUALIFICATIONS OF THE APPRAISERS

JAMES A. GRAASKAMP

PROFESSIONAL DESIGNATIONS

SREA, Senior Real Estate Analyst, Society of Real Estate Appraisers

CRE, Counselor of Real Estate, American Society of Real Estate Counselors

CPCU, Certified Property Casualty Underwriter, College of Property Underwriters

EDUCATION

Ph.D., Urban Land Economics and Risk Management - University of Wisconsin

Master of Business Administration, Security Analysis - Marquette University

Bachelor of Arts - Rollins College

ACADEMIC AND PROFESSIONAL HONORS

Chairman, Department of Real Estate and Urban Land Economics,  
School of Business, University of Wisconsin

Urban Land Institute Research Fellow

University of Wisconsin Fellow

Omicron Delta Kappa

Lambda Alpha - Ely Chapter

Beta Gamma Sigma

William Kiekhofer Teaching Award (1966)

Larson Teaching Award (1985)

Alfred E. Reirman, Jr. Award - Society of Real Estate Appraisers (1986)

Urban Land Institute Trustee

Research Committee - Pension Real Estate Association (PREA)

Richard T. Ely Real Estate Educator Award from Lambda Alpha

Homer Hoyt Foundation Fellow

PROFESSIONAL EXPERIENCE

Dr. Graaskamp is the President and founder of Landmark Research, Inc., which was established in 1968. He is also co-founder of a general contracting firm, a land development company, and a farm investment corporation. He is formerly a member of the Board of Directors and treasurer of the Wisconsin Housing Finance Agency. He is currently a member of the Board and Executive Committee of First Asset Realty Advisors, Inc., a subsidiary of First Bank Minneapolis. He is the designer and instructor of the Urban Land Institute (ULI) School of Real Estate Development and the American Bankers Association (ABA) National School of Real Estate Finance. His work includes substantial and varied consulting and valuation assignments such as investment counseling to insurance companies and banks, court testimony as an expert witness and the market/financial analysis of various projects, both nationally and locally, for private and corporate investors and municipalities. Currently is a member of Salomon Brothers Real Estate Advisory Board.

QUALIFICATIONS OF THE APPRAISERS (Continued)

J E A N B. D A V I S

EDUCATION

Master of Science - Real Estate Appraisal and Investment Analysis -  
University of Wisconsin

Master of Arts - Elementary Education - Stanford University

Bachelor of Arts - Stanford University (with distinctions)

Additional graduated and undergraduate work at Columbia Teachers College and  
the University of Wisconsin

PROFESSIONAL EDUCATION

Society of Real Estate Appraisers

Appraising Real Property Course 101

Principles of Income Property Appraising Course 201

American Institute of Real Estate Appraisers

Residential Valuation (Formerly Course VIII)

Certified as Assessor I, Department of Revenue, State of Wisconsin

PROFESSIONAL EXPERIENCE

Trained in appraisal and investment analysis, Ms. Davis is a partner at Landmark Research, Inc., specializing in tax assessment as assessor in the Village of Maple Bluff and a representative of owners appealing assessed valuations in other jurisdictions. She also emphasizes market and survey research to estimate effective demand for elderly housing, residential development, office and retail projects.

Her experience includes appraisal of major income properties, rehabilitated older commercial properties, and residential properties.

APPENDIX  
LEASES FOR  
PONDEROSA SYSTEM, INC.,  
AND  
ARBY'S, INC. AND SUCCESSORS

APPENDIX (Continued)

ARBY'S, INC.

THIRD AMENDMENT TO STANDARD LEASE

THIS THIRD AMENDMENT TO STANDARD LEASE is hereby made by and between Anding Enterprises, a Wisconsin Partnership (hereinafter referred to as "Lessor"), and Don M. Casey, an individual residing at W266 S3815 Donald Drive, Waukesha, Wisconsin (hereinafter referred to as "Lessee").

WHEREAS, on October 8, 1969, the S & A Corporation, as Lessor, leased to Arby's Inc., as Lessee, certain premises described in Exhibit A, attached hereto and made part hereof as if fully set forth at length, and whereas the original Lessor thereafter assigned said lease to Anding Enterprises, and whereas the successor, by assignment, to the original Lessee is now Don Casey, and

WHEREAS, Lessor and Lessee desire to alter and amend certain terms and conditions of the Standard Lease as a result of the construction of an addition to the demised premises by Lessor for Lessee,

NOW, THEREFORE, in consideration of the mutual covenants of the parties set forth in the aforesaid Standard Lease, Addendum and Amendments, and in consideration of the mutual covenants hereinafter set forth, the parties do hereby agree as follows:

1. The Second Amendment to Standard Lease is hereby amended by deleting subparagraphs (a) and (a) (1) of Article 5 on Pages land 2 in their entirety and substituting in lieu thereof the following:

"ARTICLE 5. RENT: (a) Effective July 1, 1985, lessee will pay to lessor as rent for the demised premises during said term a sum equal to five per cent (5%) of lessee's annual gross sales made from the demised premises during each year in excess of \$550,000. The minimum annual guaranteed rent will not be subtracted from the amount of rent due pursuant to this paragraph.

(1) The sum of Thirty Six Thousand Dollars (\$36,000.00) per year, payable in equal monthly installments of Three Thousand Dollars (\$3,000.00) each, payable in advance on the first day of each month, commencing February 1, 1987, which sum is hereby designated as the minimum guaranteed rent." The minimum annual guaranteed rent will be Thirty Three Thousand Dollars (\$33,000.00) per year payable in equal monthly installments of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00) each payable in advance on the first day of each month commencing July 1, 1985.



APPENDIX (Continued)

2. By the execution of this Amendment, Lessee hereby exercises the five year option to renew, as provided in Article 27 of Arby's Inc. Standard Lease, said option period to commence September 1, 1990, and to terminate on August 31, 1995. The execution of this Amendment by the Lessee and Lessor shall constitute the exercise of such option and incorporates herein by reference the terms and conditions of said original Lease, together with Amendments thereto.
3. In consideration of Lessee's exercise of the five year option to renew, and in further consideration of the modification of rent provided in Paragraph 1, Lessor hereby grants to Lessee an option to renew for an additional five year period, to commence on September 1, 1995, and to terminate on August 31, 2000. The exercise of said option shall be effected by the same means provided for exercise of option in the original Standard Lease and Amendments. It is hereby agreed that the minimum guaranteed rent to be effective commencing September 1, 1995, in the event said option is exercised, will be increased to \$48,000.00 per year, payable in equal monthly installments of \$4,000.00, payable in advance on the first day of each month. It is further hereby mutually agreed that the Lessee shall pay a percentage rent of five per cent (5%) of Lessee's annual gross sales in excess of \$650,000.00. The minimum annual guaranteed rent will not be subtracted from the said percentage rent for sales in excess of \$650,000.00.
4. Lessee may, at his option, and at any time during the period of ten (10) years after the date hereof, reinstate the original rental rate of \$17,095.26, as minimal guaranteed annual rent, or five (5) per cent per annum of annual gross sales, whichever is greater, upon the

APPENDIX (Continued)

following conditions:

- A. Lessee shall pay to Lessor an amount equal to the principal balance then remaining on an original principal balance of \$70,000.00, based upon amortization over a period of ten (10) years, commencing July 1, 1985, with interest at the rate of twelve (12) per cent per annum.
  - B. Adjustment of rental rate pursuant to this section shall be effective in the month in which payment under this section is tendered to Lessor by Lessee.
  - C. Notwithstanding exercise of the option provided in this Section 4, the rental rate for the option period between September 1, 1995 and August 31, 2000, shall be as stated in Section 3 above, if Lessee exercises the option to extend provided in Section 3.
5. All other terms and conditions of the original Standard Lease, and Amendments thereto, shall remain in full force and effect during the term of this lease, including the option period, if exercised by Lessee.

This Agreement is Dated this 19<sup>th</sup> day of June, 1985.

IN THE PRESENCE OF:

LESSOR: ANDING ENTERPRISES

\_\_\_\_\_  
\_\_\_\_\_

A. E. Anding  
Lessee

IN THE PRESENCE OF:

LESSEE: DON M. CASEY

Alfred E. Anding  
\_\_\_\_\_

Don M. Casey  
\_\_\_\_\_

APPENDIX (Continued)

Unit #531

ASSIGNMENT OF LEASE

THIS AGREEMENT made between SWD - Milwaukee Co., a partnership, of the City of Milwaukee, County of Milwaukee, and State of Wisconsin, hereinafter called ASSIGNEE, and ARBY'S, INC., both as Debtor and Debtor-in-Possession, hereinafter called ARBY'S.

W I T N E S S E T H:

WHEREAS, MILWAUKEE RESTAURANT CORPORATION NO. 4 (No. 4) and ARBY'S entered into a written Franchise Reorganization Agreement whereby under the provision of sub-paragraph 2:1:1(a) thereof, No. 4 exercised the option to require ARBY'S to assume a certain written Lease, dated October 8, 1969, between ARBY'S, as Lessee, and The S & A Corporation, as Lessor, leasing the premises described in Exhibit "A", attached hereto and made a part hereof, in the Chapter XI Proceedings now pending in the United States District Court, for the Northern District of Ohio, Eastern Division, Case No. B71-911, and to assign said Lease to No. 4; and

WHEREAS, NO. 4 holds a license from ARBY'S to operate an ARBY'S restaurant upon the premises demised by said S & A Lease; and

WHEREAS, ASSIGNEE has agreed to accept this assignment from ARBY'S of the above-described Lease from The S & A Corporation and has granted to No. 4 a sublease of the premises covered by said S & A Lease; and

WHEREAS, the parties hereto are entering into this Assignment to formalize and implement the said provision of the Franchise Reorganization Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants in the aforesaid Franchise Reorganization Agreement, the parties hereto hereby agree as follows:

ARTICLE 1. ASSIGNMENT OF LEASE: ARBY'S hereby transfers, conveys and assigns to ASSIGNEE all the right, title and interest that ARBY'S may have as Lessee in and to the aforesaid Lease for the Exhibit "A" premises, subject to all of the terms,

Page 1 of 4 Pages.

Form FRA-2:1:1(a) Assignment  
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APPENDIX (Continued)

conditions and provisions thereof; provided however, in the event that ~~FRANCHISEE~~<sup>ASSIGNEE</sup> gave ARBY'S a security deposit in cash under ~~FRANCHISEE'S~~<sup>ASSIGNEE'S</sup> Sub-Lease for the premises described in Exhibit "A" and if ARBY'S gave the same security deposit to the Lessor under the aforesaid Lease, ARBY'S hereby assigns without recourse or warranty all of its rights thereto to ~~FRANCHISEE~~<sup>ASSIGNEE</sup>, and ARBY'S will have no further obligation or liability to ~~FRANCHISEE~~<sup>ASSIGNEE</sup> as to such security deposit. It is understood that if any payments due under the Lease have not been paid, such security deposit may have been forfeited or set off and ~~FRANCHISEE~~<sup>ASSIGNEE</sup> may have no right to make claim for refund of same from the Lessor; and further provided, if ~~FRANCHISEE~~<sup>ASSIGNEE</sup> paid the security deposit under the Sub-Lease by note(s), the note(s) are hereby cancelled, and ~~FRANCHISEE~~<sup>ASSIGNEE</sup> shall have no right to any claim for any such security deposit that ARBY'S may have paid Lessor under the aforesaid Lease; and in any such event, ARBY'S shall reserve and retain the right to refund of the security deposit in accordance with the terms provided in the aforesaid Lease. If the Lessor under the aforesaid Lease shall not refund such security deposit to ARBY'S at the time provided therein, then ~~FRANCHISEE~~<sup>ASSIGNEE</sup> shall pay ARBY'S the sum or sums credited thereon under such Lease until said security deposit is fully refunded to ARBY'S. ~~FRANCHISEE~~<sup>ASSIGNEE</sup> hereby accepts such assignment of said Lease and hereby assumes all of the obligations and covenants of ARBY'S thereunder.

In consideration of this Assignment and as an inducement to The ~~FRANCHISEE~~<sup>ASSIGNEE</sup> The effective date of this Assignment for all purposes whatsoever, irrespective of the dates of execution hereof, (whether used for purpose of reference of computation herein or

S & A Corporation to consent to the same and release ARBY'S from liability under such lease from The S & A Corporation, ASSIGNEE hereby assumes the obligations of ARBY'S under said Lease.

Page 2 of 4 Pages.

Form FRA-2:1:1(a) Assignment  
Rev. 871

APPENDIX (Continued)

hereafter) shall be the date of the entry by the Court of the Order in the Chapter XI Proceedings assuming the aforesaid Lease and authorizing this Assignment thereof.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Assignment on the dates indicated below their respective signatures.

IN THE PRESENCE OF:
[Signature]
[Signature]

ARBY'S, INC., Debtor
By: [Signature]
Its Duly Authorized Officer
ARBY'S, INC., Debtor-in-Possession
By: [Signature]
Its Duly Authorized Officer
Date of Execution by ARBY'S:

IN THE PRESENCE OF:
Donald H. Powers
Joseph E. March

ASSIGNEE: SWD Milwaukee Co., a partner-
FRANCHISEE: Milwaukee Restaurant ship
By: Ernest H. Siegler, President Partner
L.H. Williams, Secretary Partner
Date of Execution by FRANCHISEE:
MAY 7, 1973
ASSIGNEE:

(IF FRANCHISEE is a Corporation)
STATE OF )
) SS:
COUNTY OF )

BEFORE ME, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, by \_\_\_\_\_, its President, and by \_\_\_\_\_, its Secretary, who are personally known to me to be the same persons who subscribed the foregoing instrument, and who acknowledged that they did sign same on behalf of said Corporation after being duly authorized so to do by its Board of Directors; and that the execution of this instrument is their respective free act and deed and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Notary Public

Page 3 of 4 Pages.

Form FRA-2:1:1(a) Assignment
Rev. 871

APPENDIX (Continued)

ASSIGNEE  
(If instrument is an Individual or a Partnership)

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS:

BEFORE ME, a Notary Public in and for said County and State,  
personally appeared \_\_\_\_\_ and \_\_\_\_\_,  
\_\_\_\_\_ A PARTNER, who are  
personally known to me to be the same persons who subscribed the foregoing  
instrument, and who acknowledged that they did sign this instrument and  
that the execution thereof is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official  
seal at \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Donald H. Powers  
Notary Public  
DONALD H. POWERS, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

(For ARBY'S)

STATE OF OHIO )  
 )  
COUNTY OF TRUMBULL ) SS:

BEFORE ME, a Notary Public in and for said County and State,  
personally appeared ARBY'S, INC., as Debtor and Debtor-in-Possession, by  
Max Silver, its President, and \_\_\_\_\_,  
its Secretary, who are personally known to me to be the same persons who  
subscribed the foregoing instrument, and who acknowledged that they did  
sign same on behalf of said Corporation as Debtor and Debtor-in-Possession,  
after being duly authorized so to do by its Board of Directors and by  
Order of the United States District Court for the Northern District of  
Ohio, Eastern Division, in Proceedings for an Arrangement, being Case  
No. B71-911; and that the execution of this instrument is their  
respective free act and deed and the free act and deed of said  
Corporation, as Debtor and Debtor-in-Possession.

IN TESTIMONY WHEREOF, I have hereunto set my hand and  
official seal at Youngstown, Ohio, this 1<sup>st</sup> day of November,  
1973.

Ray B. Silver  
Notary Public  
RAY B. SILVER, Attorney  
NOTARY PUBLIC - STATE OF OHIO  
My commission expires \_\_\_\_\_



APPENDIX (Continued)

ARBY'S, INC.

STANDARD LEASE

THIS LEASE made by and between THE S & A CORPORATION, a Wisconsin Corporation of the City of Madison, County of Dane, and State of Wisconsin, hereinafter called LESSOR, and ARBY'S, INC., an Ohio corporation, hereinafter called LESSEE.

ARTICLE 1. DEMISED PREMISES: LESSOR, in consideration of the covenants hereafter contained, does hereby demise and lease to LESSEE, the Building (hereafter called the demised premises), the proposed location of which is outlined in green on the drawing attached hereto marked Exhibit "A" and made a part hereof, and situated on the parcel of real estate (hereinafter called the Land), which is more fully described in Exhibit "B" attached hereto and made a part hereof as if fully rewritten herein, together with non-exclusive use of all of LESSOR'S easements and appurtenances in adjoining and adjacent sidewalks, streets and alleys, whether public or private, for ingress and egress from the demised premises and the Land. It is understood and agreed that LESSOR will also construct upon the Land a building as shown on Exhibit "A" attached hereto, suitable for a Ponderosa Steak House, and will lease same to Ponderosa Systems, Inc., a Delaware corporation. Said Ponderosa Steak House building and the LESSOR'S Improvements herein provided to be constructed shall be the only buildings constructed on the Land during the term of this Lease; the Ponderosa Steak House building shall be of no greater dimension than One Hundred Twenty (120) feet by Sixty (60) feet and shall be located on the Land as shown on Exhibit "A" attached hereto. LESSEE, its assignees, sub-lessees, employees, agents, invitees and customers, at all times herein shall have free access to and from the demised premises, the Land and adjoining and adjacent sidewalks, streets and alleys, and shall have the non-exclusive rights to use all parking areas, driveways, curb-cuts, the patio and access to and use of all utilities; provided however such rights shall not include the building designated on Exhibit "A" as "Ponderosa Steak House".

ARTICLE 2. TERM: To have and to hold for and during the full term of twenty (20) years, commencing on the 1st day of November, 1969, and expiring on the 31st day of October, 1989, inclusive, subject however, to the provisions of Article 9 hereof, as to the effective commencement date of this Lease.

ARTICLE 3. SERVICE OF NOTICE: Any and all notices, demands or communications required to be given hereunder shall be in writing and sent by certified mail, (a) if intended for LESSOR, to THE S & A CORPORATION, 3310 University Avenue, Madison, Wisconsin 53705, and (b) if intended for LESSEE, to it at 17 Colonial Drive, Youngstown, Ohio 44505, or to such other place as either LESSOR or LESSEE may hereafter designate in writing. Any such notice shall be deemed to have been given as of the time same is deposited in the United States mail.

INITIAL HERE  
L.S.A.  
A.E.L.

APPENDIX (Continued)

ARTICLE 4. UTILITIES: LESSEE will pay all charges for sewer usage or rental, refuse removal, and all utilities, including gas, water, heat, and electricity, consumed in the demised premises during the term of this Lease, or any renewal or extension hereof, as same shall become due.

ARTICLE 5. RENT:

(a). LESSEE will pay LESSOR as rent for the demised premises during said term a sum equal to five percent (5%) of LESSEE'S annual gross sales made from the demised premises during each lease year. Such rent will be paid in the following manner:

(1). The sum of FIFTEEN THOUSAND SIX HUNDRED DOLLARS (\$15,600.00) per year, payable in equal monthly installments of ONE THOUSAND THREE HUNDRED DOLLARS (\$1,300.00) each, in advance on the first day of each month, which sum is hereby designated as the minimum annual guaranteed rent.

(2). Within sixty (60) days following the end of each lease year, LESSEE will furnish LESSOR with a statement signed and certified under oath by LESSEE to be correct (or if this Lease is assigned or the demised premises sublet, then such statement will be furnished, signed and certified by the Assignee or Sub-Lessee of LESSEE) setting forth the amount of the gross sales made during the prior lease year. In the event the amount of percentage rent required to be paid hereunder is more than the minimum annual guaranteed rent, such additional rent will be paid LESSOR with the delivery of the aforesaid statement. In no event shall the rent hereunder for any lease year be less than the minimum annual guaranteed rent.

(b). Rent will be payable at the place designated in this Lease for service of notice upon LESSOR, or at such other place as LESSOR may hereafter designate in writing.

(c). "Gross sales", as used herein, shall mean the amount received by LESSEE (or if this Lease is assigned or the demised premises sublet, by the Assignee or Sub-Lessee of LESSEE) from the sale of products or performance of services made on or from the demised premises, including commissions from vending machines, but excluding sales tax or any similar taxes which are by law required to be computed separately and paid by the customer, free meals furnished to employees, and the proceeds from the sale of any fixtures and other personal property erected or installed on the demised premises by LESSEE (or its Assignee or Sub-Lessee).

(d). "Lease year", as used herein, shall mean each twelve (12) month period, beginning with the first day of the term of this Lease and each yearly anniversary hereof, provided the commencement of the term of this Lease is on the first day of the month. If the term of this Lease shall commence on any day other than the first day of the month, then the lease year shall begin on the first day of the month following the month during which the term of this Lease shall commence. Any period prior to the first lease year or any period subsequent to the last lease year within the term of this Lease, or any renewal or extension hereof, shall be adjusted with respect to percentage rent or any other matters provided in this Lease in which the lease year is a factor.

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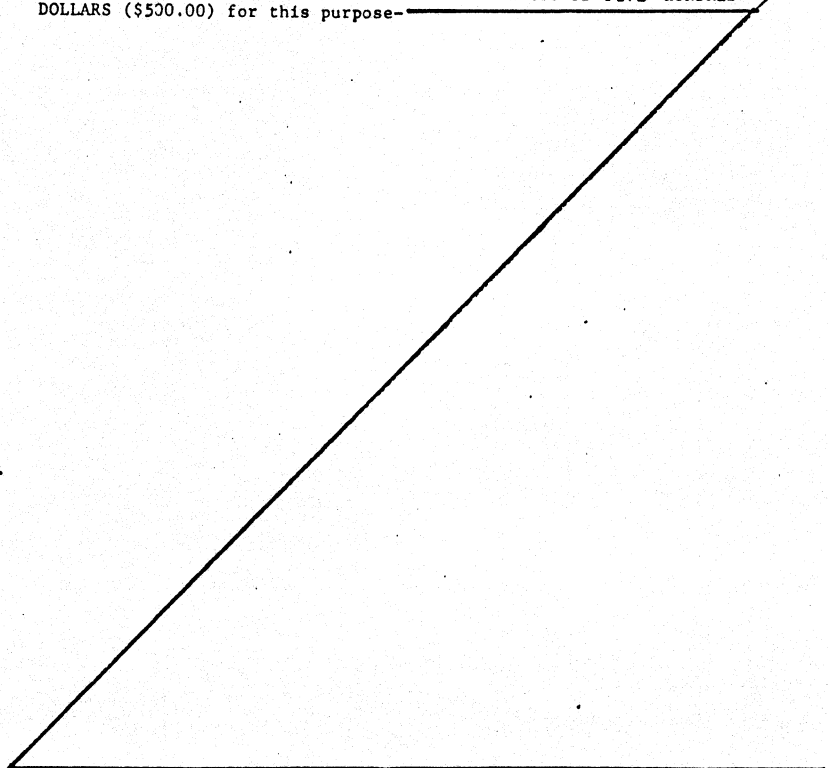
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APPENDIX (Continued)

(e). LESSEE (or if this Lease is assigned or the demised premises sublet, the Assignee or the Sub-Lessee of LESSEE) will keep books of account, in accordance with good accounting practice, accurately showing all sales and income of the business conducted on the demised premises. Such books of account, for the preceding four (4) year period only, will be open and free for inspection by LESSOR, or LESSOR'S authorized agents, at any reasonable time.

(f). The LESSOR may once in any lease year cause an audit of the business of LESSEE being conducted on the demised premises to be made by a Certified Public Accountant of LESSOR'S selection and if the statement of gross sales previously made to LESSOR shall be found to be inaccurate, then and in that event, there shall be an adjustment and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of said percentage rent that should have been paid to LESSOR for the period covered by such inaccurate statement. If such audit shall disclose an inaccuracy of greater than two percent (2%) error with respect to the amount of gross sales reported by LESSEE for the period of said report and if such audit results in a rental adjustment in favor of LESSOR, then LESSEE shall immediately reimburse the LESSOR the cost of such audit, subject, however, to the limitation that LESSEE shall not, in any one lease year, be obliged to reimburse LESSOR an amount in excess of FIVE HUNDRED DOLLARS (\$500.00) for this purpose-



INITIAL HERE  
C.R.A.  
A.L.A.



APPENDIX (Continued)

other reasons beyond the control of LESSOR reason of strikes, acts of God, insurrection, civil commotion, riots, or unavoidable casualty. Such completion shall be certified by the architect, if any, employed in connection with such construction or so evidenced by the proper municipal authorities. Anything to the contrary notwithstanding, if LESSOR shall fail to commence construction within One Hundred Twenty ( 120 ) days after the date of execution of this Lease, or ~~XXXXXX~~ after LESSEE has transmitted to LESSOR the items specified in Sub-Paragraphs (a) and (b) above, whichever is later, or to complete same for any reason whatsoever on or before July 31, 1970, LESSEE may terminate this Lease without any liability.

**ARTICLE 7. ZONING AND BUILDING LAWS:** LESSOR hereby represents and warrants to ~~LESSEE that the character, materials, design, construction and location of LESSOR'S~~ at the commencement of the term of this Lease Improvements will be in full compliance with all building and zoning laws and ordinances, and that the use of the ~~XXXXXX~~ Land as a drive-in restaurant for the sale and consumption on and off the ~~XXXXXX~~ Land of food and non-alcoholic beverages will be a permitted use under the zoning classification applicable to the ~~XXXXXX~~ Land, and upon execution of this Lease, LESSOR shall furnish LESSEE with satisfactory documentary evidence thereof. LESSOR, at LESSOR'S expense, shall make all applications and institute any proceedings for rezoning, variance or non-conforming use of the ~~XXXXXX~~ Land ~~XXXXXX~~ if required. LESSOR, immediately upon obtaining such rezoning, variance or non-conforming use, shall furnish LESSEE with satisfactory documentary evidence thereof. LESSOR further represents and warrants that the water supply and other usual utilities will be furnished by a public utility company or companies and will be available to the ~~XXXXXX~~ Land at the commencement of the term of this Lease in sufficient quantities as required for the operation of LESSEE'S business; ~~XXXXXX~~ and that there are no restrictions, easements nor conditions of any kind whatsoever, including but not limited to, those appearing in the title to the ~~XXXXXX~~ Land or in any plat thereof, nor any ordinances, statutes, or regulations, including but not limited to, set-back, side-yard and buffer restrictions, ~~XXXX~~ curb-cut and parking requirements, that would in any manner prevent, limit or restrict the use of the ~~XXXXXX~~ Land by LESSEE for the purposes and in the manner herein intended. LESSOR hereby acknowledges that LESSEE is relying upon such representations and warranties in executing this Lease, that the matters so represented and warranted are material, and that in the event of any breach of such warranties or any misrepresentation herein, LESSEE may terminate this Lease without any liability.

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**ARTICLE 8. OWNERSHIP OF PLANS AND SPECIFICATIONS:** LESSOR hereby acknowledges that the plans and specifications provided by LESSEE are the sole property of LESSEE. LESSOR shall not use, ~~XXXXXX~~ nor willingly permit LESSOR'S contractors, sub-contractors, or any other person or persons who may have access to the plans and specifications, to use the plans and specifications, in whole or in part, for the design or construction of any building or improvements other than those to be constructed by LESSOR upon the demised premises. LESSOR, promptly after completion of construction hereunder, shall use reasonable efforts to return or cause to be returned to LESSEE the originals of such plans and specifications and all copies made thereof by LESSOR, or LESSOR'S contractors or sub-contractors.

**ARTICLE 9. COMMENCEMENT OF TERM AND RENT:** Anything in this Lease to the contrary notwithstanding, the term of this Lease and the accrual of rental and any other charges required to be paid by LESSEE hereunder shall not commence until (a) ~~XXXXXX~~ ten (10) <sup>days</sup> after LESSOR has completed construction of LESSOR'S Improvements in accordance with Article 6 hereof, and such completion has been certified by the architect, if one is employed in connection with the construction of such Improvements, or so evidenced by the proper local authorities, and (b) where required, after a certificate of occupancy, sign, curb opening and other permits have been issued. If such designated commencement date shall occur prior to the date of commencement of the term as specified in Article 2 hereof, and in the event LESSEE, or its Assignee or Sub-Lessee, prior to such date actually shall have

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"Completion" as defined in this Article 9 for commencement of lease term and rental, shall not be delayed by mere mechanical adjustments yet to be performed.

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APPENDIX (Continued)

commenced doing business from the demised premises, the term of this Lease and the accrual of rental hereunder shall commence on the date of such commencement of business; provided however, neither the taking of possession nor the commencing of business from the demised premises by LESSEE, or its Assignee or Sub-Lessee, prior to the completion of LESSOR'S Improvements, shall be construed as or shall constitute an acceptance of LESSOR'S Improvements by LESSEE or a waiver of any of LESSOR'S obligations hereunder. ~~NOTICE TO LESSEE TO ACCEPT OR WAIVE~~ Anything in this Lease to the contrary notwithstanding, the term of this Lease shall expire twenty ( 20 ) years after the actual date of its commencement.

In the event the date of commencement of rent hereunder shall occur on a day other than the first day of the month, the first rental payment shall be adjusted for the proportionate fraction of the whole month so that all rental payments other than the first shall be made and become due and payable on the first day of each month. Immediately after the term hereof has been ascertained (if different from that appearing in Article 2 hereof) LESSOR and LESSEE shall execute an amendment to this Lease indicating the actual commencement and expiration dates hereof.

**ARTICLE 10. INDEMNITY:** LESSEE will indemnify and save LESSOR harmless from any liability to any person on account of any damage to person or property arising out of any failure of LESSEE to perform and comply, in any respect, with any of the requirements and provisions of this Lease or arising from LESSEE'S use and occupancy of the demised premises.

**ARTICLE 11. COMPLIANCE WITH LAWS AND ORDINANCES:** LESSEE will comply with all federal, state, county and city laws and ordinances, and rules and regulations of any duly constituted authority, affecting or respecting the demised premises, or the use or occupancy of same, including the business at any time thereon transacted by LESSEE, or its Assignee or Sub-Lessee.

**ARTICLE 12. ADDITIONS, ALTERATIONS OR REMODELING:** LESSEE shall have the right to remodel and make any additions, alterations, or extensions to LESSOR'S Improvements to be erected on the <sup>Land</sup> ~~premises~~ without the payment of additional rent. LESSEE, or its Assignee or Sub-Lessee, shall also have the right to erect, install, maintain and operate on the demised premises, fixtures and other personal property, as LESSEE, or its Assignee or Sub-Lessee, may deem advisable. Provided however, all of the foregoing will be made without any expense to LESSOR. LESSEE will comply with all applicable laws with respect thereto, and LESSEE will indemnify and save and hold LESSOR harmless from any and all mechanics' liens that may be filed against the demised premises by reason thereof. LESSEE shall have the right to contest the validity of any such lien or claim filed or asserted against the demised premises, if LESSEE shall first give LESSOR assurance that, upon final determination of the validity of such lien or claim, LESSEE will forthwith pay any final judgment rendered against it and will have such lien released without cost to LESSOR.

LESSEE, or its Assignee or Sub-Lessee, are hereby expressly given the right, at any time during the term of this Lease, or any renewal or extension hereof, and for a period of <sup>Five (5)</sup> ~~thirty (30)~~ days after termination of this Lease, or any renewal or extension hereof, to remove any such fixtures and other personal property, but shall not be obliged to do so; provided however, LESSEE will make reasonable repairs to the demised premises for any physical injury caused thereto by such removal, but without any liability for diminution in value of the demised premises caused by the absence of the fixtures and other personal property so removed and without any necessity for replacing same. In the event LESSEE, or its Assignee or Sub-Lessee, shall fail to remove all such fixtures and other personal property, then LESSEE, or its Assignee or Sub-Lessee shall be deemed to waive all rights to any such fixtures and other personal property not so removed.

LESSEE shall make no exterior structural changes to LESSOR'S Improvements without the express prior written consent of LESSOR, which consent shall not be unreasonably withheld.

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APPENDIX (Continued)

ARTICLE 13. LIABILITY INSURANCE: LESSEE, at all times during the term of this Lease, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, general public liability insurance for claims for personal injury, death, or property damage, occurring in or about the ~~demised premises~~ <sup>Land</sup> with limits of not less than \$300,000.00 in respect to death or injury of a single person, not less than \$500,000.00 in respect to any one accident, and not less than \$50,000.00 in respect to property damage.

LESSEE, at all times during the term of this Lease, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, plate glass insurance. Certificates of all such insurance will be delivered to LESSOR.

ARTICLE 14. FIRE INSURANCE: LESSEE, at all times during the term of this Lease, or any renewal or extension hereof, and at its expense, will procure, maintain and keep in force, fire, extended coverage, and vandalism and malicious mischief insurance on the building to be constructed on the ~~demised premises~~ <sup>Land</sup> for the insurable value thereof. If the parties cannot agree as to the insurable value of such building, such value shall be determined by the insurance company or companies issuing such policy or policies. In the event of any loss covered by such insurance, the proceeds therefrom (excluding that part of the proceeds, if any, attributable to LESSEE'S, or its Assignee's or Sub-Lessee's fixtures and other personal property erected or installed on the demised premises) shall be payable to LESSOR; however, at the request of LESSOR, the policy or policies of insurance shall contain a loss payable clause in favor of LESSOR'S mortgagee, if any. Certificates of such insurance, or an original copy of the policy or policies thereof, will be delivered to LESSOR and such mortgagee, if any.

Each insurance policy, required under Articles 13 and 14 of this Lease, will name LESSOR as an additional insured thereunder, will be issued by a financially responsible company or companies licensed in the State wherein the ~~demised premises~~ <sup>Land</sup> is ~~located~~ <sup>situated</sup>, and will provide that such policy or policies will not be cancelled without the insurance company first giving LESSOR written notice thereof, at least ten (10) days before any such cancellation shall become effective.

ARTICLE 15. FIRE AND CASUALTY CLAUSE:

(a). If LESSOR'S Improvements on the ~~demised premises~~ <sup>Land</sup> shall be damaged or destroyed by fire or other casualty, LESSOR, within ~~thirty (30)~~ <sup>one hundred twenty (120)</sup> days from the date of such damage or destruction, shall make necessary alterations and repairs to LESSOR'S Improvements for the purpose of restoring same to an economic architectural unit, susceptible to the same use as that which was in effect immediately prior to such fire or other casualty loss. If LESSOR'S Improvements cannot be restored and repaired within such ~~thirty (30)~~ <sup>one hundred twenty (120)</sup> day period because of delay caused by strikes, acts of God, insurrection, civil commotion, riots, or unavoidable casualty, ~~that prohibit, limit or delay such construction,~~ <sup>or other cause beyond LESSOR'S control,</sup> then the time for completion of such construction shall be extended accordingly; provided however, that in any event, if the restorations and repairs of LESSOR'S Improvements have not been completed within a period of ~~thirty (30)~~ <sup>two hundred forty (240)</sup> days from the date of such damage or destruction, LESSEE may terminate this Lease without any liability.

(b). If the ~~demised premises~~ <sup>Land</sup> shall be damaged or destroyed by fire or other casualty, and if such damage or destruction shall exceed fifty percent (50%) of the original cost of construction thereof, and if there shall be less than five (5) years remaining in the original or any renewal term of this Lease when such damage or destruction shall occur, then LESSEE may either:

- (1). Terminate this Lease without any liability; or
(2). Notwithstanding anything to the contrary herein, renew this Lease for a period of five (5) years, in addition to the balance, if any, then remaining under the original term of this Lease, or any renewal hereof (and in addition to any unexercised options to renew under Article 27 hereof), upon the same reht, terms and conditions as herein provided, by giving notice to LESSOR of the exercise of this option within thirty (30) days after the date of such damage or destruction. In such event, LESSOR, within ~~thirty (30)~~ <sup>one hundred twenty (120)</sup> days from the date of receipt of such notice from LESSEE (unless the time for completion is extended because of delay as provided in paragraph (a) above), shall restore and repair such building in the manner provided in paragraph (a) above. The additional five (5) year renewal term shall commence upon the completion of such construction; and this Lease shall not terminate.

(c). If the fire or other casualty (whether under paragraphs (a) or (b) above) shall render LESSOR'S Improvements on the demised premises untenantable, all rent herein required to be paid by LESSEE shall abate during such period of untenantability.

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APPENDIX (Continued)

ARTICLE 16. WAIVER OF SUBROGATION: LESSOR and LESSEE each hereby waives all claims, causes of action and rights of recovery against the other, and their respective agents, officers and employees, for any damage to or destruction of persons, property or business, including but not limited to LESSOR'S improvements, which shall occur on or about the demised premises and shall result from any of the perils insured under any and all policies of insurance maintained by LESSOR and LESSEE, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees, but only to the extent of recovery, if any, under such policy or policies of insurance; provided however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

ARTICLE 17. ASSIGNMENT AND SUB-LETTING: LESSEE, without the consent of LESSOR, and at any time during the term of this Lease, or any renewal or extension hereof, shall have the right to assign this Lease, or its rights hereunder, and to sub-let all or any part of the demised premises, in either event, LESSEE will remain liable for the payment of all rent required to be paid hereunder and for the performance of all of the terms, covenants and conditions herein undertaken by LESSEE.

ARTICLE 18. LESSOR'S RIGHT OF RE-ENTRY: If LESSEE shall fail to pay any installment of rent, promptly on the day when the same shall become due and payable hereunder, or if LESSEE shall fail to keep and perform any of the other terms, covenants and conditions of this Lease on its part to be performed, and in either event, shall continue in default for a period of thirty (30) days after LESSOR demands performance by giving notice to LESSEE of such default, then in such event, and as often as any such event shall occur, LESSOR may terminate this Lease, enter into the demised premises, or any part thereof, either with or without process of law, and expel LESSEE, or any person occupying the demised premises, and use such force as may be necessary so to do, and repossess and enjoy the demised premises as in LESSOR'S former estate; and (b) Shall use all reasonable diligence to relet the demised premises; and in such event, LESSOR shall apply the rent received from any new tenant thereof on any balance due under this Lease, and LESSEE shall be responsible for no more than the remaining balance that may then be due hereunder, should a balance exist. In computing rental damages\*\*\* Anything hereinbefore contained to the contrary notwithstanding if any default shall occur, other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days, and LESSEE, prior to the expiration of thirty (30) days from and after the giving of notice as aforesaid, shall commence to eliminate the cause of such default, shall proceed diligently and with reasonable dispatch to take all steps and do all work required to cure such default, and shall thereafter cure such default, then LESSOR shall not have the right to terminate this Lease by reason of such default.

ARTICLE 19. BANKRUPTCY AND INSOLVENCY: If LESSEE'S leasehold estate created hereby shall be taken in execution, or by other process of law, or if any receiver or trustee shall be appointed for the business and property of LESSEE, but only if such execution or other process, receivership, or trusteeship shall not be discharged or ordered removed within thirty (30) days after date LESSEE shall receive actual notice thereof; or if LESSEE shall be adjudicated a bankrupt; or if LESSEE shall make a general assignment of its leasehold estate created hereby for the benefit of creditors, then in any such event, LESSOR may terminate this Lease by giving notice thereof to LESSEE.

ARTICLE 20. HOLDING OVER: In the event LESSEE shall continue to occupy the demised premises after the last day of the term hereby created, or after the last day of any renewal or extension of said term, and LESSOR shall elect to accept rent thereafter, only a month to month tenancy shall be created and not for any longer period.

\*all other assignments or subletting shall be subject to LESSOR'S prior written consent, not unreasonably withheld.

\*\*remedy allowed by law, and without LESSOR'S failure to enforce a remedy being deemed a waiver of default)

\*\*\*in excess of minimum annual rental for any period subsequent to termination after LESSEE'S default, the total annual rental shall be deemed to be one-third (1/3) of the total annual rental paid or payable by LESSEE for the last three (3) full lease years preceding said termination, if at least three (3) lease years have elapsed.

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APPENDIX (Continued)

ARTICLE 21. CONDEMNATION: If the whole of the Land shall be appropriated or condemned under power of eminent domain or by any competent authority for any public or quasi-public use or purpose during the term of this Lease, or any renewal hereof, LESSEE reserves unto itself the right to prosecute its claim for an award for damages based on the value of LESSEE'S (or its Assignee's or Sub-Lessee's) fixtures and other personal property erected or installed on the Land and the removal, relocation and replacement costs and expenses caused by such appropriation or taking; provided however, such claim by LESSEE shall not impair any rights of LESSOR for such appropriation and taking of, or the injury to, the remainder. In such event, this Lease shall terminate when LESSEE can no longer use the Land in the manner herein intended, or when possession thereof shall be required by the appropriating or condemning authority, or when legal title to the demised premises shall vest in the appropriating or condemning authority, whichever shall first occur; but such termination of this Lease shall not preclude nor restrict LESSEE'S right to an award as hereinbefore provided.

In the event that a part of the Land shall be appropriated or condemned and (a) the part so taken shall include any part of the demised premises, or (b) the part so taken shall remove twenty percent (20%) or more of the depth from the front of the Land, or (c) the part so taken shall consist of twenty-five percent (25%) or more of the total parking spaces on that portion of the Land which is outlined in red on Exhibit "A" attached hereto, or (d) such partial taking shall result in cutting off access from the Land to Park Street, then and in any such event, LESSEE at any time either prior to or within a period of sixty (60) days after the date when possession of the part of the demised premises so taken shall be required by the appropriating or condemning authority, may elect to terminate this Lease. In the event LESSEE shall exercise such election to terminate this Lease, LESSEE shall have the right to prosecute its claim for an award for damages on the value of LESSEE'S (or its Assignee's or Sub-Lessee's) fixtures and other personal property and business interest, in the same manner and to the same extent, as that hereinbefore reserved by LESSEE in the event that the whole of the Land were appropriated or condemned. In the event LESSEE shall fail to exercise such option to terminate this Lease, or in the event that a part of the Land shall be taken or condemned under circumstances in which LESSEE shall have no such option, then in either such event, LESSOR, with reasonable promptness, shall make necessary repairs to and alterations of LESSOR'S Improvements on the Land for the purpose of restoring same to an economic architectural unit, susceptible to the same use as that which was in effect immediately prior to such taking and to the extent that may have been necessitated by such appropriation or condemnation. LESSEE shall be entitled to an abatement of all rent herein required to be paid by LESSEE during the period of such repairs and restoration; provided however, if LESSEE (or its Assignee or its Sub-Lessee) shall operate the business on the Land during the period such repairs and restorations are being made, LESSEE, during such period, will pay rent in the amount provided below.

In the event that a part of the Land shall be appropriated or condemned and if LESSEE shall fail to exercise its option to terminate this Lease, or if LESSEE shall have no such option as above provided, then in either such event, this Lease shall continue in full force and effect and shall terminate only as to that part of the Land so taken. In such event the fixed monthly installments of rent required to be paid under Article 3 hereof; shall be reduced, as of the date when possession of the Land shall be required by the appropriating or condemning authority, by a proportional amount equal to the proportion that the value of the part so taken or condemned, (as determined and set by the final price fixed and paid by the taking or condemning authority) shall bear to the fair market value (after the date of the condemnation or taking) of the total demised premises, as shall be agreed by the parties hereto. Provided however, that if LESSOR and LESSEE do not agree on the fair market value of the land for the above purpose, then three (3) arbitrators shall fix the valuation, as follows:

- (a) LESSOR and LESSEE, within thirty (30) days after the date of condemnation, shall appoint one (1) arbitrator each of whom shall be a member of The American Institute of Real Estate Appraisers, shall be disinterested and

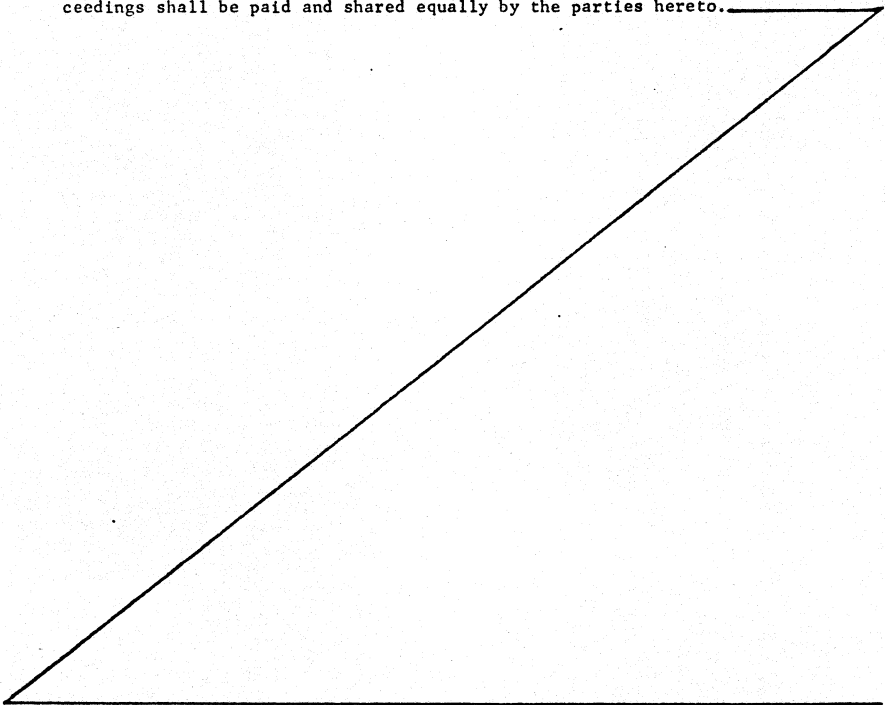
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APPENDIX (Continued)

impartial, and shall not be related to either of the parties by blood or marriage. These two (2) arbitrators, within thirty (30) days thereafter, shall select a third arbitrator, who shall also be a member of The American Institute of Real Estate Appraisers, shall be disinterested and impartial, and shall not be related to either of the parties or either of the afore-said arbitrators by blood or marriage.

- (b) If either party refuses or neglects to appoint an arbitrator as above required, or should the arbitrator appointed by a party refuse or neglect to appoint the third arbitrator as above required, then the decision by the arbitrator appointed by the side not refusing or neglecting to make the appointment shall govern. Said arbitrators shall appraise the land and improvements and fix the amount of the fair market value thereof. Their decisions shall be given in writing to LESSOR and LESSEE within thirty (30) days after their appointment. Such decision shall be binding, final and conclusive upon both parties; and each party does hereby waive any and all rights of appeal therefrom. The fees and expenses of the arbitrator appointed by each of the parties shall be paid by the respective party appointing same, and the fees and expenses of the third arbitrator shall be paid and shared equally by the parties hereto. Any other costs and expenses of the arbitration proceedings shall be paid and shared equally by the parties hereto.



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APPENDIX (Continued)

**ARTICLE 22. REPAIR OF PREMISES:** LESSEE, at all times hereunder and at its cost, will keep ~~only in the area outlined in red on Exhibit A attached hereto~~ and maintain LESSOR'S improvements in a good state of repair, including but not limited to, the interior and exterior of the building, and the driveway and parking areas ~~as provided in Item C on Page 2 of the Addendum to this Lease.~~

~~XXXXXXXXXXXX~~ LESSEE, upon expiration or termination of this Lease, will surrender to LESSOR ~~XXXXXXXXXX~~ ~~XXXXX~~ the demised premises in good condition and repair, except for loss by fire or other casualty, ordinary wear and tear, depreciation and obsolescence.

**ARTICLE 23. COVENANT OF TITLE AND QUIET ENJOYMENT:** LESSOR covenants and warrants to LESSEE that LESSOR has full right and lawful authority to enter into this Lease for the term of this Lease, or any renewal or extension hereof; that LESSOR is lawfully seized of the demised premises ~~and the Land~~ and has good and marketable title thereto, free and clear of all tenancies, liens, encumbrances, encroachments, restrictions, conditions, reservations, easements, and general and special assessments levied or imposed against the demised premises, ~~and the Land~~ whether or not a lien thereon or now due or payable, except real estate taxes due but not yet payable; and that if LESSEE is not in default herein, LESSEE'S quiet and peaceable enjoyment of the demised premises ~~and the Land~~ during the term of this Lease, or any renewal or extension hereof, shall not be disturbed nor interfered with by anyone.

**ARTICLE 24. TITLE INSURANCE AND SHORT FORM LEASE:** ~~LESSEE'S~~ Within ~~XXXXXX~~ twenty (20) days after execution of this Lease, LESSOR, at ~~LESSEE'S~~ expense, shall order for LESSEE a Leasehold Title Insurance Policy (of not less than \$50,000.00 coverage) issued by a title insurance company first approved in writing by LESSEE. The policy shall insure LESSEE'S leasehold interest herein and show record title to ~~the demised premises, as warranted in Article 23 hereof.~~ Land and the demised premises, as warranted in Article 23 hereof.

If LESSOR shall fail or refuse for any reason to order such Leasehold Title Insurance Policy within the aforesaid ~~XXXXXX~~ twenty (20) day period, or if the preliminary title report, information certificate, or interim binder for such title insurance is not delivered to LESSEE within forty-five (45) days after the date of execution of this Lease, or if LESSOR shall fail or refuse for any reason to obtain and deliver to LESSEE the final Leasehold Title Insurance Policy herein required, or if such preliminary title report, information certificate, interim binder, or the final Leasehold Title Insurance Policy shall fail to show and insure title ~~to the demised premises as hereinbefore warranted by LESSOR, then in any such event, LESSEE may terminate this Lease without any liability by giving ten (10) days prior notice thereof to LESSOR.~~ Land and the demised premises as hereinbefore warranted by LESSOR, then in any such event, LESSEE may terminate this Lease without any liability by giving ten (10) days prior notice thereof to LESSOR.

Within ten (10) days after request and presentation by LESSEE to LESSOR of a short form memorandum of this Lease, LESSOR shall execute same with proper recordation formalities and deliver such short form Lease to LESSEE, ~~which short form Lease shall not be at variance to this Lease hereto.~~ If LESSOR shall fail or refuse for any reason to execute and deliver same in the manner and time required herein, LESSEE may terminate this Lease without any liability.

**ARTICLE 25. RIGHT TO MORTGAGE:** LESSEE, upon request of LESSOR, will subordinate this Lease to any first mortgage which shall hereafter affect the demised premises, and to any renewal, modification or extension thereof, subject to the following conditions. LESSEE, upon request, but at LESSOR'S expense, if any, will execute and deliver any instruments required to subordinate this Lease to any such first mortgage or to confirm or evidence such subordination; provided however, in any such event, LESSOR shall deliver or cause to be delivered to LESSEE an agreement in writing executed by such mortgagee and providing to the effect that so long as LESSEE shall faithfully discharge its obligations under this Lease, its tenancy shall not be disturbed nor this Lease affected by any default under such mortgage; and in the event of a foreclosure sale of the demised premises, or any sale, transfer, conveyance or other proceeding in lieu thereof, that same will be sold, transferred or conveyed subject to this Lease. In the event LESSOR shall default on any such mortgage, LESSEE may make payments on the mortgage, and any payments so made shall be a credit on the rent and any other charges due and payable by LESSEE under this Lease.

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APPENDIX (Continued)

ARTICLE 26. RIGHT TO ENCUMBER PERSONAL PROPERTY: LESSEE or its Assignee or Sub-Lessee shall have the absolute right, without LESSOR'S consent, to place liens, upon or give security interests in any or all of the fixtures and other personal property erected or installed on the demised premises. Any such lien or security interest shall vest in the lien holder or secured party, a prior lien on or security interest in such fixtures and other personal property. LESSOR shall execute any instruments that the lien holders or secured parties may request or require from LESSOR, with respect to acknowledging: (a) the right of LESSEE (or its Assignee or Sub-Lessee) to erect or install such fixtures and other personal property, and that same shall not be deemed to be nor become part of the demised premises. (b) the right of the lien holder or secured party to maintain a lien thereon or security interest therein superior to any claim and interest of LESSOR, and (c) the right to remove any and all such fixtures and other personal property in the event of default in the instrument creating the lien or security interest, subject to making reasonable repairs to the demised premises for any physical injury caused thereto by such removal, but without any liability for diminution in value of the demised premises caused by the absence of the fixtures and other personal property so removed and without any necessity for replacing same.

If LESSOR, within ten (10) days after submission of such instruments, shall fail to execute and deliver same, LESSEE shall have the right and authority to execute and deliver same in the name of LESSOR, with the same force and effect as if a regular power of attorney had this day been executed by LESSOR in favor of LESSEE but only for these purposes.

ARTICLE 27. OPTION TO RENEW: LESSOR hereby grants to LESSEE the right, privilege and option to renew this Lease for ~~two (2)~~ <sup>one (1)</sup> additional periods of five (5) years ~~XXXX~~ ~~XXXXXXX~~ from the date of the expiration hereof and upon the same rent, terms and conditions, by LESSEE giving notice to LESSOR of its intention to exercise said option at least ~~one hundred~~ <sup>one hundred</sup> eighty (180) days prior to the expiration of the term of this Lease, or any renewal hereof. In any such event this Lease shall continue in full force and effect for each such renewal period.

ARTICLE 28. ACCESS TO PREMISES: LESSOR, and any agents, employees, officers and independent contractors of LESSOR, will have access to the demised premises at all reasonable times for the purpose of examining and inspecting same.

ARTICLE 29. SITE CERTIFICATION: LESSEE, at its expense, shall have the right to make a site inspection to determine if the physical conditions of the Land are suitable for the construction and erection of LESSOR'S Improvements thereon. In the event such physical conditions or the information disclosed by the topo-survey drawing and certificates of soil boring tests (all of which are to be furnished by LESSOR in accordance with Article 6 hereof) do not meet LESSEE'S requirements, LESSEE may terminate this Lease without liability by giving ten (10) days prior notice thereof to LESSOR. LESSEE'S rights to terminate under the provisions of this Article shall be limited in time to thirty (30) days after receipt by LESSEE of the\*

ARTICLE 30. SUCCESSORS AND ASSIGNS: All warranties, covenants and agreements herein shall inure to the benefit of, and be binding upon, the heirs, devisees, executors, administrators, successors and assigns of LESSOR and LESSEE.

ARTICLE 31. EXECUTION DATE OF LEASE: The effective date of this Lease for all purposes whatsoever (whether used for purposes of reference or computation herein or hereafter) shall be the later of the two (2) dates indicated hereafter, on which either of the parties hereto executed this Lease.

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\*aforesaid topo-survey drawing and certificates of soil boring tests.



APPENDIX (Continued)

**ARTICLE 32. PAYMENT OF REAL ESTATE TAXES:** LESSEE will pay, as additional rent herein, its/ proportional share of all real estate taxes and assessments, both general and special, which shall hereafter become due and payable on the demised premises and the Land during the term of this Lease, or any renewal or extension hereof. LESSEE'S proportional share of real estate taxes and assessments is defined in Item C of the Addendum attached hereto. If any assessment for a capital improvement made by a public or governmental authority shall be levied or assessed against the demised premises and the Land, and such assessment shall be payable in a lump sum or on an installment basis, LESSEE shall have the sole right to elect the basis of payment. If LESSEE shall elect to pay such assessment on the installment basis, then LESSEE will pay only those installments which shall become due and payable during the term of this Lease, or any renewal or extension hereof.

All real estate taxes and assessments, that shall become due and payable during the first and last years of the term of this Lease, or any renewal or extension hereof, shall be apportioned pro-rata between LESSOR and LESSEE in accordance with the respective number of months during which this Lease is in effect.

All real estate taxes and assessments, which LESSEE assumes or agrees to pay pursuant to this Lease and that are not paid when due, may be paid by LESSOR. Any amount so paid by LESSOR will be due and payable by LESSEE on demand by LESSOR.

LESSEE, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the amount or validity of any tax or assessment imposed against the demised premises, and the Land upon the condition that before instituting any such proceedings, LESSEE will pay such imposition as provided herein or secure payment of same to LESSOR in such manner as LESSOR may reasonably require. Nothing contained herein shall imply any right on the part of LESSEE to postpone or defer such payment, unless such proceedings or security given shall prevent or stay the collection thereof and the sale of the demised premises or the Land to satisfy same.

LESSOR shall join in any such proceedings, if necessary to do so in order to prosecute such proceedings properly, but LESSOR shall not be liable for any expenses, including attorney fees, in connection therewith. LESSEE will indemnify and save LESSOR harmless from any such expenses. The proceedings referred to herein shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings.

In the event of any reduction, cancellation or discharge of such taxes or assessments as a result of such proceedings, and if LESSEE had not already paid same, then LESSEE will do so forthwith, as they are finally levied, assessed or imposed. If there shall be any refund payable by the governmental authority with respect thereto, LESSEE shall be entitled to receive and retain same, subject however, to apportionment as provided herein during the first and last years of the term of this Lease, or any renewal or extension hereof, if applicable.

Nothing herein contained shall obligate LESSEE to pay any income, inheritance, estate, gift, succession, revenue or transfer tax of, or levied or assessed against, LESSOR, nor any other tax, assessment, charge or levy against LESSOR with respect to or because of the rent and other income derived by LESSOR under this Lease, nor shall LESSEE be deemed obligated to pay any personal property, corporation, franchise, capital stock, payroll, excess profits, excise, privilege, or any other tax of a similar nature, which may be assessed or levied against LESSOR.

INITIAL  
*A. E. C.*  
*R. E. D.*

101 F-11A  
 2/69 (N.S.)

APPENDIX (Continued)

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Lease on the respective dates set forth below.

IN THE PRESENCE OF:

[Signature]  
[Signature]

LESSOR:

[Signature]  
President

[Signature]  
Secretary

Date Executed by LESSOR: 10-8-69

IN THE PRESENCE OF:

[Signature]  
[Signature]

LESSEE:

ARBY'S, INC.

By [Signature]  
President

By [Signature]  
(Assistant) Secretary

Date Executed by LESSEE: 9-24-69

THIS LEASE CONTAINS 14 including Pages 2a and 8a PAGES PLUS A NOTARY PAGE  
ADDENDUM AND EXHIBITS A & B ATTACHED HERETO.

INITIAL  
[Signature]  
u.c.a.

101F-50  
158F-50  
12 GH

APPENDIX (Continued)

- B. At all times when this Lease is in full force and effect, LESSOR will not lease any storeroom or other building, not sell, convey or transfer all or any part of Exhibit "B" Lands, which LESSOR now owns as and for a restaurant, drive-in restaurant, or food service operation specializing in the sale or promotion of roast beef sandwiches. This restriction shall be binding upon LESSOR, its successors and assigns; provided, however, this restriction shall be operative only so long as LESSEE, its sub-lessee or assigns, shall use the demised premises as and for a restaurant, drive-in restaurant, or a food service operation for the sale of roast beef sandwiches. This restriction shall be deemed to be a covenant running with the land and appurtenant to the demised premises. Reference thereto shall be made in the Short Form Memorandum of this Lease, to be executed in recordable form and delivered by LESSOR to LESSEE, as hereinbefore provided.
- C. The demised premises are located on said Exhibit "B" Lands which will be developed by Lessor for the use of Lessee and one other tenant as provided in Article 1.

LESSOR hereby gives and grants to LESSEE, its sub-lessees, assignees, successors, guests, invitees, customers and employees, an easement and rights in common with Ponderosa Systems, Inc., at all times during the term of this Lease, or any extension or renewal hereof, for and to the non-exclusive use of all parking areas and driveways, curb-cuts, and approaches to and from abutting alleys, streets, roads and highways (whether public or private), now constructed or as they may hereafter exist or be constructed at any time hereafter on the lands described in Exhibit "B", attached hereto, for parking and for ingress to and egress from South Park Avenue, Madison, Wisconsin, Beld Street, Madison, Wisconsin, the demised premises, the Lands described in Exhibit "B" and any other such alleys, streets, roads or highways.

LESSOR does further give and grant to LESSEE, its sub-lessees, successors and assignees the right and privilege to install and maintain two (2) light poles on the common part of Exhibit "B" premises, as outlined in yellow on the Preliminary Plot Plan, Exhibit "A" attached hereto. Lessee shall be responsible to pay for all electrical utility changes for electricity consumed by the use of such light poles.

Any and all parking areas, driveways, curb-cuts and approaches over which Lessee has been granted an easement and rights hereunder shall be constructed of asphalt and shall be completed at the same time as the construction of LESSOR'S Improvements under this Lease.

LESSEE, at all times during the original term of this Lease or any renewal or extension hereof, shall keep and maintain that part of Exhibit "B" Lands, as outlined in red in Exhibit "A" attached hereto, in a good state of repair.

Neither LESSEE nor LESSOR shall, at any time during the term of this Lease or any renewal or extension thereof, erect any barricade, fence, obstruction, wall, curb, shubbery, hedge or other planting, building, structure or other impediment to vehicular or pedestrian traffic, that shall in any way restrict, impair, prevent or interfere

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G.F.A.  
2.8.81

Page 2 of 5 pages  
of Addendum to Lease.

APPENDIX (Continued)

with driving or parking on the aforescribed lands, alleys, streets, roads or highways, except as indicated on the Preliminary Plot Plan, Exhibit "A", attached hereto. LESSOR shall cause a like restriction to be placed in its Lease with Ponderosa Systems, Inc.

In the event that LESSEE, at any time during the original term of this Lease or any renewal or extension hereof, shall be prevented or deprived from the full unrestricted and peaceable use and enjoyment of the aforesaid easements and rights, then LESSEE may terminate this Lease without any liability. The foregoing right of termination shall only apply to any prevention or deprivation caused by or through LESSOR, and shall not apply to prevention or deprivation caused by or resulting from condemnation or eminent domain proceedings, except as provided in Article 21 of this Lease.

The aforesaid easements and rights hereby granted LESSEE shall be deemed to be covenants running with the land and appurtenant to the demised premises. Reference thereto shall be made in the Short Form Memorandum of this Lease to be executed in recordable form and delivered by LESSOR to LESSEE as hereinbefore provided.

D. ~~Upon the commencement of the term of this lease, LESSEE shall open the demised premises for business to the public and shall from that day actively and in good faith operate its business on the demised premises. In furtherance hereof, LESSEE agrees that it will not, open any other store specializing in the sale of roast beef sandwiches within a radius of two (2) miles of the demised premises during the term of this Lease or any renewal or extension hereof. LESSEE further agrees to keep the demised premises open on all the usual business days during the business hours of the day and night as practicable for its type of business, except LESSEE shall have the right to close the demised premises on legal and religious holidays or at such times as the majority of the like retail businesses in the neighborhood shall be closed for business, or when closing of the demised premises becomes necessary by reason of alterations permitted hereunder, strikes, fire or other causes enumerated in this Lease, or any other cause beyond the reasonable control of LESSEE.~~

E. LESSOR shall in its lease with Ponderosa Systems, Inc., which lease is referred to in Article 1 of the Lease, require Ponderosa Systems, Inc., at all times during the term of that lease, or any renewal or extension thereof to procure, maintain and keep in force, general public liability insurance for claims for personal injury, death, or property damage, occurring in or about the Land, with limits of not less than Three Hundred Thousand Dollars (\$300,000.00) in respect to death or injury of a single person, not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to any one accident, and not less than Fifty Thousand Dollars (\$50,000.00) in respect to property damage. Each insurance policy, required under this Item of this Addendum, will name Arby's, Inc., as an additional insured thereunder, will be issued by a financially responsible company or companies licensed in the state wherein the Land is situated, and will provide that such policy or policies will not be cancelled without the insurance company first giving Arby's, Inc., written notice thereof, at least ten (10) days before any such cancellation shall become effective.

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C. F. G.  
A. E. A.

APPENDIX (Continued)

- F. It is understood and agreed that LESSOR intends to construct upon the Land a separate building suitable for use as a Ponderosa Steak House and lease said building to Ponderosa Systems, Inc. Said Ponderosa Steak House and the LESSOR'S Improvements hereunder shall constitute the only improvements located on the Land. LESSOR'S execution of this Lease is conditioned and contingent on LESSOR entering into a lease with Ponderosa Systems, Inc. In the event LESSOR shall fail to enter into a lease with Ponderosa Systems, Inc., or if said Ponderosa Systems, Inc., Lease shall be terminated or cancelled within sixty (60) days after LESSOR executes this Lease, LESSOR shall give notice thereof to LESSEE within seventy (70) days after LESSOR executes this Lease. In such event either party hereto may thereafter terminate this Lease without any liability hereunder, by giving notice thereof to the other.
- G. LESSEE'S proportional share of real estate taxes and assessments shall be the sum of the real estate taxes and assessments attributable to the following:
- (a). The assessed value of the demised premises; and
  - (b). Five-elevenths (5/11) of the assessed value of the Land.

LESSEE shall pay its proportional share of real estate taxes and assessments (as hereinabove defined) to LESSOR as additional rent herein, within thirty (30) days after a receipt of a written statement executed by LESSOR under oath setting forth (1) the amount of total taxes assessed against the Land, (2) the amount of taxes assessed against the demised premises, and (3) certification or other written evidence from the proper governmental authority or authorities of the appraised valuation of the demised premises and the Land, the percentage of such appraised value which is taxed and the rate of such taxation.

In the event separate assessments of the demised premises and of the Land are not obtained and LESSEE and LESSOR are not then able to resolve by agreement the amount of LESSEE'S proportional share of real estate taxes and assessments, then such matter will be resolved by arbitration in the following manner:

- (a). Within thirty (30) days after LESSEE shall so notify LESSOR of its intention that this matter be settled by arbitration, LESSOR and LESSEE shall each appoint one (1) arbitrator and shall advise the other party in writing of that choice. On the failure of either party to appoint an arbitrator within ten (10) days after notification of the appointment made by the other party, the one (1) person appointed as arbitrator shall appoint a second (2nd) arbitrator to represent the party failing to make such appointment. The two (2) arbitrators, appointed in either manner, shall then determine LESSEE'S proportional share of the real estate taxes and shall make their report thereof in writing, both to LESSOR and LESSEE, within thirty (30) days after the appointment of the second (2nd) arbitrator. Such determination shall be binding, final and conclusive on the parties; and each party hereby waives any and all rights of appeal therefrom. In the event of their inability to reach a result, the two (2) arbitrators shall select a third (3rd) arbitrator; and such determination by two (2)

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P.S.A.  
A.L.H.

APPENDIX (Continued)

of the three (3) arbitrators shall be binding, final and conclusive on the parties; and each party hereby waives any and all rights of appeal therefrom. Such appraisal and determination shall be reported in writing, both to LESSOR and LESSEE, within thirty (30) days after the appointment of such third (3rd) arbitrator. If the two (2) arbitrators are unable to agree on a third (3rd) arbitrator, the Presiding Judge of the Court, then having general jurisdiction for the County in which the demised premises are situated, shall appoint such arbitrator; and such appraisal, determination, and report thereof shall be made in the same manner and time after such appointment, as hereinbefore provided.

(b). LESSOR and LESSEE shall each pay the expenses and reasonable fees of the respective arbitrator appointed by each party and one-half (1/2) of the expenses and reasonable fees of the third (3rd) arbitrator, if any. All such arbitrators shall be disinterested and impartial, and not related by blood or marriage to either of the parties. In the event those two (2) arbitrators are unable to reach a result, the third (3rd) arbitrator, who is selected, shall be an attorney at law with at least fifteen (15) years experience in the general practice of law and admitted to the practice of law in the State of Wisconsin.

(c). In arriving at their decision, the arbitrators shall consider oral and written testimony and evidence which may be presented at any formal or informal hearing, and any facts and data which they may discover or obtain by way of investigation and inquiry outside of any such hearings, together with all terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Lease on the respective dates set forth below.

IN THE PRESENCE OF:

Ray Henry  
James B. ...

LESSOR:

A. F. Anding  
A. F. Anding President  
Alfred F. Anding  
Alfred F. Anding Secretary  
Date Executed by LESSOR: 10-8-69

IN THE PRESENCE OF:

Carol Michael  
Judy Zagatti

LESSEE:

ARBY'S, INC.  
By Joseph Kasper President  
By Paul ... (Assistant) Secretary  
Date Executed by LESSEE: 9-24-69



APPENDIX (Continued)

(If LESSOR is an Individual or a Partnership)

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, a notary public in and for said County and State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, who are personally known to me to be the same persons who subscribed the foregoing Lease and Addendum and who acknowledged that they did sign this Lease and that the execution thereof is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

(If LESSOR is a Corporation)

STATE OF Wisconsin )  
 ) SS:  
COUNTY OF DANE )

BEFORE ME, a notary public in and for said County and State, personally appeared \_\_\_\_\_ The S & A Corporation, a corporation organized under the laws of the State of Wisconsin, by A. E. Anding, its President, and Alfred E. Anding, its Secretary, who are personally known to me to be the same persons who subscribed the foregoing Lease and Addendum and who acknowledged that they did sign same on behalf of said Corporation after being duly authorized so to do by its Board of Directors; and that the execution of this Lease and Addendum is their respective free act and deed and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Madison, Wisconsin, this 10th day of October, 19 69.

Margaret Henry  
Notary Public  
My Commission Expires 2/8/70

(FOR LESSEE)

STATE OF OHIO )  
 ) SS:  
COUNTY OF TRUMBULL )

BEFORE ME, a notary public in and for said County and State, personally appeared ARBY'S, INC., a corporation organized under the laws of the State of Ohio, by Sheroy B. Raffel, its President, and Max Silver, its (Assistant) Secretary, who are personally known to me to be the same persons who subscribed the foregoing Lease and Addendum and who acknowledged that they did sign same on behalf of said Corporation after being duly authorized so to do by its Board of Directors; and that the execution of this Lease and Addendum is their respective free act and deed and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Youngstown, Ohio, this 2nd day of September, 1969.

Jacqueline Bickley  
Notary Public

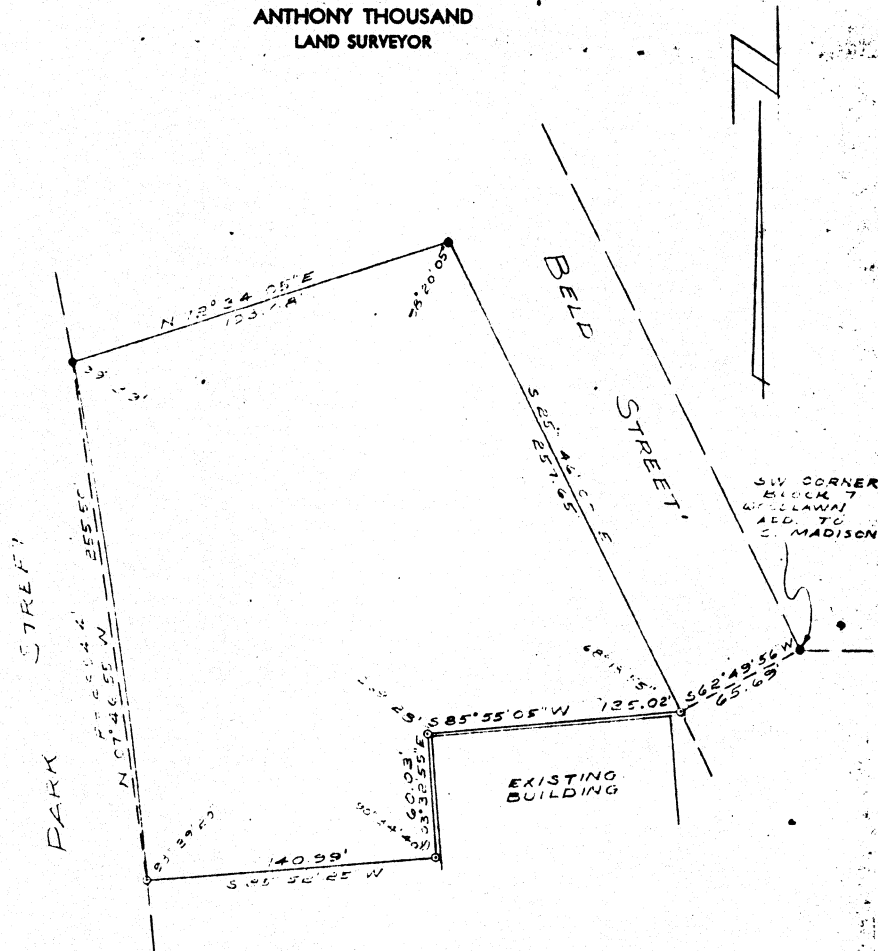
JACQUELINE BICKLEY, Notary Public  
Mahoning & Trumbull Counties, Ohio  
My Commission Expires Dec. 27, 1973

INITIAL  
HERE

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1581-51  
12/68

APPENDIX (Continued)

**PLAT OF SURVEY**  
**ANTHONY THOUSAND**  
 LAND SURVEYOR



A PARCEL OF LAND LOCATED IN THE W1/2 OF THE SE1/4 OF SECTION 26, T7N, R9E, CITY OF MADISON, DANE COUNTY, WISCONSIN, TO-WIT: COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 7, WOODLAWN ADDITION TO SOUTH MADISON; THENCE S62°49'56" W, 65.69 FEET; THENCE S85°55'05" W, 60.03 FEET; THENCE S85°52'25" W, 140.99 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WHICH HAS A RADIUS OF 2894.40 FEET AND A CHORD WHICH BEARS N07°46'55" W, 255.50 FEET; THENCE N72°34'05" E, 193.08 FEET; THENCE S25°46'00" E, 257.65 FEET TO THE POINT OF BEGINNING.



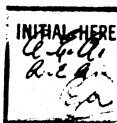
ENDING CONSTRUCTION

EXHIBIT "B"

I HEREBY CERTIFY THAT I HAVE MADE A SURVEY ACCORDING TO THE DESCRIPTION FURNISHED TO ME AND THAT THE PLAT DRAWN ABOVE IS A TRUE REPRESENTATION OF THAT SURVEY.

*Anthony Thousand*  
 ANTHONY THOUSAND

MADISON, WISCONSIN



SCALE: 1" = 60'  
 DATE: 8-15-69  
 ● IRON STAKE FOUND  
 ○ IRON STAKE PLACED  
 NO: 4-12-69

APPENDIX (Continued)

ARBY'S, INC.

AMENDMENT TO STANDARD LEASE

THIS AMENDMENT TO STANDARD LEASE made and entered into this 20th day of October, 1969, by and between THE S & A CORPORATION, a Wisconsin Corporation, of the City of Madison, County of Dane, and State of Wisconsin, hereinafter called LESSOR, and ARBY'S, INC., an Ohio corporation, of the City of Youngstown, and State of Ohio, hereinafter called LESSEE.

W I T N E S S E T H:

WHEREAS, on October 8, 1969, LESSOR leased to LESSEE certain premises described in Exhibit A, attached hereto and made a part hereof, as if fully rewritten herein, and

WHEREAS, LESSOR and LESSEE desire to alter and amend certain of the terms and conditions of the Standard Lease and Addendum attached thereto, for the purpose of clarifying their Agreement, but to maintain in full force and effect all of the other terms, conditions, provisions and covenants thereof.

NOW THEREFORE, in consideration of the premises and of the mutual covenants of the parties set forth in the aforesaid Standard Lease, and Addendum attached thereto, the parties do hereby agree as follows:

I. The Standard Lease is hereby amended by deleting Item E of the Addendum to Standard Lease in its entirety and substituting in lieu thereof the following:

"E. Lessor shall in its lease with Ponderosa Systems, Inc., which lease is referred to in Article 1 of the lease, require Ponderosa Systems, Inc., at all times during the term of that lease, or any renewal or extension thereof to procure, maintain and keep in force, general public liability insurance for claims for personal injury, death, or property damage, occurring in or about the Land, with limits of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to death or injury of a single person, not less than Three Hundred Thousand Dollars (\$300,000.00) in respect to any one accident, and not less than Ten Thousand Dollars (\$10,000.00) in respect to property damage."

Page 1 of 3 pages  
of Amendment to Standard Lease

APPENDIX (Continued)

II. The Standard Lease is hereby further amended by deleting the sixth (6th) paragraph of Item C of the Addendum to Standard Lease in its entirety and substituting in lieu thereof the following:

Neither Lessee, Lessor nor their respective Lessees, Sub-Lessees or Assignees shall, at any time during the term of this lease or any renewal or extension thereof erect any barricade, fence, obstruction, wall, curb, shrubbery, hedge or other planting, building, structure or other impediment to vehicular or pedestrian traffic, that shall in any way restrict, impair, prevent or interfere with driving or parking on the aforescribed lands, alleys, streets, roads or highways, except as indicated on the Preliminary Plot Plan, Exhibit "A", attached hereto.

III. All other provisions, conditions, terms, covenants and agreements set forth in the aforesaid Standard Lease and Addendum attached thereto, shall continue and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED IN THE PRESENCE OF:

Donald R. Huggett
Clare E. Schweitzer

LESSOR:

THE S & A CORPORATION
By A. E. Anding, President
By Alfred E. Anding, Secretary
Date Executed by LESSOR: 2/26/70

LESSEE:

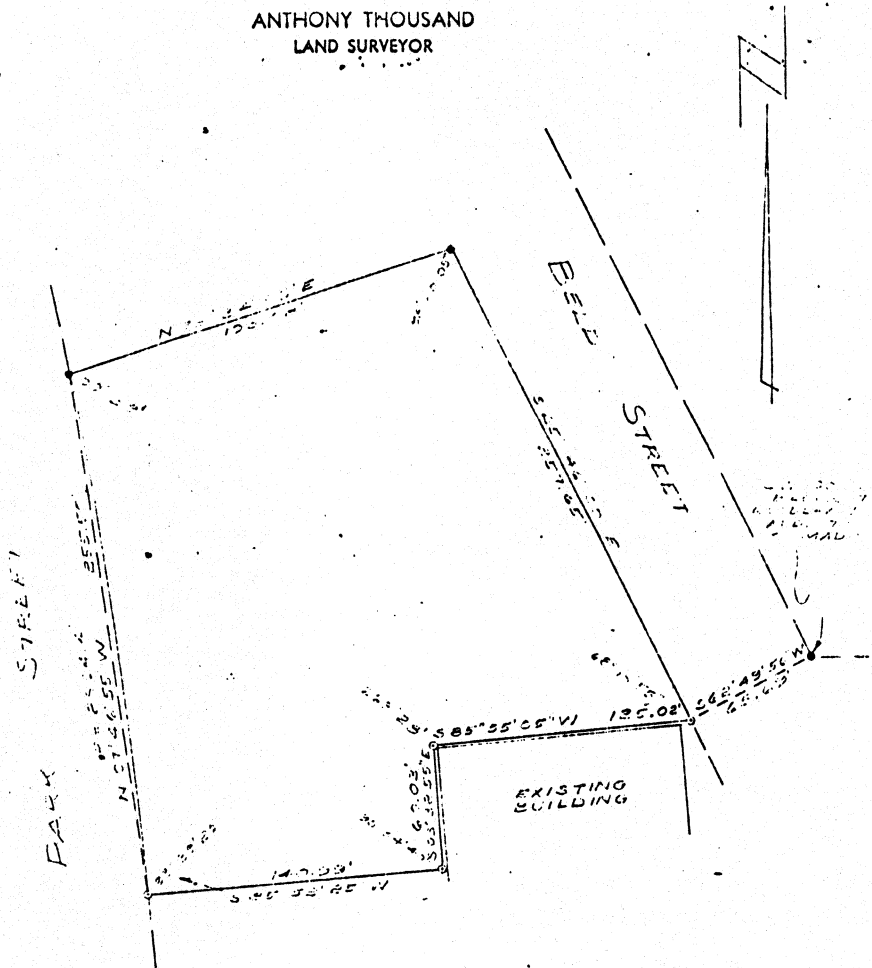
By [Signature]
By Lynne DeJulio

ARBY'S, INC.
By [Signature] UICR President
By [Signature] (Assistant) Secretary
Date Executed by LESSEE: 3/10/70

Page 6 of 11 pages of Amendment to Standard Lease

APPENDIX (Continued)

ANTHONY THOUSAND  
LAND SURVEYOR



A PARCEL OF LAND LOCATED IN THE W1/2 OF THE SE1/4 OF SECTION 26, T7N, R9E, CITY OF MADISON, DANE COUNTY, WISCONSIN, TO-WIT:  
COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 7, WOODLAWN ADDITION TO SOUTH MADISON; THENCE  $S 62^{\circ} 49' 56'' W$ , 65.69 FEET; THENCE  $S 85^{\circ} 55' 05'' W$ , 125.02 FEET; THENCE  $S 03^{\circ} 32' 55'' E$ , 60.03 FEET; THENCE  $S 85^{\circ} 52' 25'' W$ , 140.99 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WHICH HAS A RADIUS OF 2894.40 FEET AND A CHORD WHICH BEARS  $N 07^{\circ} 46' 55'' W$ , 255.50 FEET; THENCE  $N 72^{\circ} 34' 05'' E$ , 193.08 FEET; THENCE  $S 25^{\circ} 46' 00'' E$ , 257.65 FEET TO THE POINT OF BEGINNING.



ENDING CONSTRUCTION

EXHIBIT A

I HEREBY CERTIFY THAT THE TO THE ABOVE DRAWN ABOVE IS A TRUE REPRESENTATION OF THAT SURVEY.

*Anthony Thousand*  
ANTHONY THOUSAND  
MADISON, WISCONSIN

INITIAL HERE  
*U. G. G.*  
*Pa*

DATE  
● IRON STAKE FOUND  
○ IRON STAKE PLACED

APPENDIX (Continued)

(If LESSOR is a Corporation)

STATE OF WISCONSIN )  
COUNTY OF DANE ) SS:

BEFORE ME, a notary public in and for said County and State, personally appeared The S & A Corporation by A. E. Anding, its President, and Alfred E. Anding, its Secretary, who are personally known to me to be the same persons who subscribed the foregoing Amendment to Standard Lease, and who acknowledged that they did sign the same on behalf of said Corporation after being duly authorized so to do by its Board of Directors; and that the execution of this Amendment to Standard Lease is their respective free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Madison, Wisconsin, this 26th day of February, 1970.

*[Signature]*  
Donald R. Huggett, Notary Public  
My Commission is permanent.

(FOR LESSEE)

STATE OF OHIO )  
COUNTY OF TRUMBULL ) SS:

BEFORE ME, a notary public in and for said County and State, personally appeared ARBY'S, INC., by Max Silver, its Vice President, and Martin N. Hollenrich its (Assistant) Secretary, who are personally known to me to be the same persons who subscribed the foregoing Amendment to Standard Lease, and who acknowledged that they did sign the same on behalf of said Corporation after being duly authorized so to do by its Board of Directors; and that the execution of said Amendment to Standard Lease is their respective free act and deed, and the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Youngstown, Ohio, this 10th day of March, 1970.

*[Signature]*  
JACQUETTE HIGLEY, Notary Public  
Mahoning & Co. Co., Youngstown, Ohio  
My Commission Expires Dec 27, 1973

Page 3 of 3 pages  
of Amendment to Standard Lease



APPENDIX (Continued)

LEASE AMENDMENT

This Lease Amendment made on this 19<sup>th</sup> day of February, 1981 by and between ANDING ENTERPRISES, a partnership consisting of Alfred E. Anding, Jr. and Larry J. Anding as the sole remaining partners, whose address is 3310 University Avenue, Madison, Wisconsin 53705, "LANDLORD", and PONDEROSA SYSTEM, INC., a Delaware corporation with its principal office located at Dayton International Airport, Terminal Road, P. O. Box 578, Dayton, Ohio 45401, "TENANT".

W I T N E S S E T H:

WHEREAS, LANDLORD and TENANT have heretofore entered into a certain lease agreement and "Supplement to Lease", dated September 12, 1969 with respect to a certain premises located at South Park Street, Madison, Wisconsin, (the "Lease"); and

WHEREAS, LANDLORD and TENANT now desire to amend the Lease:

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, and the mutual covenants hereinafter contained, LANDLORD and TENANT do hereby agree as follows:

1. This amendment is effective January 1, 1981.
2. Article 3.1 of the Lease is deleted and the following is inserted in its place and stead:

"Provided this Lease is in full force and effect, and TENANT has met the terms and conditions of this Lease, TENANT shall have the right to renew the term of this Lease for three (3) periods of five (5) years each, respectively, under the same terms and conditions, except as expressly provided for herein, (the "Renewal Term(s)"). If the Renewal Term is to be effective, it must be exercised by TENANT by written notice of such exercise mailed to LANDLORD and postmarked no less than six (6) months prior to the commencement of the then current Renewal Term."

3. Article 4.1 of the Lease is deleted and the following is inserted in its place and stead:

"TENANT shall pay to LANDLORD rent for the premises during the Original Term as follows:

A. Twenty Two Thousand Two Hundred Dollars (\$22,200.00) per annum, payable in equal monthly installments of One Thousand Eight Hundred Fifty Dollars (\$1,850.00) payable in advance on the first day of every calendar month for the then current month, (the "Minimum Base Rent"); and

B. One Thousand Eight Hundred Dollars (\$1,800.00) per annum, payable in equal monthly installments of One Hundred Fifty Dollars (\$150.00) payable in advance on the first day of each and every calendar month for the then current month."

4. Article 4.2 of the Lease is deleted and the following is inserted in its place and stead:

"If a Renewal Term is exercised, TENANT shall pay rent during each Renewal Term as follows:

APPENDIX (Continued)

A. (i) The Minimum Base Rent increased or decreased (but not less than Twenty Four Thousand Dollars (\$24,000.00) per annum) according to the percentage fluctuation, if any, in the Consumer Price Index published by the Bureau of Labor Statistics United States Government, for urban wage earners and clerical workers, all items, All City Average, United States ("Index"), between the Index at the commencement of the Original Term of the Lease as compared to the Index at the commencement of the first Renewal Term. The annual fixed minimum rental for each year in the first renewal period shall be determined by dividing the Minimum Base Rent by the Index in effect at the commencement of the Original Term of the Lease, and multiplying that number by the Index in effect on the commencement date of the first Renewal Term ("Adjusted Minimum Base Rent") shall be payable in equal monthly installments in advance each and every calendar month during all years of the first Renewal Term; and

(ii) One Thousand Eight Hundred Dollars (\$1,800.00) per annum, payable in equal monthly installments of One Hundred Fifty Dollars (\$150.00) in advance of each and every calendar month for the then current month during the first Renewal Term.

B. During the second Renewal Term, TENANT shall pay the same rental paid by TENANT during the first Renewal Term plus Four Hundred Sixteen and 67/100 Dollars (\$416.67) per month.

C. During the third Renewal Term, TENANT shall pay the same rental paid by TENANT during the first Renewal Term plus Eight Hundred Thirty Three and 33/100 Dollars (\$833.33) per month.

5. Except as expressly amended hereby, all other terms and conditions of the Lease remain in full force and effect including, but not limited to the earned or percentage rentals payable pursuant to Article 4.3 of the Supplement to Lease.

6. For purposes of this amendment and application of this amendment to the Lease, LESSEE may be referred to as TENANT, and LESSOR may be referred to as LANDLORD.

In Witness Whereof, the LANDLORD and TENANT have executed this lease Amendment the day and year first above written.

ANDING ENTERPRISES, a partnership

By Alfred E. Anding, Jr.  
Alfred E. Anding, Jr.

By Larry J. Anding  
Larry J. Anding

LANDLORD

PONDEROSA SYSTEM, INC.

By Martin M. Starr  
Martin M. Starr  
Vice President

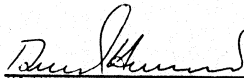
Attest John R. Mohr  
John R. Mohr  
Secretary

APPENDIX (Continued)

STATE OF WISCONSIN }  
COUNTY OF DANE } ss.

Before me, a Notary Public in and for said County and State, personally appeared the above named ANDING ENTERPRISES, a Partnership, by ALFRED E. ANDING, JR., and LARRY J. ANDING, who acknowledged that they did sign the foregoing instrument, and that they did sign the same on behalf of said partnership; that said instrument and execution thereof is the free act and deed of them individually and, as such, the free act and deed of said partnership.

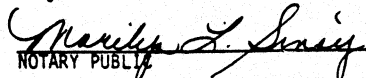
In Testimony Whereof, I have hereunto set my hand and seal at Madison, Wisconsin, this 19<sup>th</sup> day of February, 19 87.

  
NOTARY PUBLIC

STATE OF OHIO }  
COUNTY OF MONTGOMERY } ss.

Before me, a Notary Public in and for said County and State, personally appeared the above-named PONDEROSA SYSTEM, INC., by Martin M. Starr, its Vice President, and John R. Mohr, its Secretary, who acknowledged that they did execute the foregoing instrument; and that they did sign the same on behalf of said corporation; that said instrument and execution thereof is the free act and deed of them individually and, as such, the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and seal at Dayton, Ohio this 25<sup>th</sup> day of February, 1981.

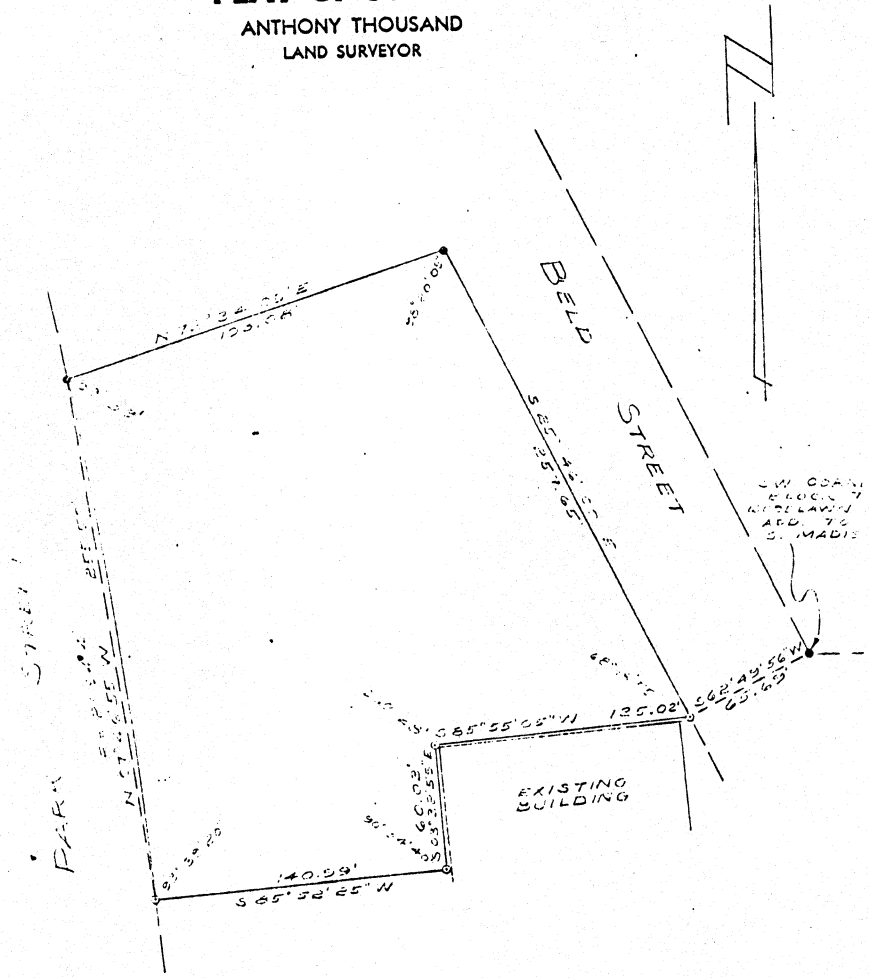
  
NOTARY PUBLIC

MARILYN L. SINAY, Notary Public  
In and for the State of Ohio  
My Commission Expires Dec. 19, 1983

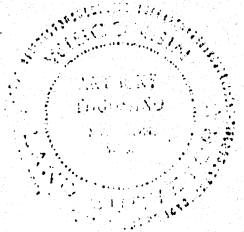
APPENDIX (Continued)

PLAT OF SURVEY

ANTHONY THOUSAND  
LAND SURVEYOR



A PARCEL OF LAND LOCATED IN THE W1/2 OF THE SE1/4 OF SECTION 26, T7N, R9E, CITY OF MADISON, DANE COUNTY, WISCONSIN, TO-WIT: COMMENCING AT THE SOUTHWEST CORNER OF BLOCK 7, WOODLAWN ADDITION TO SOUTH MADISON; THENCE  $S 62^{\circ} 49' 56'' W$ , 65.69 FEET; THENCE  $S 85^{\circ} 52' 25'' W$ , 125.02 FEET; THENCE  $S 03^{\circ} 32' 55'' E$ , 60.03 FEET; THENCE  $S 85^{\circ} 52' 25'' W$ , 140.99 FEET TO A POINT ON A CURVE; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT WHICH HAS A RADIUS OF 2894.40 FEET AND A CHORD WHICH BEARS  $N 07^{\circ} 46' 55'' W$ , 255.50 FEET; THENCE  $N 72^{\circ} 34' 05'' E$ , 193.08 FEET; THENCE  $S 25^{\circ} 46' 00'' E$ , 257.65 FEET TO THE POINT OF BEGINNING.



*WATL*  
*G. E. G.*  
*L.P.C.*

PENDING CONSTRUCTION

I HEREBY CERTIFY THAT I HAVE MADE A SURVEY ACCORDING TO THE DESCRIPTION FURNISHED TO ME AND THAT THE PLAT DRAWN ABOVE IS A TRUE REPRESENTATION OF THAT SURVEY.

ANTHONY THOUSAND

MADISON, WISCONSIN

SCALE: 1" = 60'  
DATE: 8-15-63  
● IRON STAKE FOUND  
○ IRON STAKE PLACED  
NO: 1111111111

APPENDIX (Continued)



PONDEROSA SYSTEM, INC.

Actual completion date 3/1/70

LEASE

THIS LEASE, made on this 12 day of September, 19 69, by and between ANDING ENTERPRISES, a Wisconsin partnership consisting of A. E. Alfred E. Anding and Larry J. Anding, as co-partners SYSTEM, INC., a Delaware corporation with its principal office located at 3661 Salem Avenue, Dayton, Ohio, as "LESSOR," and PONDEROSA SYSTEM, INC., a Delaware corporation with its principal office located at 3661 Salem Avenue, Dayton, Ohio, as "LESSEE,"

WITNESSETH:

In consideration of the rents and covenants hereinafter set forth, the LESSOR and LESSEE agree as follows:

ARTICLE I PREMISES

1.1 The LESSOR leases to LESSEE and LESSEE rents from LESSOR premises located in the County of Dane State of Wisconsin, a legal description of which will be supplied by LESSOR after the execution of this lease and attached hereto and made a part hereof and designated "Exhibit A."

at LESSEE'S expense

1.2 Within 30 days after execution of this lease there shall be attached hereto and made a part hereof a state survey of the premises provided by the LESSOR certified by a licensed surveyor, engineer or architect, which, LESSOR warrants accurately reflects all boundary lines, encroachments, utilities, underground and above and easements of other rights of way across the premises. Such survey is to be designated "Exhibit B."

INITIAL WJC 3/1/70

consisting of the building outlined in red as shown on Plot Plan attached hereto, which land is located on the land outlined in blue on said Plot Plan.

ARTICLE II TERM

2.1 TO HAVE AND TO HOLD the above premises for a term to commence upon the day when LESSEE opens for business or upon substantial completion of improvements to be constructed by LESSOR, whichever occurs first. The term of this lease shall end on the last day of the full lease year and shall be for a term of 20 years.

2.2 "Lease year" shall mean each twelve month period beginning with the first day of the term of this Lease, and each yearly anniversary thereof, provided the commencement of the term of this Lease is on the first day of the month. If the term of this Lease commences on any day other than the first day of the month, then "lease year" shall begin on the first day of the month following the end of the month during which the term of this Lease commences. Any period prior to the "lease year" or any period subsequent to the "last lease year" within the term of this Lease shall be adjusted with respect to rent or any other matters provided in this Lease in which the lease year is a factor. Substantial completion shall include complete blacktop

ARTICLE III OPTIONS TO RENEW

3.1 Provided this Lease is in full force and effect, LESSEE shall have the option to renew this Lease for one (1) year term of five (5) years hereinafter set forth and under the same terms, conditions and provisions as established and herein provided for the original term of the Lease. Any renewal option to be effective must be exercised by LESSEE by written notice received by LESSOR at least six (6) months prior to the commencement date of the renewal term.

ARTICLE IV RENT

4.1 The LESSEE agrees to pay to the LESSOR as rent for the premises during the term hereof the sum of Twenty Two Thousand Dollars (\$22,200.00) per year payable at 3310 University Ave., Madison in monthly installments of One Thousand Eight Hundred Fifty Dollars (\$1,850.00) each on the first day of every calendar month during said term, in advance.

ARTICLE V FIRST REFUSAL TO PURCHASE

5.1 The LESSOR agrees that if he shall receive a bona fide offer to purchase said premises during the term of this Lease, or any extensions thereof, which offer LESSOR proposes to accept, LESSOR will deliver or mail by certified mail to the LESSEE a writing showing the price and terms thereof, and the LESSEE shall have the right and option, provided written notice of the exercise of the option is delivered personally or mailed by certified mail to the LESSOR within fifteen (15) days thereafter, to purchase said premises at the price and on the terms set forth in said writing. (This Article V has been deleted in its entirety.)

ARTICLE VI CONSTRUCTION OF IMPROVEMENTS

6.1 Within 30 days after execution of this Lease LESSOR will provide LESSEE with a Plot Plan which shall be designated "Exhibit C" and attached hereto and made a part hereof. LESSOR will construct within the area outlined on said "Exhibit C," designated "Plot Plan," a building and will improve the remaining areas of the premises by grading, leveling, paving, marking and landscaping the same and by constructing thereon walks, drives, curbs, illumination, standards, equipment, and storm sewers, all in accordance with final working plans and specifications approved by LESSOR and LESSEE and identified as PONDEROSA PLOT PLAN 242

INITIAL WJC 3/1/70

6.2 LESSEE shall have the right at any time or times either prior to or during the progress of the work, by signing a written order and delivering one signed copy to LESSOR'S general architect, to modify or eliminate any item or detail included in the final working plans and specifications and/or substitute and/or to add other items or details not shown on such final plans and specifications in which event LESSOR shall comply with LESSEE'S requests.

6.3 LESSEE shall commence construction of the building and improvements stated in Section 6.1 with reasonable promptness after the execution of this Lease. If LESSOR has not started construction of the improvements within sixty (60) days, LESSEE shall have the right to terminate this Lease; provided, however, that if any delay in construction caused by acts of the LESSEE or its agents, shall result in an extension of time for LESSOR in which this Lease may not be terminated by LESSEE, said extension not to exceed the period of time of delay caused by LESSEE or its agents. Further delays caused by events described in Section 6.5 shall toll the period of extension by LESSEE to the extent of delay caused by such events.

6.4 At all times until completion of LESSOR'S work LESSEE shall have the right to enter upon the premises for the purpose of inspecting construction and progress of the improvements.

6.5 If LESSOR does not complete the improvements within one hundred eighty (180) days, LESSEE has the right to terminate this Lease. The date for completion of the improvements before which LESSEE may not terminate this Lease, shall be extended by the amount of time equal to the time resulting from delays caused (1) by acts or failures to act on the part of LESSEE and (2) by reason of fire, tornado, windstorm, adverse or unfavorable weather conditions, or other acts of God, or any strike, lockout, riot, governmental regulations by reason of any other cause beyond

APPENDIX (Continued)

6.6 The amount of LESSOR'S obligations under this Article shall not exceed \$ 90,000.00. All construction and improvement costs in excess of \$ 90,000.00 shall be paid by LESSEE. Such excess all may be LESSOR'S option paid in one lump sum upon presentation by LESSOR of satisfactory evidence as to construction costs (excluding real estate commissions, legal fees and other non-direct expenses) LESSOR'S option engineering, architectural and surveying costs and license and permit fees. Construction costs include

6.7 If LESSOR does not complete the building and improvements by the time LESSEE opens for business as provided above, then LESSEE shall be relieved of all rent due until said building and improvements are so completed and LESSOR shall forfeit all rights and claims to the rent for the period in which the building and/or improvements are incomplete as liquidated damages in order to compensate the LESSEE.

6.8 LESSOR acknowledges that the contractor or builder of all the improvements on the premises shall be the contractor or builder selected by LESSOR or LESSOR'S architect. LESSOR acknowledges that neither LESSEE nor any representatives of LESSEE recommends any contractor or builder as being approved or accepted by LESSEE.

ARTICLE VII MEMORANDUM OF LEASE

7.1 Since the parties herein intend that this Lease shall not be recorded, LESSOR and LESSEE agree to execute and record a short form lease, entitled "Notice of Lease."

ARTICLE VIII TAXES AND ASSESSMENTS

8.1 LESSEE covenants and agrees to pay and discharge before delinquency thereof and before penalties shall accrue thereon, all taxes and assessments on the premises due and payable during the term of this Lease and renewal thereof, provided, however, that all taxes and assessments during the first and last years of this Lease, as defined, shall be equitably apportioned between LESSOR and LESSEE. (This Article replaced by Supplement to Lease)

ARTICLE IX UTILITIES

9.1 LESSEE shall pay or cause to be paid all charges for water, gas, sewer (except as provided in ARTICLE VIII), electricity, light, heat or power, telephone or other service used, rendered or supplied to or in connection with the premises during the terms of this Lease and any renewals thereof.

ARTICLE X INSURANCE

10.1 During the term of this Lease and any renewals of it, LESSEE shall maintain and provide general liability insurance for the benefit and protection of both LESSOR and LESSEE in an amount not less than TWO HUNDRED THOUSAND DOLLARS (\$200,000) for injury to any one person and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for injuries to more than one person arising out of any one accident or occurrence and for damage to property in an amount not less than FIFTY THOUSAND DOLLARS (\$50,000). LESSEE shall provide LESSOR with written proof of such coverage.

10.2 LESSOR shall provide proof of coverage for period prior to the commencement date of this Lease in the amounts provided in Section 10.1.

10.3 LESSEE shall maintain and provide during the term of this Lease and any renewals thereof, fire and extended coverage insurance insuring all the improvements in an amount equal to the replacement value of the improvements exclusive of foundations and excavations. Such fire and extended coverage insurance policies shall be in the names of the LESSOR and LESSEE as their respective interests may appear. LESSEE shall provide LESSOR with written proof of such insurance at LESSOR'S request.

ARTICLE XI DESTRUCTION OF PREMISES

11.1 If the demised premises shall be totally destroyed by fire or other casualty covered by LESSOR'S policy of fire and extended coverage insurance during the first ten (10) years of this Lease, then LESSOR shall replace the demised premises with a building conforming to the specifications of the building which was destroyed, the same to be done as soon as possible after the insurance adjustments but in no event later than six (6) months from the destruction of the building. If such destruction occurs after said ten-year period, then LESSEE at its option may terminate this Lease or may cause LESSOR to replace the building destroyed by LESSOR to the balance of the term of the Lease as well as to the balance of the term of the Lease by notice to the other party within 30 days of such loss.

11.2 In the event of total destruction of the premises, including the parking area as above mentioned, or such partial destruction whereby LESSEE cannot reasonably operate, LESSEE'S rent shall completely abate from the date of such destruction until possession of the rebuilt premises is delivered to the LESSEE. In the event of any other partial destruction or damage whereby LESSEE shall be deprived of the occupancy of only a portion of said premises, including the parking area, then the rent shall be equitably reduced and apportioned according to the area of the premises which is unusable by LESSEE until such time as the premises shall be repaired or restored.

11.3 For the purpose of paying towards the cost of such repairs, replacement or rebuilding, LESSOR, its mortgagees and LESSEE shall make available all net sums received under insurance policies covering such loss, in reimbursement for work and materials actually incorporated in the premises.

ARTICLE XII ASSIGNMENT AND SUBLETTING

12.1 LESSEE shall have the right to sublease the premises or assign its rights under this Lease in whole or in part. Notwithstanding any such sublease or assignment, however, LESSEE shall remain liable for the performance of all obligations contained in this Lease.

ARTICLE XIII REPAIRS

13.1 Except as otherwise provided in this Lease, LESSEE agrees to make all necessary repairs and to keep the premises and improvements in the same condition as of the date it takes possession excepting reasonable use and damage.

13.2 LESSEE further covenants to operate and keep the premises in clean and sanitary condition, according to all applicable laws and codes.

13.3 LESSEE shall maintain and keep in good condition for the term of this Lease and any renewals thereof, the driveways and parking area.

ARTICLE XIV MORTGAGES

14.1 LESSEE agrees to execute any instrument necessary to evidence subordination of this Lease to any mortgage of LESSOR, provided that any mortgagee acknowledges the validity of this Lease.

ARTICLE XV MUTUAL RELEASES

15.1 LESSEE at its option may be released from this Lease if it complies with the following conditions: presenting LESSOR with a minimum six (6) months' notice by certified mail; paying all rents and other monies due to the date of release; paying LESSOR an additional FIVE THOUSAND DOLLARS (\$5,000) on the date of release; and vacating the premises within sixty (60) days of the receipt of such notice. Upon the satisfaction of the above conditions LESSEE shall be relieved from all obligations under this Lease.

15.2 LESSOR may re-let the premises sixty (60) days after receipt of such notice as stated in section 15.1 without

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H.A.

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H.A.

Provided that said subletting or assignment be to a franchisee or franchisee licensee; all other assignments or subleases shall require LESSOR'S prior written consent, not unreasonably withheld.



APPENDIX (Continued)

(representing portion of cost of improvements) less depreciation at a rate of \_\_\_\_\_ per cent per year beginning and including first year of the lease term. The balance of the initial amount has been depreciated shall be paid in monthly installments to the LESSOR by the LESSEE over the remaining months of the original term of this Lease with the first payment due within thirty (30) days after the effective date of the mutual release.

15.4 In the event LESSEE decides to utilize Section 15.1 during any renewal period of this Lease, then Section 15.3 shall not apply and LESSEE shall be liable only for the amounts stated in Section 15.4. (Articles XV and XVI have been deleted in their entirety.)

ARTICLE XVI  
OPTION TO PURCHASE

16.1 LESSOR grants LESSEE the right and option to purchase the leased premises after \_\_\_\_\_ years of the term of the Lease and any renewals thereof for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) provided rents have been paid and all other covenants to be performed by LESSEE have been duly performed and provided thirty (30) days notice of exercise of this option is given to the LESSOR by LESSEE.

16.2 Upon the exercise of this option and payment, LESSOR agrees to deliver a good and sufficient warranty deed conveying a marketable title to the premises to LESSEE, free of dower with a covenant against encumbrances and any other charges for which the LESSOR is liable, or has prepaid shall be adjusted and prorated as of the date the deed is delivered.

ARTICLE XVII  
CHATTLES AND FIXTURES

17.1 LESSOR waives all claims to any chattels or equipment affixed to the premises by LESSEE or its sublessee and LESSEE or its sublessee may remove the same at the expiration or termination of this Lease and/or its renewals, repairing any damage caused by removal.

ARTICLE XVIII  
CURATIVE PROVISION

18.1 LESSEE shall have thirty (30) days after receipt of written notice from LESSOR to cure any default of obligation under the terms of this Lease. If LESSEE fails to correct such defaults LESSOR may terminate this Lease and retake possession of the premises. Upon reentry and regaining possession of the premises, LESSOR shall let the premises at a reasonable rental and upon such terms as may reasonably be obtained under the circumstances.

ARTICLE XIX  
EMINENT DOMAIN

19.1 If the whole of the leased premises shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, the term of this Lease shall terminate and cease from the date when possession shall be so taken.

19.2 If only a portion of the leased premises shall be taken or condemned by competent authority for a public or quasi-public use or purpose, and if

- (a) the part so taken includes the building or any part thereof, or if
- (b) the part so taken shall remove from the premises 10% or more of the front depth of the parking area thereof, or if
- (c) the part so taken shall consist of 25% or more of the total parking area, or if
- (d) the taking shall result in cutting off direct access from the leased premises to any adjacent public street or highway, the LESSOR or the LESSEE may, at any time prior to or within sixty (60) days after the date possession of the premises shall be required by the condemning authority, elect to terminate this Lease. If neither party shall exercise such option to terminate this Lease within such period of time the LESSOR shall, with reasonable promptness, make the necessary repairs to and alterations of the improvements on the leased premises to the extent that they have been necessitated by such condemnation. To the extent that the LESSEE'S possession of the leased premises may be impaired, the rent hereinabove specified shall abate proportionately.

19.3 If, after the execution of this Lease, there is constructed by the proper authorities a raised media strip in the streets and highways upon which the leased premises abut, which medial strip interferes with the free passage of traffic traveling in both directions on the streets and highways to and from the leased premises, or in the event of the reduction or relocation by the proper authorities of the number of curb cuts as shown on the Plot Plan referred to in Article VI, Section 6.1, leading from the streets and highways to the leased premises, or if turns by traffic traveling on the streets and highways shall be restricted or prohibited by the proper authorities, thereby interfering with the entry of such traffic into the leased premises, the rent for the leased premises shall be reduced in the same proportion as any of such occurrences shall restrict the flow of traffic to and from the leased premises. If the parties shall be unable to agree as to the amount of reduced rent, the matter shall be referred to arbitration, the LESSOR and the LESSEE each to choose an arbitrator, and the two so chosen to choose a third one, and the decision of a majority of the arbitrators shall be binding on both parties.

19.4 In the event that all or part of the demised premises shall be taken or expropriated by public or quasi-public authority and the compensation, therefor, is not allocated between the respective interests of the LESSOR and LESSEE, and provided further, that the LESSOR and LESSEE cannot agree between themselves as to the allocation of the compensation, then the LESSOR and LESSEE agree to the following:

- a. The LESSOR and LESSEE shall each immediately appoint an arbitrator. Said arbitrators shall be members of the Arbitration Association and/or licensed real estate brokers. Said arbitrators shall appoint one additional arbitrator within seven days, and said three arbitrators shall then constitute an arbitration panel which shall determine the allocation of the compensation award between the LESSOR and LESSEE for the expropriated property. The decision of said panel shall be reduced in writing and signed in duplicate and one duplicate delivered to each of the parties and shall be final and conclusive upon both the LESSOR and LESSEE.
- b. All costs and expenses of said arbitration proceedings shall be divided equally between and paid one-half by LESSOR and one-half by LESSEE.

ARTICLE XX  
COVENANTS OF LESSOR

20.1 LESSOR covenants and warrants that LESSOR has the lawful right and authority to make this Lease; and that LESSEE, upon paying the rent herein reserved and performing and observing the covenants and conditions herein contained on LESSEE'S part to be performed and observed, shall and will peacefully and quietly have, hold and enjoy the premises for the full term of this Lease and any extensions thereof, except in the event of the taking of premises by public or quasi-public authority as provided in Article XIX, above.

20.2 LESSOR covenants that there are no restrictions, covenants, easements, rights-of-way, zoning restrictions or ordinances or regulations which prevent construction ~~xxxxxx~~ of a PONDEROSA RESTAURANT on the premises.

20.3 At the written request from LESSEE, given within thirty (30) days after execution of this Lease, LESSOR shall provide a title guarantee in the name of LESSEE upon the premises in an amount equal to the cash rental for the first year of the term of this Lease. Should said title guarantee disclose any defects in title which prevent LESSOR from carrying out LESSOR'S obligations under this Lease, then LESSEE shall have the option, for a period of thirty (30) days after receipt of said title guarantee, by a notice in writing to LESSEE, to terminate this Lease without liability to LESSEE, in damages or otherwise.

- 20.4 LESSOR shall furnish no later than the time of the completion of construction:
- (a) Evidence satisfactory to LESSEE that the premises are zoned for the purpose and use intended under this Lease;
  - (b) All necessary permits and licenses for the erection of a PONDEROSA RESTAURANT on the premises including but not limited to the free-standing PONDEROSA sign;
  - (c) Public utilities, including but not limited to gas, water, electricity, telephone, sanitary and storm sewer on the premises.

20.5 In the event LESSOR fails to comply with Section 20.4 LESSEE may itself secure the same information at



APPENDIX (Continued)

"SUPPLEMENT TO LEASE"

(For purposes of this Supplement, LESSEE may be referred to as TENANT)

4.2 In the event LESSEE exercises its right to renew this lease as aforesaid, the annual fixed minimum for each year of the renewal lease period shall be determined by dividing the fixed minimum annual rental applicable to the original term of this lease, as the same may be amended as to amount existing on the last day of said primary term, by the cost of living index in effect on the date LESSEE'S rent commences under this lease, and multiplying that number by the index in effect on the commencement date of said renewal term, but in no event shall said fixed minimum annual rental be less than the fixed minimum annual rental applicable to the primary term of this lease as the same may hereafter be amended. The cost of living index shall be that index as determined by the Bureau of Labor Statistics of the U. S. Department of Labor, or whichever governmental department shall have assumed such function, using the regional index applicable to the region in which these premises are located, if available.

4.3 In addition to the fixed rental hereinabove required to be paid, the Tenant shall pay to the LESSOR five (5%) percent (hereinafter called the "percentage") of all gross sales made by the Tenant from or upon the demised premises in each lease year in excess of Four Hundred Seventy-Five Thousand (\$475,000.00) Dollars (which sum is hereinafter referred to as "Quota Sales"). Earned rental for partial lease years shall be prorated.

The Tenant shall furnish to the LESSOR, on or before the fifteenth (15) day of each month by U. S. certified mail, an accurate and correct statement, duly certified by the Tenant, reflecting the amount of gross sales made upon the demised premises by the Tenant for the preceding month. The aforesaid certified statement for the first full month of the lease year shall include gross sales for the preceding fractional month if the Tenant's initial obligation for payment of rentals herein reserved shall have accrued other than on the first day of a calendar month, and the earned rental for the first month shall be computed accordingly. The LESSOR shall have the privilege, at its option of examining the books and records of the Tenant in order to determine the gross volume of business conducted on the demised premises during the term of this lease.

Within Thirty (30) days after the close of each lease year, the Tenant shall deliver via U. S. certified mail an annual statement to the LESSOR showing the total of all gross sales made upon the demised premises by the Tenant during the lease year, which annual statement shall be duly verified by a qualified officer of the Tenant and by a recognized qualified independent auditor.

The Tenant shall pay to the LESSOR, annually the "percentage" of the gross sales made in such year in excess of the "quota sales" as defined above.

*C.G.C.*  
*3/2/70*  
*H.A.*  
*W.C.*

APPENDIX (Continued)

By the term "gross sales" as used herein is meant the aggregate of all sales of every kind, type, and description, and services performed for patrons, whether for cash or for credit, made in, upon, or from the demised premises by the Tenant or by any sub-lessee, licensee, concessionaire, or other occupant of part or all of said demised premises, or resulting from the conduct of the business upon the demised premises, or all orders taken in or from the leased premises though filled elsewhere, or orders resulting from mail or telephone, or procured from the leased premises by house to house or other types of canvassing or resulting from inquiry directed to the leased premises, but deducting therefrom credits, allowances, and refunds arising by virtue of the return of merchandise by customers or refunds made in the normal or usual conduct of said business and excluding likewise therefrom such taxes, federal or state, which the Tenant may collect for and on behalf of any governmental unit, which taxes are not included in the sales price of the merchandise.

The term "gross sales" shall not include the mere exchange or transfer of merchandise between the stores of the Tenant, if any, where such exchanges or transfers of merchandise are made solely for the convenient operation of the business of the Tenant and not for the purpose of consummating a sale made at, in or upon the leased premises, or for the purpose of depriving the LESSOR of the benefit of a sale which would otherwise be made at, in, from or upon the said leased premises.

If any audit made on behalf of the LESSOR discloses an error in any statements furnished by the Tenant establishing a deficiency in sales reported, in an amount equal to or greater than one percent (1%) of the actual sales disclosed by such audit, the Tenant shall pay the costs of any such audit as well as any deficiency in earned rental. In the event such audit shall disclose an error of three percent (3%) or more of sales, reporting three (3) times the deficiency of earned rental so disclosed, and the LESSOR may, at its option, upon ten (10) days notice after discovery of such deficiency cancel and terminate this lease.

Lessee agrees to pay and liquidate damages for such

The Tenant agrees to keep full, true, and accurate accounts, records and books of all purchases, sales inventory, credits, and all other information reasonably necessary or pertinent to determining the rentals due from the Tenant to the LESSOR from receipts as above defined, all of which accounts, records and books shall be kept by the Tenant at a place reasonably available for the LESSOR'S inspection, and which records the Tenant need not keep for longer than three years. All information which the LESSOR may obtain from the examination of the Tenant's records shall be kept strictly confidential except as revelation thereof may be necessary to enforce the provisions of this lease.

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reporting then, in addition to the cost of such audit,  
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B-2  
F.P.A.  
W.R.

The Tenant agrees that it will use the demised premises for the purpose of conducting thereon a Ponderosa franchised or owned restaurant in compliance with all applicable laws, ordinances, and regulations of federal, state, and local governments, and for no other purpose without the consent of the LESSOR first had and obtained in writing. The Tenant further agrees not to engage directly or indirectly nor through subsidiary or affiliated corporations or other related commercial vehicles in the same or in any similar business within a radius of three (3) miles from the

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L.I.L.  
F.P.A.  
W.R.

APPENDIX (Continued)

extreme limits of said described area during the term of this lease and for a period of one (1) year thereafter.

The Tenant shall continuously and uninterruptedly, during the lease term, occupy and use the entire leased premises for the purpose or purposes herein specified, and shall continuously use not less than 100% of the premises for such purposes, except during any time the premises may become untenable by reason of fire or any casualty.

INITIAL  
B.G.P.  
W.C.C.  
J.P.A.

The Tenant shall not change its advertised name of Ponderosa at this location used by it without the written consent of the LESSOR first had and obtained in writing.

8.1 It is understood and agreed that LESSOR will construct upon the legally described area a building suitable for an Arby's Restaurant, and lease same to Arby's, Inc. Said Arby's building, as the same may hereafter be altered, added to or enlarged, shall together with the building to be constructed as provided in this lease, constitute the only buildings on the demised premises during the term of this lease. In the event LESSOR shall fail to enter into a lease with Arby's, Inc., or if said Arby's lease shall be terminated or cancelled prior to the time LESSOR commences construction of the building provided for in this lease, then LESSOR may, upon written notice to LESSEE, cancel this lease and all of LESSOR'S obligations thereunder shall thereupon terminate.

LESSEE shall pay, as additional rental herein, its proportionate share of all real estate taxes and assessments, both special and general, which apply to or shall become due and payable on the demised premises during the term of this lease and any renewal or extension hereof.

LESSEE'S proportionate share of real estate taxes is defined as follows: In the event separate assessments are obtained on the Arby's building and upon the Ponderosa building, then LESSEE'S share of the real estate tax shall be that portion of the tax attributable to improvements represented by the proportion the assessment on the Ponderosa building represents to the assessment on both buildings, plus 6/10ths of the assessment attributable to land. In the event separate assessments are not obtained, then LESSEE'S share of the real estate taxes shall be 6/10ths thereof.

LESSEE'S proportionate share of special or general assessments other than real estate taxes shall be 6/10ths thereof.

18.1 It is mutually agreed that in the event the Tenant shall default in any of the terms and provisions of this lease other than payment of rent, the Lessor may forward written notice of such default by U. S. certified mail, addressed to the Tenant as hereinbefore set forth, and the Tenant agrees that if it be in default as set forth in such notice it will cure such default within twenty (20) days after the date of mailing of such notice (or in the event such default is of such a character as to require more than twenty (20) days to cure, the Tenant will use due diligence to cure such default). And, in the event the Tenant shall fail to cure such default as herein set forth, the LESSOR may cure such default and the cost and expense thereof shall be deemed to be additional rent to be paid by the Tenant on the next day when fixed monthly rental shall become due and collectible.

B.G.P.  
W.C.C.  
J.P.A.  
W.K.

APPENDIX (Continued)

If, however, after due notice to the Tenant of an opportunity to cure the same, the Tenant shall refuse to cure or make good any such default, the LESSOR may, at its option, terminate this lease.

Failure to give notice of any default shall not be deemed to be a waiver thereof not consent to the continuation thereof.

Neither this lease, nor any interest therein nor any estate thereby created shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law. In the event the estate created hereby shall be taken in execution or by other process of law, or if the Tenant shall be adjudicated insolvent or bankrupt pursuant to the provisions of any state or federal insolvency or bankruptcy act, or if a receiver or trustee of the property of the Tenant shall be appointed by reason of the Tenant's insolvency or inability to pay its debts, or if any assignment shall be made of the Tenant's property for the benefit of creditors, then and in any such events the LESSOR may at its option, in addition to the remedies provided herein, terminate this lease and all rights of the Tenant herein by giving to the Tenant notice in writing of the election of the LESSOR so to terminate. The Tenant shall not cause or give cause for the institution of legal proceedings seeking to have the Tenant adjudicated bankrupt, reorganized or rearranged under bankruptcy laws of the United States, and shall not cause or give cause for the appointment of a trustee or a receiver for the Tenant's assets, and shall not make an assignment for the benefit of creditors or become or be adjudicated insolvent. The allowance of any petition under the bankruptcy laws, or the appointment of a trustee or a receiver of the Tenant or its assets, shall be conclusive evidence that the Tenant caused, or gave cause therefor, unless such allowance of the petition, or the appointment of a trustee or receiver, is vacated within thirty (30) days after such allowance or appointment.

If the Tenant shall abandon or vacate the demised premises before the end of the term of this lease, or shall suffer any installments or rent or other payment to be in arrears, or shall neglect or fail to keep and perform any other provisions or terms of this lease on the part of the Tenant to be kept and performed, the LESSOR after notice as hereinabove provided, may enter said premises and remove any signs of said Tenant therefrom, and relet the same as the LESSOR may see fit, without thereby voiding or terminating this lease. And if a sufficient sum shall not be realized from such reletting after payment of the expenses of such reletting to equal the monthly rentals stipulated to be paid by the Tenant under the provisions of this lease, plus the LESSOR'S cost for remodeling such premises for such reletting purposes plus reasonable fees therefor, then the Tenant agrees to pay said deficiency during each month during the entire term, on demand, it being expressly agreed that no surrender of the demised premises, and no action taken on the part of the LESSOR to repossess itself as of its former estate, shall release or relieve the Tenant of its continued liability for the payment of rent, unless such release be evidenced by written consent to the Tenant from the LESSOR.

In computing damages for rental due under this lease, the value of earned rental for any period subsequent to the termination of this lease shall be an amount per year equal to one-third (1/3) of the total earned rental paid or payable by the Tenant for the last three (3) full lease years immediately

*C. B. B.*  
*A. B.*  
*J. H.*  
*W. H. L.*



APPENDIX (Continued)

preceding such termination, and if less than three(3) full lease years shall have elapsed, such value shall be an amount per year equal to the average yearly earned rental theretofore paid or payable by the Tenant.

All rights and remedies of the LESSOR herein enumerated shall be cumulative and none shall exclude any other right or remedies allowed by law, and such rights and remedies may be exercised and enforced concurrently and whenever and as often as the occasion therefor arises, and failure on the part of the LESSOR to enforce any of its remedies in connection with any default shall not be deemed a waiver of such default nor a consent to any continuation thereof.

19.1 In the event the demised premises shall be condemned or taken by Eminent Domain by any authority having the right of Eminent Domain, or if purchased by such authority in lieu of condemnation of said premises, then the term of this lease shall cease and terminate as of the date title vests in the condemnor and all rentals shall be paid up to that date, and the Tenant shall have no claim against the owner for the value of any unexpired term of the lease.

In the event part of the demised premises shall be taken by Eminent Domain by any authority having the right of Eminent Domain, or if purchased by such authority in lieu of condemnation of said premises, and such purchase or taking shall render the remainder of the demised premises unsuitable for the business of the Tenant, then the term of the lease shall cease and terminate at the same time and in the same manner as if the entire demised premises had been taken.

In the event a partial taking of the demised premises does not render the remainder of the demised premises unsuitable for the business of the Tenant, then the LESSOR shall promptly restore the leased premises to a condition reasonably comparable to the condition of the demised premises at the time of the commencement of such condemnation proceedings and thereafter this lease shall continue in force without diminution of rental.

If the entire Parking Area of the legally described area of which the demised premises are a part, shall be acquired or taken by Eminent Domain, then this lease shall cease and terminate in the same fashion and at the same time as if there were a total taking of the demised premises unless the LESSOR shall provide Parking Areas within ninety (90) days from the date the Parking Areas are acquired by the condemnor to the extent of at least seventy-five (75%) percent of that taken.

If any part of the Parking Area of the legally described area shall be condemned, and if, as a result of such condemnation the Parking Area shall be reduced to less than fifty (50%) percent of the Parking Area, the term of this lease shall end unless the LESSOR shall, within six (6) months after taking of such area provide parking space so as to increase the parking area to at least seventy-five (75%) percent of its former area.

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APPENDIX (Continued)

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WPK	BSC
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In the event the entire legally described area or more than one-third (1/3) thereof shall be condemned or taken by Eminent Domain by any public authority having the right of Eminent Domain, or if purchased by such authority in lieu of condemnation of such premises, then, at the option of the LESSOR or LESSOR this lease shall terminate and the Tenant shall surrender the possession of the premises.

Article XXVII. Parking Facilities and Common Areas. The LESSOR shall furnish parking facilities of concrete, cement compound, or bituminous surface pursuant to plans and specifications in such area and in such location as shown on Exhibit "A". Such parking facilities and all space within the legally described area that is not designated for rental to or for the exclusive use of tenants, whether enumerated above or not, are herein referred to as the "common area". Such common area shall be available to tenants, their customers and invitees under a license and not as a part of the demised premises. The LESSEE and Arby's, Inc. as tenants of the other building to be constructed on the legally described area, jointly shall maintain the common area in good condition and repair.

*C.F.R.  
B.S.C.  
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IT IS UNDERSTOOD AND AGREED that Lessee shall be obligated to maintain only that portion of the common area outlined in red on the attached "EXHIBIT A" and Arby's, Inc., the tenant of the other building on the legally-described area, shall be obligated to maintain the balance of the common area.

IT IS FURTHER UNDERSTOOD AND AGREED that both the Lessee and Arby's, Inc. shall have access to all of the common area, as outlined in this Article XXVII, and said common area shall be available to tenants, customers, and invitees of said Lessee and Arby's, Inc.

