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CIRCUIT COURT OF OREGON  
COUNTY OF MULTNOMAH

HEATHMAN HOTEL PORTLAND LLC,  
an Oregon limited liability company,

Plaintiff,

v.

MCCORMICK & SCHMICK  
RESTAURANT CORP., a Delaware  
corporation,

Defendant.

Case No.

**COMPLAINT (ACTION FOR  
DECLARATORY RELIEF)**

**CLAIM NOT SUBJECT TO  
MANDATORY ARBITRATION**

**FEE AUTHORITY: ORS 21.135(2)(g)**

Plaintiff alleges as follows:

1.

Plaintiff Heathman Hotel Portland LLC ("Landlord") is an Oregon limited liability company which owns the Heathman Hotel located at 1001 SW Broadway in downtown Portland, Oregon.

2.

Defendant McCormick & Schmick Restaurant Corp. ("Tenant") is a Delaware corporation.

3.

Landlord and Tenant are parties to a Lease dated September 20, 2000 for restaurant and kitchen space within the Heathman Hotel (the "Lease"). Plaintiff is the Landlord under the Lease, and Tenant is the successor-in-interest to the original tenant under the Lease, Avado Brands, Inc. Under the Lease (and a closely-related Food and Beverage Service Agreement), Tenant operates the Heathman Hotel's restaurant and provides room

1 service and catering within the Heathman Hotel. The term of the associated Food and  
2 Beverage Service Agreement is coterminous with the term of the Lease.

3 4.

4 The original term of the Lease was ten years. The Lease provided options for  
5 two renewal terms, which Tenant would be entitled to exercise if it satisfied certain terms and  
6 conditions. One of the conditions for exercising each of the two renewal options was that the  
7 Tenant had to have achieved specified revenue levels in the two full Lease Years (defined as  
8 October 1 through September 30) that preceded the Lease Year in which the renewal option  
9 was to be exercised.

10 5.

11 On or before May 12, 2009, Tenant exercised its first option to renew and  
12 extended the Lease term. Tenant was entitled to do so because, among other things, it had  
13 achieved the specified revenue levels in the two full Lease Years ending September 30, 2007  
14 and September 30, 2008.

15 6.

16 Following Tenant's exercise of the first renewal option under the Lease,  
17 Landlord and Tenant entered into a First Amendment to Lease dated September 30, 2009 (the  
18 "Lease Amendment").

19 7.

20 The Lease Amendment states that Tenant shall have one remaining option for  
21 a second five-year term, subject to the same terms and conditions of the Lease, including the  
22 requirement of achieving a specified revenue level in the two full Lease Years that precede  
23 the Lease Year in which the renewal option may be exercised.

24 8.

25 Pursuant to the Lease as amended, and assuming that the required revenue  
26 level had been achieved in the Lease Years ending September 30, 2012 and September 30,

1 | 2013, the second renewal option would have to be exercised by Tenant no later than  
2 | September 30, 2014. If the second renewal option were validly exercised, the Lease term  
3 | would be extended to September 30, 2020. Otherwise, the Lease (along with the associated  
4 | Food and Beverage Service Agreement) will expire on September 30, 2015.

5 | 9.

6 | Under the Lease as amended, Tenant must achieve average total gross annual  
7 | sales of at least \$7,500,000 for the two full Lease Years ending September 30, 2012 and  
8 | September 30, 2013 as a precondition to exercising the second renewal option.

9 | 10.

10 | For the two full Lease Years ending September 30, 2012 and September 30,  
11 | 2013, Tenant failed to achieve average total gross annual sales of at least \$7,500,000.

12 | 11.

13 | There exists between the parties a concrete, immediate, and justiciable dispute  
14 | regarding the proper interpretation of the Lease and the Lease Amendment.

15 | 12.

16 | Landlord asserts that Tenant does not have the right to exercise the second  
17 | renewal option under the Lease as amended because, for the preceding two full Lease Years  
18 | ending September 30, 2012 and September 30, 2013, Tenant failed to achieve average total  
19 | gross annual sales of at least \$7,500,000.

20 | 13.

21 | Tenant asserts that it is entitled to renew the Lease for an additional five-year  
22 | term, even though Tenant failed to achieve gross annual sales of at least \$7,500,000 for the  
23 | two full Lease Years ending September 30, 2012 and September 30, 2013.

24 | 14.

25 | The Heathman Hotel is the cultural and culinary crown jewel of the City of  
26 | Portland's hospitality industry. The current Lease term (and the current term of the

1 associated Food and Beverage Services Agreement) expires September 30, 2015. Landlord  
2 needs sufficient time to identify and secure a suitable replacement operator for its restaurant  
3 business, so that it may restore and preserve the first class quality standards that the  
4 Heathman Hotel has traditionally exemplified, including its restaurant and banquet services.  
5 The replacement tenant also will need sufficient time for planning and preparation before  
6 beginning to operate the Heathman Hotel restaurant, room service, and catering functions, to  
7 ensure a seamless transition prior to the critical holiday period in 2015. A substantial capital  
8 expenditure for repairs and upgrades to the kitchen service and guest amenities, preceded by  
9 significant design, planning, and ordering, must also be accomplished. It is vitally important  
10 that the parties' respective rights and obligations be determined now as they are actively in  
11 dispute. Landlord is unable to get a new operator under contract when Tenant is claiming  
12 that it still has a renewal option, while Landlord maintains it does not.

13 15.

14 Pursuant to ORS 28.020, Landlord is entitled to a judgment declaring that  
15 Tenant does not have the right to exercise the second renewal option under the Lease as  
16 amended because, in the preceding two Lease Years that ended on September 30, 2012 and  
17 September 30, 2013, Tenant failed to achieve average total gross annual sales of at least  
18 \$7,500,000. Landlord is further entitled to a judgment declaring that, unless sooner  
19 terminated, the terms of the Lease and the associated Food and Beverage Service Agreement  
20 will expire September 30, 2015.

21 16.

22 Pursuant to the terms of the Lease, Landlord is entitled to an award of its  
23 reasonable attorney fees incurred herein.

24 17.

25 Pursuant to ORS 28.100, Landlord is further entitled to an award of its costs  
26 incurred herein, in an amount deemed just and equitable to this Court.

1  
2 WHEREFORE, Plaintiff Heathman Hotel Portland LLC prays for judgment  
3 against Defendant McCormick & Schmick Restaurant Corp. as follows:

4 A. Declaring that Defendant as Tenant under the Lease as amended does  
5 not have the right to exercise the second Lease renewal option;

6 B. Declaring that, unless sooner terminated, the terms of the Lease and of  
7 the associated Food and Beverage Service Agreement will expire September 30, 2015;

8 C. Awarding Plaintiff its reasonable attorney fees, costs, and  
9 disbursements incurred herein; and

10 D. Awarding Plaintiff such further relief as the Court deems just and  
11 equitable.

12 DATED this 11th day of April, 2014.

13 TONKON TORP LLP

14  
15 By 

16 Edwin C. Perry, OSB No. 843227  
17 Direct Telephone: 503.802.2026  
18 Direct Facsimile: 503.972.8726  
19 E-mail: ned.perry@tonkon.com  
20 1600 Pioneer Tower  
21 888 SW Fifth Avenue  
22 Portland, OR 97204

23 Attorneys for Plaintiff

24 Trial Attorney: Edwin C. Perry, OSB No. 843227

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