

(ATTACHMENT 2) ACTION ON A REQUEST TO APPROVE THE FIRST AMENDMENT TO THE CHILLED WATER AGREEMENT WITH SP MILWAUKEE PROPCO1, LLC, AT GOLDA MEIR UPPER CAMPUS LOCATED AT 235 WEST GALENA STREET

AGREEMENT

THIS AGREEMENT made this 25 day of February, 1991, by and between SCHLITZ PARK ASSOCIATES II LIMITED PARTNERSHIP, located at 235 West Galena Street, Milwaukee, Wisconsin (hereinafter referred to as "Company"), and the MILWAUKEE BOARD OF SCHOOL DIRECTORS, in the name of the CITY OF MILWAUKEE, WISCONSIN, a Wisconsin municipal corporation, acting on behalf of the Milwaukee Board of School Directors, located at 5225 West Vliet Street, Milwaukee, Wisconsin (hereinafter referred to as "Customer").

Recitals

Company is engaged in the business of producing, distributing and selling chilled water for cooling buildings. Customer occupies the building (the "Building") commonly known as 1600 North Martin Luther King, Jr. Drive, Milwaukee, Wisconsin pursuant to a lease dated as of November 1, 1990 by and between Wisconsin Preservation Fund, Inc., as "Landlord", and Customer, as "Tenant", and desires to purchase chilled water for the cooling requirements of the Building.

Agreement

In consideration of the above premises, \$10.00 and other good and valuable consideration, the parties agree to the following:

1.

Company shall sell and Customer shall purchase chilled water for cooling the Building.

2.

The term of this Agreement shall be for a period of approximately twenty-three (23) years commencing on May 1, 1992 and ending on August 31, 2015. At the end of the initial term, this Agreement shall automatically renew for an additional period of five (5) years unless written notice is given by either party to terminate the Agreement at least twelve (12) months prior to the end of the term.

3.

The chilled water to be provided by Company to Customer and returned by Customer under this Agreement will meet the following specifications:

Maximum supply pressure at point of supply	125 psig
Maximum design operating pressure	150 psig
Chilled water temperature at point of delivery at Building	
May through October	45° - 47°F.
Customer return water temperature at point of delivery at Building	55° - 59°F.

Company and Customer will use reasonable efforts in a professional, prudent and responsible manner to provide and return chilled water that conforms to these specifications on a regular and uninterrupted basis; provided, however, Company cannot and does not guarantee to provide chilled water service to Customer at all times. Repairs and maintenance to the extent reasonably possible shall be performed during non-working hours and the Company shall perform such repairs and maintenance as may be required in an expeditious manner. The performance and obligations of Company under this Agreement are specifically subject to the commitments, conditions and limitations set forth in this Agreement.

4.

Company, at its own cost and expense, will install chilled water equipment and piping necessary to deliver chilled water to a point of delivery located underground, adjacent to and adjoining the exterior foundation wall of the Building.

There presently exists in the Building or Customer, at its own cost and expense, will install in the Building chilled water equipment and piping necessary to connect Company's piping at the point of delivery, including pumps, valves, insulation, gauges, controls, metering flanges and a return water line capable of returning water to Company's piping at the point of delivery. Company will furnish, install, own and maintain such metering equipment as it deems appropriate to measure the cooling service to Building, and Customer agrees to provide adequate space and utility facilities to Company in the Building for such purpose and to allow reasonable access thereto at all times. Customer agrees to (i) provide for the pumping requirements due to friction within this system and any head requirements above 50 psig, and (ii) take steps to assure at all times that no shocks or over pressure is placed on Company's cooling system from Customer's system. Customer shall reimburse Company for the cost of installing and maintaining the metering equipment as aforesaid.

Company shall have the right, but not the duty, to inspect, review and approve the connection of the Building's equipment and piping to Company's cooling system for the purpose of determining that the Building's equipment and piping will not cause damage to or adversely affect the performance of Company's cooling system. Company's right shall in no way impose a duty or liability on Company with respect to the lawful, safe or proper operation of the Building's equipment and piping.

5.

The cooling capacity under this Agreement shall be 650 tons of refrigeration per hour ("Capacity"). The Capacity may be adjusted in the event that Customer's actual demand for refrigeration during any peak one-hour consumption period ("Demand") exceeds the Capacity. Company will make reasonable

efforts to meet the demand requirement, however, Company is not obligated to furnish cooling service in excess of 1.10% of the original Capacity.

6.

Customer shall be billed monthly and shall pay within 30 days after billing for cooling service the combined total of the Capacity Rate, Consumption Rate and Lost Water Rate calculated as follows:

A. Capacity Rate

\$10.00 per month for each ton of Capacity.

B. Consumption Rate

\$.1643 for each ton hour consumed.

C. Lost Water Rate

\$10.00 for each 1000 gallons of lost or leaked chilled water, if any.

The rates in Paragraphs A, B and C shall be escalated on an annual basis commencing May 1, 1992, by the greater of (i) the percentage increase, if any, in the Cost of Living Index (as hereinafter defined) for the month last published immediately preceding each adjustment date over the Cost of Living Index published for the identical month one year earlier or (ii) the percentage increase, if any, in the rate charged the Company for electricity by Wisconsin Electric Power Company (or such other utility as may provide electricity to Company) during the 12 month period preceding each adjustment date (provided, however, in no event shall such rates as adjusted ever be less than the amount payable immediately prior to the adjustment). "Cost of Living Index" as used herein shall mean the index presently known as "Consumer Price Index, U.S. Average, All Items, All Urban Consumers (1982-84=100)" published by the Bureau of Labor Statistics, United States Department of Labor. If the computation and publication of the Cost of Living Index is transferred to another governmental bureau, such bureau's publication shall be substituted for the presently published index. If such Cost of Living Index is substantially revised, or its method of calculation is substantially altered, adjustments shall be made to such next index by Company as may be necessary to make it comparable to the original index used, provided, however, that the addition or elimination of particular items or commodities included in the Cost of Living Index shall not be deemed a "substantial" revision or a "substantial" alteration of its method of calculation. In the event the Bureau of Labor Statistics or other governmental bureau to whom the publication of the Cost of Living Index is transferred publishes such adjustment, then such adjustment as published shall be controlling upon the parties. In the event the Cost of Living

Index is discontinued, the parties shall accept comparable statistics on the purchasing power of the consumer dollar as published at the time of such discontinuation by a responsible financial periodical of recognized authority to be then chosen by Company.

Further, Customer shall be billed monthly and shall pay within 30 days after billing the amount necessary to amortize Expenditures (defined below) in equal monthly payments of principal and interest over a period of 5 years respecting Expenditures of between \$50,000 and \$200,000 and over a period of 15 years respecting Expenditures of over \$200,000 at an assumed interest rate of 10% per annum. "Expenditures" as used herein shall mean the cost of (i) a major maintenance procedure, repair and replacement, (ii) special equipment or systems necessitated by government regulations, or (iii) new equipment or systems.

Customer shall pay a penalty charge of 1-1/2% per month from billing date on any unpaid account of Customer that is overdue by more than 10 days.

7.

This Agreement is subject to the conditions of service attached as Exhibit A which Company may amend from time to time by revising or adopting additional conditions which are reasonably necessary in Company's opinion to assure proper, efficient and safe operation of Company's cooling service; provided, however, if such such revision or additional condition would impose additional cost to Customer, then the same shall require the consent of Customer, which consent shall not be unreasonably withheld or unduly delayed. All such amendments shall become a part of this Agreement and Customer shall be bound thereby upon receipt of a copy thereof.

8.

Company will use all reasonable efforts to secure and maintain all necessary permits, ordinances, easements and licenses over private and public property and any other approvals that may be required to provide cooling service, and Customer agrees to cooperate and assist Company. Company and Customer agree that all obligations of Company to perform under this Agreement are contingent upon and subject to securing and maintaining all permits, ordinances, easements, licenses and approvals referred to in the preceding sentence. Customer agrees to allow the running of service lines within Customer's property and agrees to grant to Company an easement if required for such purpose. Company will provide advance notice and coordinate with Customer the installation of such service lines.

9.

Company may cancel this Agreement upon prior written notice to Customer of a default arising from the failure of Customer to perform hereunder, which failure continues for a period of more than 30 days following a demand by Company to cure such default. In the event of cancellation, Company shall discontinue providing cooling service hereunder and Company may, at its option, enter the Building and remove all of Company's equipment and piping. A default under this Agreement is defined to include any of the following events: failure to pay the rates specified in Paragraph 6 when due, failure to perform any term, covenant or condition in any material respect, or the commencement of bankruptcy proceedings by or against Customer.

10.

Company shall not be liable to Customer or occupants in the Building for special or consequential damages, or for damages arising from an interruption in cooling service.

11.

Company will use reasonable efforts to provide Customer with cooling service under this Agreement. Customer will use reasonable efforts to receive cooling service in the Building and each party will design, construct and operate its equipment and piping in an efficient, safe and reliable manner and will maintain it in good working condition. Provided, however, that the obligations of either party to perform under this Agreement (other than the obligation of customer to pay for the services hereunder) shall be suspended to the extent that such party is unable to perform as a result of causes beyond the reasonable control, including but not limited to equipment breakdown, accidents, strikes, acts of nature and governmental action. In such event, a party shall give notice thereof to the other party and use reasonable efforts to eliminate the cause as quickly as possible.

12.

Each remedy under this Agreement shall be cumulative and in addition to any other remedy provided by law. The failure of either party to insist on strict performance of any provision under this Agreement, or to take advantage of any right hereunder shall not be construed as a waiver of such provision or right.

13.

All notices, demands, requests, reports and statements provided for pursuant to this Agreement shall be in writing and delivered in person or by mail addressed to the party at the address set forth on the first page of this Agreement, or to such other address and person as either party may, from time to time, notify the other in writing.

14.

Company is supplying cooling service to Customer as a private contractual service and not as a public utility service. Except as stated herein, Company makes no warranties or representations, express or implied, as to any matter whatsoever related to the interconnection or performance of the cooling service to the Building, including the design, capacity, efficiency and operation thereof.

15.

This written instrument and attached exhibit contains the entire agreement between the parties with respect to the subject matter. There are no representations, understandings or agreements, oral or written, except as contained herein. Except as provided in Exhibit A, any amendments or changes shall be in writing and by mutual agreement of both parties.

16.

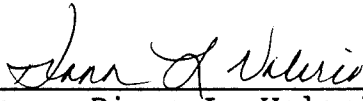
This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns, provided that neither party shall be relieved of its obligations and liabilities under this Agreement and such successor and assign shall assume and agree in writing to perform the obligations and liabilities of its predecessor and assignor in accordance with this Agreement.


(Signatures on next page)

SIGNED AND SEALED as of the day and year first written above.

Schlitz Park Associates II
Limited Partnership


By: The Brewery Works, Inc.,
general partner

By: 
Name: Diana L. Valerio
Title: Vice President

Attest: 
Name: Andrew C. Smith
Title: Secretary

COMPANY

City of Milwaukee, represented by
the Director of Facilities and
Maintenance Services, acting on
behalf of the Milwaukee Board of
School Directors


Name: Ronald Allen
Title: Director of Facilities
and Maintenance Services

CUSTOMER

EXHIBIT A

A. Metering and Billing.

- (i) Metering of the Customer's usage of chilled water supply and return will utilize a device which measures and records chilled water flow and water temperature difference and converts this relationship to ton-hours. Company will supply the initial fill of treated water for the Customer's system. Any additional requirements beyond normal make up will be charged at the "Lost Water Rate" then in effect.
- (ii) When a meter fails to register the quantity of chilled water consumed, Company will change or repair the meter and render a bill for the period of non-registration based on either of the following methods:
 - (1) Estimates of the chilled water consumed on the basis of past usage during a similar period and under similar conditions; or
 - (2) Estimates of the chilled water consumed on the basis of usage registered by the new or repaired meter during a subsequent period.
- (iii) Company may inspect and maintain its metering equipment located within the Building as needed. In the event Customer believes that the meters located within the Building are not operating properly, Customer may request, in writing, a test of the meters whereupon Company shall conduct a test upon the meters located in the Building. If the results of such test show that the meters have overstated the amount of Product used by Customer by at least three percent (3%), then Company shall bear the costs of such test and shall either repair or replace the defective meters at its own expense. In all other cases, Customer shall bear the costs of such test. Customer and Company agree to negotiate in good faith the amount of any retroactive adjustment, if any, to be made as a result of any meter test, whether such adjustment would result in payments by, or credits issued to Customer.
- (iv) Company may, at its option, estimate the billing. Over or under charges shall be compensated for at the next monthly billing.

- (v) Should Company provide Customer with one or more additional delivery points, the services rendered at each such point shall be separately metered and billed unless otherwise agreed to by the parties in writing.

B. Authorized Personnel.

The service stop valves and meter stop valves shall be operated only by authorized personnel of Company, except that the service stop valves and meter stop valves may be closed by Customer in an emergency, but in no event shall they be opened by Customer after shut-off. Company shall be notified immediately of such shut-off.

No person, except a duly authorized employee of Company, shall be permitted to break or replace a Company seal or lock, or to alter or interfere with the operation of meters, or its connections, regulators or any other item of service equipment furnished by Company.

C. Maintenance and Repair of Customer Equipment.

All repairs to Customer's piping and equipment shall be made by the Customer at Customer's expense. Customer shall give immediate notice to Company of any leakage or escape of chilled water.

Company shall not be required to supply chilled water services until Customer's installations have been approved by all local authorities having jurisdiction over the same. If at any time a local authority or Company deems Customer's plant or equipment to be unsafe, Company reserves the right to withhold or discontinue services until the necessary corrective measures have been taken by Customer, and the local authority and Company determine the Customer's plant or equipment to be in safe condition. Except in the case of an emergency, Company will notify Customer prior to discontinuing its delivery of Product for the reasons stated above.

D. Access to Customer's Premises and Building.

Company's duly authorized representative shall have the right of access to all of Company's property on the premises of Customer and on all other premises, with respect to which Company has secured easements, at all reasonable times, for the purposes of installing service lines, inspecting, protecting, maintaining and replacing, where necessary, its service lines, meters and service equipment, removing its property, or any other proper purpose. Except in the case of an emergency, Company shall give reasonable notice of its presence on Customer's premises.

E. Design Requirements for Compatibility of Equipment at Point of Delivery.

Company will provide service shut-off valves and cathodic protection isolation flanges when required. All other equipment and installation will be provided by Customer, with the exception that Company will furnish the meter primary flow element, separable thermometer wells, the meter proper, the necessary electronics and recorders for installation by Customer. Customer shall provide at the location determined for the meter a 120 volt, 60 cycle, single phase outlet.

The temperature control indicated for the control valves shall be provided by Customer.

The maximum combined running head on the chilled water system will be maintained at 140 feet at the central chilled water plant discharge. Friction head loss in the primary supply and return system will vary from zero to 140 feet at ultimate peak flow. The maximum residual static head shall be 200 feet, City Datum. Customer connections shall not exert static pressure head in excess of 115 feet. Customer shall install approved devices to reduce such excess pressures.

Customer shall provide booster pumps to supply the dynamic head required to overcome friction loss within its premises, and to supply any elevation head required above that provided by the supply system.

The accuracy of the metering is dependent upon maintaining a reasonably steady and high temperature rise across the system. This can be most easily accomplished by varying the flow. Therefore, it is recommended that throttle valves be used at the cooling units. Where for special reasons Customer desires to use a constant flow system, arrangements as indicated must be provided by Customer.

All normal make-up water requirements will be provided by Company in the central chilled water plant. However, the make-up required should be very small and Customer is not to draw off water from the chilled water system. Company should be notified of any loss of chilled water.

All provisions for thermal expansion of the chilled water distribution system water volume will be provided by Company. Customer shall provide an expansion tank in its system to accommodate expansion in its piping system when Company's main service valves are closed.

F. Clean and Flush of Customer's System.

Customer shall properly clean, degrease and flush its chilled water system and make certain there are no leaks at the maximum operating pressure. Customer's own consulting engineers may recommend cleaning solutions and methods, but any such recommendation must be acceptable to Company. In the event no specific cleaning methods are proposed, the following procedures should be used:

- (1) Close Company isolation valves in the Building.
- (2) Install temporary 2" bypass line between chilled water supply and return.
- (3) Install temporary city water make-up connection (1 1/2") on supply line and a temporary blow-down connection with valve (1 1/2") on the return liner, preferably at a strainer blow-down connection.
- (4) Calculate volume of water required to fill system or meter water filled through city water make-up line.
- (5) Add 1 1/2% by weight alkaline cleaner (Nalco 2567, or equal) to system as system is being filled with city water.
- (6) Circulate water through system with building chilled water circulating pumps. Use all pumps in system one at a time to be certain treated water reaches all piping. Also, open all valves to heat exchanges, coils, etc. as is practical.
- (7) After circulating treated water for twenty-four hours, take hourly pH and conductivity readings until no further change is noted.
- (8) Drain system and refill with untreated city water. Circulate water for eight hours and start sampling at blow-down connection.
- (9) With city water make-up valved in, continue to constantly blow-down, taking periodic conductivity reading. When conductivity reaches that of city water, system is ready for service.
- (10) Remove 2" bypass connection between chilled water supply and return piping.
- (11) Notify Company to open isolation valves in the Building.

G. Pressure Gauges and Strainer.

Customer will furnish and install pressure gauges and a strainer in its return line as close as possible to the service connection to prevent foreign matter from its system entering Company's chilled water system.

The pressure drop through the strainer should be included in Customer's system friction losses for the sizing of its chilled water booster pumps. Filters shall be inspected by Customer at regular intervals and cleaned as required.