

AGREEMENT RE TERMINATION OF RP 12-03

THIS AGREEMENT RE TERMINATION OF RP 12-03 ("**Agreement**") is dated as of September ____, 2022, by and between the City of Los Angeles ("**CITY**") through its Board of Harbor Commissioners ("**BOARD**"), and BIG HEART PET BRANDS, INC., a Delaware corporation ("**TENANT**").

RECITALS

A. On or about December 11, 2012, CITY and , DEL MONTE CORPORATION ("Del Monte"), entered into Revocable Permit No.12-03 ("**Permit**" or "**RP 12-03**") for use of certain premises as more particularly described in Exhibit "A" to RP 12-03 ("**Premises**"). In or about February 2014, Del Monte changed its name to Big Heart Pet Brands ("Big Heart"). On March 23, 2015, Big Heart was acquired by The J.M. Smucker Company and was re-named BIG HEART PET BRANDS, INC. in 2016.

B. The Permit was terminated as to Parcels 1 and 3 on or about October 1, 2014, and was terminated as to Parcel 12 on or about July 1, 2014. Terms with initial capitalization used, but not defined, in this Agreement shall have the meanings given to them in the Permit.

C. The Permit provided the CITY or TENANT with a right of termination upon ninety (90) days' written notice to the other. Upon termination of the Permit, Tenant has certain restoration obligations with respect to the Premises to restore the PREMISES and return the PREMISES to City in a clean condition free of Contamination as set forth in Section 11(1) of the PERMIT ("**RESTORATION OBLIGATION**").

D. The CITY and TENANT desire to memorialize and acknowledge the full and final termination of RP 12-03 and the performance of the RESTORATION OBLIGATIONS, as provided in this Agreement.

E. TENANT has performed all RESTORATION OBLIGATIONS with respect to the Premises as required by the Permit except only for the following (the "**Remaining Restoration Work**"): (1) cleanup of any remaining identified contamination (EMGE hot spot) (see Section 1) located at Parcel 1 of the Premises under the building located at 936 Barracuda Street, Terminal Island CA 90731 aka the Ardagh Warehouse Under Slab Term Release ("**Ardagh Slab Release**"), and (2) removal of certain concrete building materials related to building footings and foundations on Parcel 2 at the area known as the dog kennel property.

F. CITY and TENANT are entering into this Agreement to document the full and final termination of RP 12-03, the restoration that has taken place at the Premises, and the agreement for the TENANT to make the payment described below to the CITY with respect to the Remaining Restoration Work.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, CITY and TENANT agree as follows.

AGREEMENT

1. **RESTORATION.** CITY acknowledges that, except for the Remaining Restoration Work, TENANT has completed all RESTORATION OBLIGATIONS required under the Permit with respect to the return of the Premises, including without limitation the remediation for the term release (ethylene glycol monobutyl ether "EMGE" spill and associated total petroleum hydrocarbons "TPH") at the former Ardagh Metal Packaging USA Inc. location at Parcel 1 of the Premises. Upon making the Restoration Payment described below, the CITY does hereby release TENANT from any further obligation under the Permit to complete or perform any further RESTORATION OBLIGATIONS with respect to the Premises, including without limitation the Remaining Restoration Work, as they may concern any conditions at the Premises which are known to CITY and/or which are described in any studies, reports or assessments with respect to the Premises in the possession of the CITY or which have been delivered to the CITY.

2. RESTORATION PAYMENT. In consideration for the release set forth in Section 1 hereof, TENANT shall pay to CITY the total amount of Fifteen Thousand Two Hundred Six Dollars (\$15,206.00) [consisting of \$11,926.00 in connection with the work described in Recital D (1) and \$3,280.00 in connection with the work described in Recital D (2)] (“**Restoration Payment**”) as full payment for any and all costs of any cleanup or performance of the Remaining Restoration Work. The Restoration Payment shall be delivered to City within thirty (30) days after this Agreement is signed by CITY and a copy of such fully signed Agreement is delivered to TENANT. Upon receipt of the Restoration Payment, CITY does hereby assume responsibility for the performance and completion of any Remaining Restoration Work

3. TERMINATION DATE: When this Agreement is fully executed and any and all other obligations under this Agreement have been completed including but not limited to the payment of the Restoration Payment to CITY, the Permit and TENANT’s tenancy and occupancy of the entire Premises will be deemed immediately fully and finally terminated (“**Final Termination**”). Beyond making the Restoration Payment, TENANT shall have no further obligation for and shall be released from liability to pay any Rent as of April 4, 2019 or other charges that may be due or described in the Permit, including Rent that could or may have accrued under the Permit during the performance of RESTORATION OBLIGATIONS by TENANT and/or prior to the date of Final Termination. By executing this Agreement, the CITY acknowledges that TENANT has tendered full possession of the Premises back to the CITY and upon the full execution of this Agreement, CITY will refund to TENANT the amount of Eighty Two Thousand One Hundred-Thirty Seven and Fifty Nine Cents (\$82,137.59) representing overpayment proration of Rent for the month of April 2019 and full payment for the month of May 2019 under the Permit and shall return to Tenant the remaining portion of the security deposit in the amount of Eighty-Six Thousand Four Hundred Sixty Dollars and Sixty-Two Cents (\$86,460.62).

4. AUTHORITY. TENANT represents that it has the full right, power and authority to enter into, execute and consummate this Agreement; and the entities and/or individuals executing this Agreement on behalf of TENANT have the full right and authority to do so.

5. REMAINING FF&E. Any and all personal property, fixtures, equipment, and/or improvements of any kind left in, on or about the Premises by TENANT as of the date hereof are subject to disposal, demolition or destruction by CITY without further notice to TENANT. In the event any holders of liens or other encumbrances or interests in any personal property, fixtures, equipment, or improvements in, on or about the Premises, pursue claims or causes of action against CITY in connection therewith (“**Claims**”), then TENANT shall defend, indemnify and hold harmless CITY from and against all costs, claims, causes of action, expenses, judgments and/or damages of any kind including attorney's fees and expert's fees incurred by the CITY as a result of such Claims.

6. STUDIES. TENANT has delivered to the CITY complete copies of any and all final written environmental studies or assessments, remediation plans, and/or remediation cost estimates (collectively, “**Environmental Studies Documents**”) for the Premises which are in TENANT’s possession and which were prepared by third party engineers, consultants or contractors . (A list of the Environmental Studies Documents is attached hereto as Exhibit 1.) Tenant shall have no further obligations to perform, obtain or pay for any further assessments, studies or reports with respect to the physical condition of the Premises. CITY acknowledges that to the best of its knowledge, all known Contamination of the Premises (other than the Remaining Restoration Work) has been remediated, and payment of the Restoration Payment by TENANT shall satisfy TENANT’s obligations with respect to the Remaining Restoration Work. TENANT shall have no further obligations for or with respect to any Contamination of the Premises known by the CITY as of the date of this Agreement, including without limitation any further obligations to perform studies, assessments or remediation.

7. BOARD APPROVAL. This Agreement and each of its terms and conditions is subject to the approval of the BOARD and any other CITY approvals, as needed, which is a condition of the effectiveness of this Agreement. The CITY through its Harbor Department staff shall use its good faith and due diligence to bring this Agreement before the Board for its approval and shall promptly notify TENANT in writing upon the approval or denial of such Board action.

8. SURVIVAL. Rights and/or obligations which survive termination of the Permit pursuant to the express terms of Section 10.6 thereof or otherwise by operation of law shall continue in force and effect. Entering into this Agreement does not constitute a waiver of any rights of CITY other than as expressly set forth herein. This Agreement does not address any undiscovered Contamination, provided that TENANT shall have no responsibility or obligation for Contamination that was not caused or expressly allowed by TENANT or its sublessees (Ardagh/Impress), invitees, licensees or agents.

9. GENERAL. This Agreement is made and entered into in the State of California, and shall, in all respects, be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules. The parties hereto ("PARTIES") consent to the jurisdiction of the State of California, County of Los Angeles, for the enforcement of this Agreement. The PARTIES acknowledge that each of them and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by either party in connection herewith. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement. This Agreement is intended to be and does constitute the entire agreement of the parties with respect to the termination of the PERMIT, and all prior negotiations and written and contemporary oral agreements between the PARTIES and their agents with respect to the matters contemplated by this Agreement are merged in this Agreement together with its exhibits. This Agreement shall be binding upon execution by the PARTIES and shall inure to the benefit of the PARTIES and their successors and assigns. Time is of the essence of each of the terms and conditions herein. This Agreement may be executed in counterparts, and such counterparts shall constitute but one original of the Agreement. The submission of this Agreement for examination and execution shall not bind either PARTY hereto in any manner, nor constitute an offer by either PARTY, and no agreement or other obligation shall arise hereunder until such time as this Agreement is fully executed and delivered by the PARTIES after approval by the BOARD. This Agreement may be amended only by a writing signed by all of the PARTIES hereto

10. NOTICES. All notices, consents, approvals, and other communications under this AGREEMENT shall be in writing using one of the following methods and shall be deemed to have been duly given or made (a) upon delivery if hand delivered; (b) one (1) business day after delivery to any nationally recognized overnight courier service for next business day delivery, fee prepaid; (c) upon transmittal if sent by e-mail prior to 6:00pm on a business day (otherwise on the next business day after transmittal), provided that the sender does not receive notice that e-mail transmission has failed for any reason; or (d) five (5) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case sent to the Party to receive notice as set forth below:

Notice to TENANT:

Lynn M. Boris, Esq.
Director and Managing Counsel
The J. M. Smucker Company
One Strawberry Lane
Orrville, OH 44667
Facsimile: (330) 684-3026
Email: Lynn.Boris@jmsmucker.com

Notice to CITY:

Los Angeles Harbor Department
P.O. Box 151
San Pedro, California 90733-0151
Attention: Executive Director
Attention: Director of Real Estate

With a copy to:

Office of City Attorney—Harbor District
425 S. Palos Verdes Street, 5th floor
San Pedro, CA 90731
Attention: Estelle M. Braaf, Deputy
Email: ebraaf@portla.org

IN WITNESS WHEREOF, this Agreement was made and executed by the PARTIES as of the date first above written.

“CITY”

CITY OF LOS ANGELES,
by and through its Board of Harbor
Commissioners

Date: _____

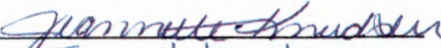
By _____
Eugene D. Seroka
Executive Director

Attest: _____
Amber M. Klesges
Board Secretary

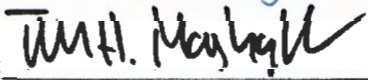
“TENANT”

BIG HEART PET BRANDS, INC.,
a Delaware corporation

Date: 8/23/22

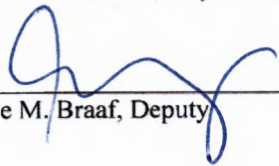
By: 
Name: Jeannette Koudjen
Title of Officer: Chief Legal Officer + Sec

Date: 8/23/22

By: 
Name: Tucker H. Marshall
Title of Officer: Chief Financial Officer

APPROVED AS TO FORM AND LEGALITY

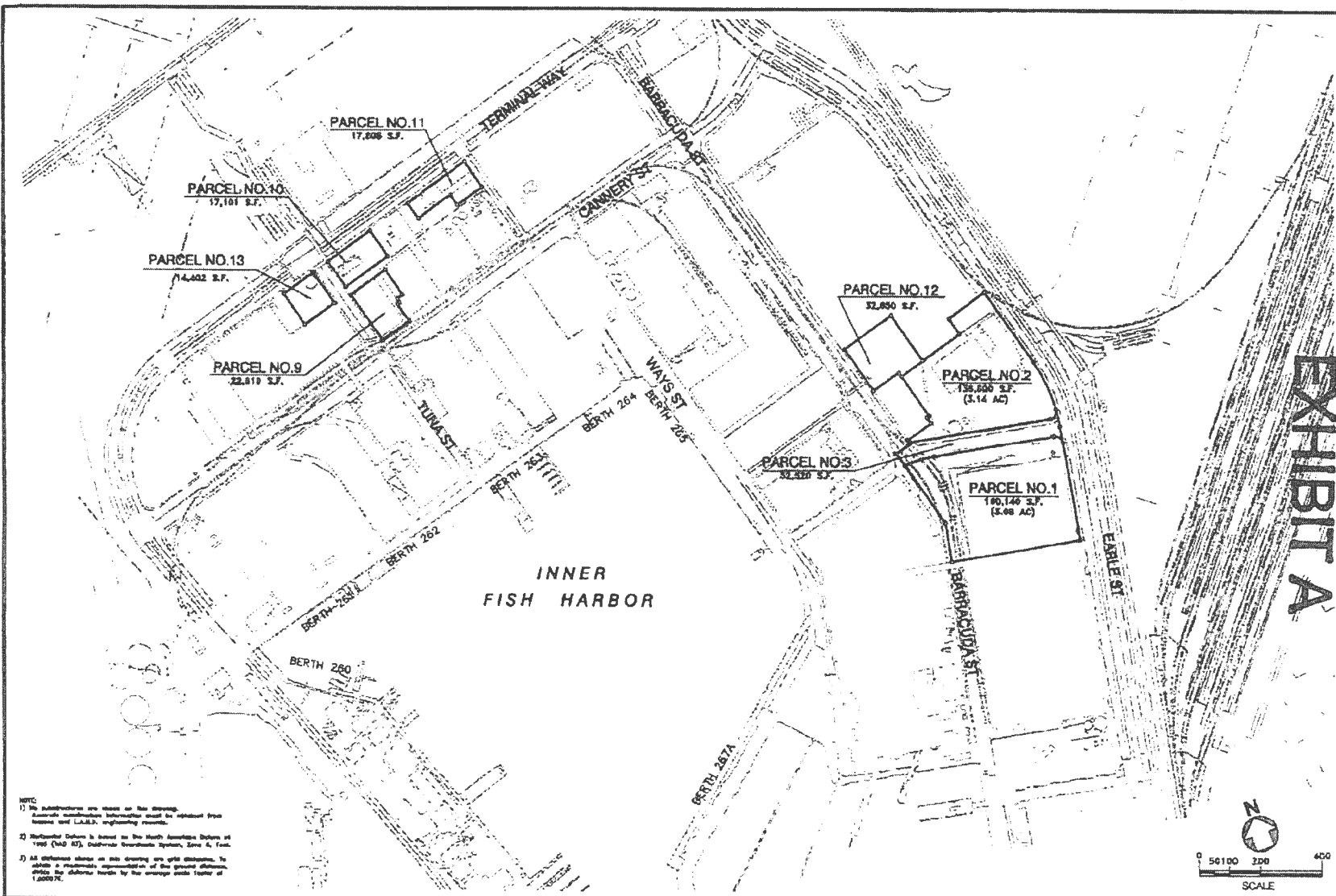
, 2022
MICHAEL N. FEUER, City Attorney

By 
Estelle M. Braaf, Deputy

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E
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EXHIBIT A



NO.	DATE	DRAWN	REVISIONS	CITY	APP'D	SCALE: 1"=200'	CHIEF OF DESIGN	PERMIT MAP - AUTHORITY NO. RP12-03
							DR: C. VENTURA	
							ASSISTANT CHIEF HARBOR ENGINEER	DRAWING NUMBER 2-2169-4
							CHIEF HARBOR ENGINEER	
								<p>THE PORT OF LOS ANGELES ENGINEERING DIVISION 415 S. PALM TERRELL ST. LOS ANGELES, CA 90721-3300</p>

EXHIBIT 1

2001-01 ERM Phase 1 Environmental Site Assessment Heinz Pet Products Facilities – 1054 Ways St. and Vicinity, Terminal Island, CA

2011-02-16 TRC_Phase 1 Environmental Site Assessment for the Star-Kist Former Factory Building at 1050-1054 Ways Street, Terminal Island, CA as supplemented by that certain TRC Phase 1 ESA Addendum Letter dated February 9, 2012

2011-03-31 TRC_Phase 1 Environmental Site Assessment for the Star-Kist Properties at 916, 938, and 950 Barracuda Street, Terminal Island, CA, as supplemented by that certain TRC Phase 1 ESA Addendum Letter dated February 9, 2012

2011-10 TRC_Hazardous Materials Survey Report for the R&D Offices, Storage Shed and Pilot Plant, Terminal Island, CA

2011-10 TRC_Hazardous Materials Survey Report for the Impress/Ardagh Can Plant Building, Terminal Island, CA

2011-10 TRC_Hazardous Materials Survey for the Animal Care Facility, Terminal Island, CA

2011-12 TRC_Phase 1 Environmental Site Assessment for the R&D Offices, Pilot Plant, and Net Shed Storage/Warehouse at 212 Terminal Way and 642 Tuna Street, Terminal Island, CA

2011-12 TRC_Phase 1 Environmental Site Assessment for the Animal Care Facility at 919 Earle Street, Terminal Island, CA

2011-12 TRC_Phase 1 Environmental Site Assessment for the Ardagh/Impress Can Plant at 936 Barracuda Street, Terminal Island, CA

2014-08 TRC_Ardagh Phase I ESA Report

2015-06-15 B&C_Smuckers Terminal Island Phase I ESA Report

2015-10 TRC_Pet Care Facility Phase I ESA and MCR Report

2016-08-30 ECO_Parcel 12 Final Limited Soil Investigation Report

2016-11-14 ECO_Final Limited Soil and Groundwater Investigation Report -2

2017-01-03 ECO_Parcel 12 Addendum Letter Report

2017-01-06 TRC_Ardagh Phase II WP (Jan 6, 2017)

2017-01-06 TRC_Pet Care Phase II WP (Jan 6, 2017)

2017-03-17 TRC_Pet Care Subsurface Report

2017-08-29 TRC_Big Heart Ardagh – Phase II Report

2018-04-23 TRC_Site Investigatin_Big Heart R_D Research Facility

2019-04-11 TRC_Ardagh Final Additional Soil and In-situ Groundwater Report

2019-08-21 TRC_BHPB-Ardagh Soil Removal WP

2020-03-26 TRC_Final BHPB-Ardagh Soil Removal Report

2020-08-05 TRC_Ardagh Sub-Slab Soil & GW Assessment Report