

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	LICENSE		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Wolferman's, LLC		01/15/2008	LIMITED LIABILITY COMPANY: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Williams Foods, Inc., as Successor to Licensee Williams Foods, Inc., a Missouri corporation		
<b>Street Address:</b>	129 E. Guenther		
<b>City:</b>	San Antonio		
<b>State/Country:</b>	TEXAS		
<b>Postal Code:</b>	78204		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 5</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
Registration Number:	1905767	WAGNER'S	
Registration Number:	2140193	WAGNER'S	
Registration Number:	2237163	WAGNER GOURMET FOODS	
Registration Number:	2241077	WAGNER GOURMET FOODS SINCE 1847	
Registration Number:	3213340	WAGNER'S SINCE 1847 EXPERIENCE THE TASTE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(713)223-3717		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	713-226-1200		
<b>Email:</b>	ppaquet@lockelord.com		
<b>Correspondent Name:</b>	Patricia Paquet/Locke Lord Bissell & Lid		
<b>Address Line 1:</b>	600 Travis Street		
<b>Address Line 2:</b>	3400 JPMorgan Chase Tower		
<b>Address Line 4:</b>	Houston, TEXAS 77002-3095		

**CH \$140.00 1905767**

ATTORNEY DOCKET NUMBER:	016192-00239
NAME OF SUBMITTER:	Patricia Paquet
Signature:	/patricia paquet/
Date:	09/16/2009

**Total Attachments: 11**

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## TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the "License Agreement") is made and entered into as of January 15, 2008 (the "Effective Date") by and between Wolferman's, LLC, a Delaware limited liability company (the "Licensor"), and Williams Foods, Inc., a Missouri corporation (the "Licensee"). All capitalized terms not defined herein shall have the meaning assigned to such terms in the UPA and Trademark Assignment (each as defined below). Licensor and Licensee are sometimes referred to individually herein as a "Party" and collectively as the "Parties".

**WHEREAS**, Licensee and Harry and David, an Oregon corporation, are parties to that certain Unit Purchase Agreement dated as of the date hereof (the "UPA"), and Licensor and Licensee are parties to that certain Contribution Agreement dated as of the date hereof (the "Contribution Agreement"), and that certain Trademark Assignment dated as of the date hereof (the "Trademark Assignment").

**WHEREAS**, pursuant to the Contribution Agreement, Licensee contributed certain assets, including the trademarks together with any and all associated goodwill listed in the attached Exhibit A (the "Marks"), to Licensor;

**WHEREAS**, as a result of the consummation of the transactions set forth in the UPA, the Contribution Agreement and the Trademark Assignment, Licensor is the owner of all right, title and interest in and to the Marks;

**WHEREAS**, Licensor desires to grant to Licensee an exclusive, worldwide right and license to use the Marks and Licensee desires to acquire certain rights to use the Marks in connection with Licensee's production and sale of spices, dry seasonings, gravies, meal kits, dry sauce mixes, batters and breading (the "Categories") produced and sold in the retail and wholesale channels under or in connection with the Marks, in the Categories of Goods in use as of the Effective Date (collectively, the "Goods"), subject to and in accordance with the terms and conditions of this License Agreement.

**NOW, THEREFORE**, for and in consideration of the premises, and of the agreements and covenants hereinafter set forth, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### 1. LICENSE.

**1.1 License.** Licensor hereby grants to Licensee an exclusive, worldwide right and license to use the Marks in connection with the marketing, sale, production and distribution of the Goods. Licensee shall not advertise, promote or otherwise use any Marks for, or in connection with, any goods or activities other than the Goods, as defined herein. Notwithstanding the license granted, Licensor reserves the right to use the Marks in connection with the marketing, sale and distribution of products other than the Goods with which Licensee is using the Marks, in the Categories of Goods in use as of the Effective Date.

**1.2 Assignment.** Licensee may not assign this License Agreement or Licensee's rights or obligations under this License Agreement to any natural person, corporation, partnership, limited liability company, joint venture, association, bank, trust company, trust or other entity (collectively, "Person") except with prior written consent of Licensor, and any

purposed assignment without such prior consent will be null and void. Notwithstanding the foregoing, Licensee may assign its rights and obligations hereunder, in whole, upon notice to but without the consent of the Licensor, to a wholly-owned subsidiary of Licensor or any Person that acquires the Williams Business from Licensee. The Person to which Licensee assigns its rights and obligations as permitted under this License Agreement may not assign its assumed rights and obligations except with the prior written consent of the Licensor, and any purposed assignment without such prior consent will be null and void. Notwithstanding the foregoing, there are no restrictions upon Licensor's ability to assign this Agreement or Licensor's rights and obligations under this License Agreement.

**1.3 Sub-License.** Licensee may grant a limited sub-license of Licensee's rights under this License Agreement, without prior consent of the Licensor, only for manufacturing, packaging, producing artwork and advertising the Goods to be sold by Licensee. Licensee shall require that any sub-licensee be subject to the quality control standards and all other relevant provisions of this License Agreement and will provide notice to the Licensor of such sub-licensee. Licensor shall have the right to require that the Licensee terminate any sub-license granted pursuant to this Section 1.3 if the sub-licensee fails to comply in all material respects with the terms of this License Agreement and the applicable sub-license agreement and all laws and governmental regulations applicable to the use of the Marks in connection with the Goods.

## **2. OWNERSHIP AND PROTECTION OF MARKS.**

**2.1 Ownership of Marks.** Licensee acknowledges that Licensor is the owner of the Marks and the goodwill now or hereafter associated therewith. The parties acknowledge that the License Agreement is not an assignment of rights. All use of the Marks shall inure to the benefit of Licensor. Licensee agrees that nothing in this License Agreement and no use of the Marks by Licensee pursuant to this License Agreement shall vest in Licensee, or shall be construed to vest in Licensee, any right, ownership or interest in or to the Marks or the goodwill now or hereafter associated therewith, other than the right to use the Marks in accordance with this License Agreement.

**2.2 Assertion of Claims.** Licensee acknowledges that neither Licensor nor any of its Affiliates makes any representation or warranty that Licensee will not infringe any rights of third parties by using the Marks.

**2.3 No Registration.** Licensee shall not register or attempt to register any of the Marks or any variation thereof, or any trade names, trademarks, service marks, collective mark, certification marks or logos that are confusingly similar to, or that contain elements that are confusingly similar to, the Marks.

**2.4 Protection of the Licensed Trademark.** Licensee shall not use its own name or marks, or the name or marks of any third party nor any word, symbol or device, in connection with the Marks, in a manner which would create a new mark containing any one of the Marks. The Licensee does have the right to use its own name on advertising and packaging of Goods in connection with the Marks but not in such a way that might create a new mark or create the impression that Licensee is the owner rather than the licensee of the Marks.

**2.5 New Marks.** If the Licensee wants to create a new logo or word mark similar to any of the Marks, Licensor will work with the Licensee to create the new mark and/or logo. If

the Parties can mutually agree that the new mark is mutually beneficial, Licensor will file, in its own name, such new mark for trademark registration with the United States Patent and Trademark Office and any other relevant trademark registries throughout the world, at Licensee's expense. Licensor will own such new mark and all use of such new mark by Licensee will inure to the benefit of the Licensor and be subject to all terms and conditions of the License Agreement.

**2.6 Maintaining the Marks.** Licensor agrees to use all reasonable efforts to maintain all trademark registrations for the Marks and to prosecute the trademark applications included in the Marks. Licensee will cooperate with Licensor in the maintenance and renewal of registrations and prosecutions of applications of the Marks. Licensee shall pay its portion of the commercially reasonable costs associated with the maintenance and renewal of the Marks. Licensee shall comply with all notice and marking requirements under applicable intellectual property laws and labeling requirements under local laws which are reasonably necessary or advisable for the protection and enforcement of the Marks. Licensee shall further comply with applicable laws and regulations related to the manufacture, marketing, distribution, and sale of the Goods sold under and in connection with the Marks.

### **3. QUALITY CONTROL STANDARDS**

**3.1 Quality Control.** In order to preserve the inherent value of the Marks, Licensee agrees to use its reasonable efforts to ensure that all aspects of the marketing, sale, production and distribution of the Goods sold in connection with the Marks pursuant to this License Agreement shall be at least of a standard of quality substantially equal to the quality for the same products sold in connection with the Marks as of the Effective Date of this License Agreement, or any greater standard of quality thereafter widely recognized in the industry for comparable products.

**3.2 Records.** For the purposes of this Section 3, Licensor shall choose an agent to carry out the rights and obligations of Licensor in this Section. Licensee agrees to maintain the following records in connection with the License Agreement:

- (a) An original or photograph of representative samples of packages, package inserts and labeling bearing each of the Marks; and
- (b) One original representative sample of promotional pieces or advertisements bearing each of the Marks.

**3.3 Inspection.** Subject to the provisions of Section 3.2 and upon (i) the written request of Licensor, which request shall not be made more than once annually, or (ii) a showing of good cause by Licensor, Licensee shall submit to Licensor any, package inserts, advertising and promotional materials that are maintained pursuant to the provisions of Section 3.2 or samples of Goods bearing the Marks. Licensor shall have the right once annually, or upon a showing of good cause, during normal business hours and with at least seventy-two (72) hours' prior notice to Licensee at its own expense, to inspect workmanship and materials, and inspect packing and storing practices on the premises of Licensee related to the Goods sold in connection with the Marks.

**3.4 Approvals.** In the event that any of the Goods, any other material bearing any of the Marks, or any inspected facility or operation does not, in all material respects, meet the standards set forth in Section 3.1, or, if any of the Marks are being adversely affected by Licensee's activities, then Licensor may withhold its approval of Licensee's use of the Marks at issue, but such approval shall not be unreasonably withheld. If the standards set forth in Section 3.1 are not met, withholding approval shall be deemed reasonable. Starting with the issue of written notice by Licensor to Licensee that some or all of the Goods or other material bearing the Marks has not been approved, Licensee shall have thirty (30) days to cure. If Licensee does not provide a cure within said time period, Licensor may, upon notice to Licensee, immediately terminate this License Agreement with regard to the Marks at issue.

#### **4. CONFIDENTIALITY.**

**4.1 Disclosure of Confidential Information.** During the course of performance of this License Agreement, each Party may disclose to the other Party certain Confidential Information (as defined below). Each Party shall, and shall cause each of its principals, directors, officers, managers, partners, employees, agents, counsels, or other representatives ("Representatives") to, hold the other Party's Confidential Information in confidence and shall use its best efforts to protect it. Each Party shall, and shall cause each of its Representatives to, not disclose the other Party's Confidential Information to any third party, and shall use such Confidential Information for the sole purpose of performing such Party's obligations under this License Agreement. Each Party shall be responsible for any breach of this paragraph by any of its Representatives (including, without limitation, Representatives who, subsequent to the first date of disclosure of Confidential Information become former Representatives) or by any other Person receiving Confidential Information from or through such Party.

**4.2 Definition.** For the purposes hereof, "Confidential Information" means any technical data, know-how or other information (either oral, written or digital) provided to either Party by the other (including any Representative of the other) or obtained by either Party from the other (including any Representative of the other) including, without limitation, that which relates to the organization, marketing strategies, business, finances, know-how, trade secrets, recipes, formulas, technology, advertising plans, distribution information, technical data, inventions (whether or not patentable), processes, designs, drawings, models, software, hardware and operations or past, current or potential customers, advertisers and suppliers of the disclosing party. The term Confidential Information shall not include any information which: (i) is disclosed through no fault of the receiving Party; (ii) the receiving Party can verifiably demonstrate was in its possession prior to disclosure hereunder; (iii) is subsequently disclosed to the receiving Party by a third party having the right to disclose it; (iv) is verifiably independently developed by the receiving party without reference to or the assistance of the disclosing Party's Confidential Information; or (v) is approved for release in writing by the owner thereof.

**4.3 Exceptions.** Either Party or its Representatives may disclose the other party's Confidential Information upon the order of any competent court or government agency, provided that, as promptly as practicable after any such order issued and prior to disclosure, the Party that is subject to such order shall inform the other party of such order and the details thereof.

**4.4 Survival.** The confidentiality provisions of this License Agreement shall survive termination or expiration of this License Agreement forever and shall inure to the benefit of both Parties' successors and permitted assigns.

**4.5 Return of Confidential Information.** Except as otherwise provided in this Agreement: (a) at any time, each Party agrees to return all Confidential Information of the other Party upon request by the other Party; and (b) upon termination or expiration of this License Agreement, each Party will return to the other Party all tangible copies of the other Party's Confidential Information and destroy any notes or other work product containing the other Party's Confidential Information and certify such destruction to the other Party.

**5. TERM.** This License Agreement and the license granted herein shall commence on the Effective Date and shall continue for a term of twenty (20) years, and thereafter, shall be automatically renewed for periods of ten (10) years unless terminated by mutual agreement of the Parties or until terminated as permitted in this License Agreement.

**5.1 Termination for Breach of this Agreement.** Either party may terminate this License Agreement if the other party breaches a material term of this License Agreement and the breach continues unabated for a period of thirty (30) calendar days after the non-breaching party provides written notice of the breach to the other party.

**5.2 Termination for Lack of Use.** Licensee must provide, no later than thirty (30) days prior to any legally required deadline for the registration or renewal of registration of any Mark (the "Deadline") reasonable evidence ("Proof of Use") that the Licensee has used such Mark during the three (3) years immediately prior to the Deadline. If the Licensee fails to provide such evidence by the fifteenth (15) calendar day immediately preceding the Deadline, Licensor may terminate this License Agreement with respect to any such Mark, the use of which Licensee has failed to reasonably demonstrate as aforesaid. If Licensee notifies Licensor that Licensee is not using, or does not plan to use, any Mark or if Licensee fails to provide, on or before the fifteenth (15) calendar day immediately preceding a written request from Licensor for Proof of Use with respect to any Mark, Licensor may terminate this License Agreement with respect to such Mark.

**5.3 Termination for Bankruptcy.** Either Party may terminate this License Agreement immediately upon the furnishing of written notice if the other Party is a debtor in a bankruptcy proceeding or files for other relief from creditors.

**5.4 Upon Termination.** Upon the termination or expiration of this License Agreement for any reason (i) all rights granted to Licensee under this License Agreement, including all rights granted in Section 1 of this License Agreement hereof, shall automatically revert to Licensor, and (ii) Licensee shall immediately discontinue any and all use of the Marks and shall not thereafter use the Marks or any names or marks confusingly similar to the names or marks included in the Marks; provided, however, that Licensee shall have sixty (60) days after the termination of this Agreement to (i) sell (except in the case of termination for breach of Section 3, in which case there shall be no sell off right) and/or destroy or overlabel or oversticker where appropriate all Goods in inventory.

**5.5. Effect of Termination.** If the Agreement is terminated as a result of a material breach, the right of the non-breaching Party to terminate shall be in addition to, and not in lieu

of, any equitable or legal remedies available to such Party. Upon the termination of this Agreement for any cause, neither Party shall have any further obligation to the other except for obligations that by their terms are to be performed after termination of this Agreement, and any obligations or liabilities arising prior to or in connection with such termination, including the right to damages for breach

**6. INFRINGEMENT.** Subject to the remainder of this paragraph 6, Licensee shall not undertake any action which might impair Licensor's title in the Marks. In the event that either Party becomes aware of a third party whose actions, directly or indirectly, may constitute infringement of any of the Marks or may constitute misappropriation of the Confidential Information of Licensor, written notice shall be given to the other Party. Within sixty (60) days after becoming aware of the allegedly infringing activities, Licensor shall either commence an action to enjoin the alleged infringement or notify Licensee that it does not intend to commence such an action. If, within the said sixty (60) day period, Licensor does not commence an infringement action, Licensee may commence an action against the alleged infringer. The expenses of the suit shall be born by and all damages recoverable from the suit shall belong to the Party or Parties actually prosecuting the action; provided, however, Licensor shall, at Licensee's expense, join in any such action if necessary to maintain standing. The Party not bringing the action shall fully cooperate, at its own expense, except as otherwise provided in this paragraph 6, including executing all papers necessary and desirable in connection with such actions and providing testimony and evidence whenever reasonably requested.

**7. INDEMNIFICATION BY LICENSEE.** Licensee shall be solely responsible for and hereby agrees to indemnify and defend Licensor, its Affiliates, and Licensor's and such Affiliate's respective officers, directors, shareholders, employees and agents, and to hold each of them harmless from any and all claims, demands, cause of action, or damages, including attorney's fees, (i) arising out of or in connection with the use by Licensee, or anyone under Licensee's direct or indirect control, of the Marks outside the scope of the license granted hereunder; (ii) resulting from any claims in the nature of product liability; and (iii) (other than those for infringement of the Marks) arising out of Licensee's manufacture, marketing, sale or distribution of products bearing, using or otherwise exploiting the Marks.

**8. GENERAL.** The following provisions shall apply to this License Agreement:

**8.1 Entire Agreement.** This License Agreement and the Exhibit referenced herein (and attached hereto), together with the UPA, Contribution Agreement and Trademark Assignment, constitutes the entire agreement between the Parties concerning the subject matter hereof. This License Agreement may not be modified or amended except by a written instrument executed by duly authorized officers of both Parties.

**8.2 Governing Law.** This License Agreement and the license granted hereunder shall be governed by and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the State of Delaware applicable to contracts made in that state, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Delaware.

**8.3 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law, such invalidity, illegality or unenforceability shall not affect any other provision and such provision or portion thereof shall be struck from the remainder of this Agreement, which shall remain in full force and effect. This Agreement shall be reformed, construed and enforced in such jurisdiction so as to best give effect to the intent of the Parties.

**8.4 Notices.** All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile, by nationally recognized private courier, or by United States mail. Notices delivered by mail shall be deemed duly given (i) when delivered in person, (ii) upon receipt of electronic confirmation when dispatched by electronic facsimile transfer, (iii) three (3) Business Days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or (iv) one (1) Business Day after having been deposited with a recognized overnight courier service. All notices shall be addressed as follows:

If to Licensor: Harry and David  
2500 South Pacific Highway  
Medford, OR 97501  
Attention: Stephen V. O'Connell (soconnell@harryanddavid.com)  
Robert E. Bluth, Esq. (bbluth@harryanddavid.com)  
Fax No.: (541) 864-2190

With a copy to: Jones Day  
222 East 41st Street  
New York, NY 10017  
Attention: Joseph A. Adams, Esq.  
Fax No.: (212) 755-7306

If to Licensee: Williams Foods, Inc.  
13301 West 99<sup>th</sup> Street  
Lenexa, KS 66215  
Attention: Conrad Hock  
Facsimile: (913) 888-0727

With a copy to: Blackwell Sanders LLP  
4801 Main Street, Suite 1000  
Kansas City, Missouri 64112  
Attention: James M. Ash  
Fax: 816-983-8080

or to such other addresses as may be designated by notice given in accordance with the provisions hereof.

**8.5 Headings.** The headings of each section contained herein are provided only for convenience of reference only and shall not affect the meaning or interpretation of this License Agreement.

**8.6 Non-Waiver.** The failure in any one or more instances of a Party to insist upon performance of any of the terms, covenants or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said Party of any breach of any of the terms or covenants of this Agreement, shall not be construed as a subsequent waiver of any such terms or covenants, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving Party.

**8.7 Counterparts.** This License Agreement may be executed in multiple counterparts, each of which will be deemed an original, but which together will constitute one and the same instrument.

**[The remainder of this page is intentionally left black. Signature page to follow.]**

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the date first set forth above.

**LICENSOR:**

**WOLFERMAN'S, LLC,**  
a Delaware limited liability company

By: *S. V. O'Connell*

Name: *S. V. O'Connell*

Title: *Executive Vice President*

**LICENSEE:**

**WILLIAMS FOODS, INC.,**  
a Missouri corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the date first set forth above.

**LICENSOR:**

**WOLFERMAN'S, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:**

**WILLIAMS FOODS, INC.,**  
a Missouri corporation

By: *Vicki Smith*\_\_\_\_\_

Name: Vicki Smith

Title: Vice President Finance and Secretary

[Signature page to the Trademark License Agreement.]

**EXHIBIT A**  
**TRADEMARKS**

1. Registered trademark, application no. 75/151,229, registration no. 2,237,163, filed August 16, 1996, registered April 6, 1999 in the United States relating to WAGNER GOURMET FOODS.
2. Registered trademark, application no. 75/231,632, registration no. 2,241,077, filed January 27, 1997, registered April 20, 1999 in the United States relating to WAGNER GOURMET FOODS SINCE 1847 (logo).
3. Registered trademark, application no. 74/466,560, registration no. 1,905,767, filed December 7, 1993, registered July 18, 1995 in the United States relating to WAGNER'S .
4. Registered trademark, application no. 75/151,084, registration no. 2,140,193, filed August 16, 1996, registered March 3, 1998 in the United States relating to WAGNER'S .
5. Registered trademark, application no. 78/880,276, registration no. 3,213,340, filed May 10, 2006, registered February 27, 2007 in the United States relating to WAGNER'S SINCE 1847 EXPERIENCE THE TASTE (logo).