

LEASEBACK TO COMPANY

THIS LEASEBACK TO COMPANY (“Leaseback Agreement”) is effective as of the 23rd day of December, 2020, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY (“Agency”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 548 Broadway, Monticello, New York 12701 and FRITO-LAY, INC., a Delaware corporation, with an address of 7701 Legacy Drive, Plano, Texas 75024 (“Company”).

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (“State”), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, on or about February 4, 2002, Ideal Snacks, Inc. (“Ideal Inc.”) applied to the Agency requesting the Agency assist in constructing and equipping an approximately 26,600± square foot expansion to its existing manufacturing facility situate on one (1) parcel of real property consisting of approximately 2.59± acres located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the Town of Liberty tax map as Section 113, Block 3, Lot 1.1 and related facilities leased to the Agency and leased back to Ideal Inc. (“2002 Expansion”); and

WHEREAS, on or about February 19, 2002 the Agency adopted a Resolution appointing Ideal Inc. as Agent of the Agency for the purpose of constructing and equipping the 2002 Expansion; and

WHEREAS, on or about February 19, 2002 the Agency and Ideal Inc. entered into an Agent Agreement (“2002 Agent Agreement”), which 2002 Agent Agreement was amended on or about October 1, 2002, authorizing Ideal Inc. to act as the Agent of the Agency to construct and equip the 2002 Expansion; and

WHEREAS, on or about November 12, 2002, the Agency adopted a Resolution authorizing an increase in the floor area of the 2002 Expansion from 26,600± square feet to 29,400± square feet and authorizing the Agency to execute a Lease to Agency, Leaseback to Company Agreement, Payment in Lieu of Tax Agreement and related documents with respect to construction and equipping of the 2002 Expansion; and

WHEREAS, on or about August 1, 2003 Ideal Inc. and the Agency entered into a lease/leaseback transaction pursuant to which Ideal Inc. constructed and equipped the 2002 Expansion; and

WHEREAS, on or about December 1, 2003 Ideal Inc. and the Agency entered into a lease/leaseback transaction pursuant to which Ideal Inc. constructed and equipped a two (2) story manufacturing warehouse building to consist of approximately 104,600± square feet situate on three (3) parcels of real property consisting of approximately 3.96± acres located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the

Town of Liberty tax map as Section 113, Block 3, Lots 1.1, 2 and a portion of 5.1 and related facilities leased to the Agency and leased back to Ideal Inc. (“2003 Expansion”); and

WHEREAS, on or about December 1, 2004 Ideal Inc. and the Agency amended the 2002 Expansion and the 2003 Expansion to (i) include certain additional parcels of real property used in connection with the 2002 Expansion and the 2003 Expansion namely those parcels identified on the Town of Liberty tax map as Section 113, Block 2, Lot 2; Section 113, Block 2, Lot 3; Section 113, Block 1, Lot 10; and Section 23, Block 1, Lot 86; and (ii) update consistent with the Town of Liberty Assessor’s records parcels previously identified on the Town of Liberty tax map as a portion of Section 113, Block 3, Lot 5.1 and Section 113, Block 3, Lot 2 to Section 113, Block 3, Lot 5.3 (“2004 Expansion”); and

WHEREAS, on or about June 10, 2005 the Agency, Ideal Snacks Corporation (“Ideal Corp.”) and AmSouth Bank (“AmSouth”) entered into a certain Omnibus Amendment to Project Documents (“2005 Omnibus Amendment”) whereby the Agency (i) consented to a financing credit facility in an aggregate amount not to exceed \$24,000,000.00 to Ideal Corp. and AmSouth Bank (“AmSouth Loan”); (ii) granted a mortgage tax abatement relating to a mortgage in an amount not to exceed \$8,000,000.00; (iii) amended the 2002 Expansion, the 2003 Expansion and the 2004 Expansion; and (iii) authorized a consent to a change in ownership and control of 2002 Expansion, 2003 Expansion and 2004 Expansion from Ideal Inc. to Ideal Corp. (“2005 Expansion”); and

WHEREAS, on or about March 2, 2006, Ideal Corp. presented an application (“Application”) to the Agency whereby the Agency undertook a project consisting of the (i) construction and equipping of an approximately 1,700± square foot corridor connecting the 2002 Expansion and the 2003 Expansion intended to house an enrobing manufacturing line on one (1) parcel of real property located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the Town of Liberty tax map as Section 113, Block 3, Lot 5.3 (“2006 Expansion” and together with the 2002 Expansion, the 2003 Expansion, the 2004 Expansion and the 2005 Expansion, the “Project”); and

WHEREAS, on or about March 22, 2006, the Agency and Ideal Corp. entered into a Second Omnibus Amendment to Project Documents (“2006 Omnibus Amendment”) to provide for the appointment of Ideal Corp. as agent of the Agency to construct and equip the 2006 Expansion and amend the 2002-2006 Project Documents (hereinafter defined) to (i) include the 2006 Expansion where appropriate; and (ii) increase to the Total Value Subject to PILOT (as defined in the PILOT Agreement) in the PILOT Agreement; and

WHEREAS, the Agency and Ideal Inc. or Ideal Corp. entered into certain agreements authorizing and facilitating the 2002 Expansion, 2003 Expansion, the 2004 Expansion, the 2005 Expansion and 2006 Expansion, which agreements include, but are not limited to the following:

Agent Agreement, dated as of February 19, 2002 by and between the Agency and Ideal Inc., as amended by that certain Amended Agent Agreement, dated October 1, 2002 and effective as of February 19, 2002 by and between the Agency and Ideal Inc. and as further, amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment;

Bill of Sale to Agency, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment (“2002 Expansion Agency Bill of Sale”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Agency Bill of Sale”);

Bill of Sale to Company, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment (“2002 Expansion Company Bill of Sale”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Company Bill of Sale”);

Lease to Agency, dated as of August 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on August 3, 2003 in Liber 2616 at Page 433, as amended by the 2005 Omnibus Amendment (“2002 Expansion Lease to Agency”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Lease to Agency”);

Leaseback to Company, dated as of August 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on August 3, 2003 in Liber 2616 at Page 438, as amended by the 2005 Omnibus Amendment (“2002 Expansion Leaseback to Company”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Leaseback to Company”);

Payment in Lieu of Tax Agreement, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended and restated by that certain Amended and Restated Payment in Lieu of Tax Agreement, effective as of March 1, 2004 by and between the Agency and Ideal Inc., as further amended and restated by that certain Second Amended and Restated Payment in Lieu of Tax Agreement, dated as of December 1, 2004 by and between the Agency and Ideal Inc., as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (collectively, the “PILOT Agreement”);

Agent Agreement, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended and restated by that certain First Amended and Restated Agent Agreement, dated as of December 1, 2004, as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (collectively, the “Agent Agreement”);

Bill of Sale to Agency, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005

Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Agency Bill of Sale”);

Bill of Sale to Company, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Company Bill of Sale”);

Lease to Agency, dated as of December 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on January 20, 2004 in Liber 2705 at Page 92, as amended and restated by that certain First Amended and Restated Lease to Agency, dated as of December 1, 2004 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County December 30, 2004 in Liber 2895 at Page 15, as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Lease to Agency”);

Leaseback to Company, dated as of December 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on January 20, 2004 in Liber 2705 at Page 116, as amended and restated by that certain First Amended and Restated Leaseback to Company, dated as of December 1, 2004 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on December 30, 2004 in Liber 2895 at Page 36, as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Leaseback to Company”). Each of the foregoing documents are collectively referred to herein as the “2002-2006 Project Documents”.

WHEREAS, on September 13, 2011, the Agency adopted a resolution authorizing Ideal Corp. to obtain a loan from Sovereign Bank (“Sovereign”) in an amount not to exceed \$22,000,000 Dollars secured in part by a mortgage on the Project in the amount of \$8,000,000 Dollars; and

WHEREAS, on or about September 21, 2011, the AmSouth Loan was paid off making the 2005 Omnibus Amendment no longer relevant; and

WHEREAS, on or about September 21, 2011, the Agency and Ideal Corp. entered into a Third Omnibus Amendment to Project Documents (“2011 Omnibus Amendment”) to amend the 2002- 2006 Project Documents to provide that the Agency will endeavor to provide a copy of any notice which the Agency delivers to Ideal Corp. (as defined in the 2002-2006 Project Documents) under the Project Document to Sovereign; and

WHEREAS, on or about March 7, 2012 (and supplemented on October 22, 2012) Ideal Corp. presented applications to the Agency, copies of which are on file at the office of the Agency (collectively, "2012 Application") requesting the Agency undertake an additional expansion project consisting of (i) the construction, installation and equipping of an approximately 41,000± square foot expansion ("2012 Expansion"); and (ii) lease to Agency of an additional parcel of real estate acquired for use in connection with the Pre-2012 Project, namely that parcel identified on the Town tax map as Section 113, Block 3, Lot 5.1 ("Bowling Alley Parcel"); and

WHEREAS, by resolutions duly adopted on March 27, 2012 and November 26, 2012 ("2012 Resolutions"), the Agency approved the project contemplated by the 2012 Application ("2012 Expansion"); and

WHEREAS, Ideal Corp. has (i) constructed, installed and equipped a two (2) story manufacturing warehouse building to consist of 41,000± square feet expansion ("2012 Building" and together with the First Expansion Building and the Second Expansion Building collectively, the "Building") situate on one (1) parcel of real estate consisting of approximately 6.9⁹ acres to be located at 89 Mill Street in the Village, Town, County, State and identified on the tax map as Town Section 113, Block 3, Lot 5.1 ("2012 Land" and together with the Pre-2012 Land collectively, the "Land") and related facilities a leasehold interest in which the Agency is to acquire; (ii) acquired and installed thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("2012 Equipment" and together with the Second Expansion Equipment collectively, the "Equipment"); (iii) constructed improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as the "2012 Project" and together with the Pre-2012 Project collectively, the "Project"); (iv) leased the 2012 Project to the Agency; and (v) the 2012 Project leased back from the Agency; and

WHEREAS, on or about February 1, 2013, Ideal Corp. and the Agency amended the 2002-2006 Project Documents to make provision for the 2012 Addition, by execution of the following documents:

- Second Amended and Restated Agent Agreement;
- Second Amended and Restated Lease to Agency;
- Second Amended and Restated Leaseback to Company;
- Bill of Sale to Agency;
- Bill of Sale to Ideal Corp.; and

Third Amended and Restated Payment in Lieu of Tax Agreement (the "2012 Project Documents" and together with the 2002-2006 Project Documents and the 2011 Omnibus Amendment, the "Ideal Project Documents"); and

WHEREAS, on or about June 9, 2015, Permira, an international private equity firm, announced that a company backed by Permira (the "Permira Backed Company") entered into a definitive agreement to acquire Ideal Corp. and Medora Snacks, LLC ("Medora"); and

WHEREAS, on or about July 1, 2015, Ideal Corp. and Medora were acquired by the Permira Backed Company with Medora and Ideal Corp. combined under a single holding company called BFY Holdings I, LLC ("BFY Holding"); and

WHEREAS, on or about February 28, 2020, Company acquired indirect beneficial ownership of BFY Holding via a merger with BFY Brands, Inc.; and

WHEREAS, Ideal Corp. merged into Ideal Snacks Holding Corporation at 9:06 a.m. on December 18, 2020; and

WHEREAS, Ideal Snacks Holding Corporation merged into BFY Acquisition Sub, Inc. at 9:07 a.m. on December 18, 2020; and

WHEREAS, BFY Acquisition Sub Inc. converted to a Delaware LLC called BFY Acquisition Sub, LLC on December 21, 2020; and

WHEREAS, BFY Acquisition Sub, LLC merged into the Company on December 23, 2020 and following this merger, the Company became the successor to Ideal Corp. as a counterparty to the Agency; and

WHEREAS, in order to induce the Company to continue operation of the Project, the Agency is willing to enter into a lease/leaseback transaction involving a lease of the Project from the Company to the Agency and a leaseback of the Project from the Agency to the Company; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to continue operation of the Project in accordance with the plans presented to the Agency; and

WHEREAS, the Agency proposes to lease the Project to the Company and the Company desires to rent the Project from the Agency, upon the terms and conditions hereinafter set forth in this Leaseback Agreement subject to the terms of that certain PILOT Agreement, of even date herewith.

WHEREAS, by resolution duly adopted on October 19, 2020, the Agency consented to the transfer of the Project to the Company subject to the Agency and Company entering into a direct contractual relationship.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS

- 1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:
 - (a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as

to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

- (b) The Agency has been duly authorized to execute and deliver this Leaseback Agreement.
- (c) The Agency will take or has taken a leasehold interest in the Facility, will lease the Facility to the Company pursuant to this Leaseback Agreement and designate the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and County and improving their standard of living.
- (d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.
- (e) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to continue operation of the Facility and the related jobs resulting therefrom in the County and State.

1.2. Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The Company is a corporation duly organized, existing and in good standing under the laws of the State of Delaware, has the authority to enter into this Leaseback Agreement and has duly authorized the execution and delivery of this Leaseback Agreement.
- (b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.
- (c) The continued operation of the Facility and the leaseback of the Facility by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities located within the State.

- (d) The Facility and the operation thereof will conform in all material respects with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d) and subsection (f) below.
- (e) The Company has caused to be transferred to the Agency a leasehold interest in all those properties and assets contemplated by this Leaseback Agreement and all documents related hereto.
- (f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened, against or affecting the Company in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement.
- (g) The Company covenants (i) that the Facility will comply in all material respects with all applicable environmental laws and regulations, (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility, except in material compliance with all applicable laws, (iii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iv) that no asbestos will be incorporated into or disposed of on the Facility, (v) that no underground storage tanks will be located on the Facility, except in full compliance at all times with all applicable laws, rules, and regulations, and (vi) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section (g).
- (h) The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by the collective bargaining contracts to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively referred to as the "Referral Agencies"). The Company also agrees that it will, except as otherwise provided by the collective bargaining contracts to which it is a party, first consider for such new employment opportunities persons eligible to

participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

ARTICLE II

DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Demise Leasehold Interest to Agency; Transfer to Agency. The Company has leased and demised or has caused to be leased and demised to the Agency a leasehold interest in the Land as more particularly described on Schedule A attached hereto, including any buildings, structures or improvements thereon. The Company agrees the Agency's interest in the Facility resulting from said leasehold interest will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.
- 2.2. Intentionally Deleted.
- 2.3. Demise of Facility to Company. The Agency hereby transfers, leases and demises to the Company all its right, title and interest in and to a certain Lease to Agency, dated as of December 23, 2020 ("Lease Agreement") by and between the Company and the Agency, a copy of which is attached hereto as Exhibit A, whereby the Company granted to the Agency a leasehold interest in the Land and any buildings, structures or improvements thereon as more particularly described in Schedule A and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.
- 2.4. Remedies to be Pursued Against Contractors and Subcontractors and its Sureties. In the event of a default by any contractor, subcontractor or any other person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance, or guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor, manufacturer, supplier or other person so in default and against such surety for the performance of such contract. The Company in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which is reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including, but not limited to reasonable attorneys' fees) in any such action or proceeding.
- 2.5. Duration of Lease Term; Quiet Enjoyment.
 - (a) The Agency has delivered to the Company sole and exclusive possession of the Facility and the leasehold estate created hereby commenced on December 23, 2020.

- (b) The leasehold estate created hereby shall terminate at 11:59 P.M. on February 1, 2024, or on such earlier date as may be permitted by Section 8.1 hereof.
- (c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the "Lease Term".
- (d) The Agency shall, subject to the provisions hereof, neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Leaseback Agreement, to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

2.6. Rents and Other Consideration. The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

- (a) On January 1, 2022 and January 1st of each calendar year thereafter during the Lease Term the sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars annually.
- (b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's leasehold interest in the Facility or its leasing of the Facility to the Company and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement.
- (c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6, the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

2.7. Obligations of the Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof, (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, except in a suit initiated by the Company

against the Agency, unless, in the event, the Company is unsuccessful in that suit and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2 hereof, take any action that will adversely affect the Facility or that will otherwise adversely affect the rights of estates of the Company hereunder, except upon written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

ARTICLE III

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

3.1. Maintenance and Modifications of Facility by the Company.

- (a) During the Lease Term, the Company shall not abandon the Facility or cause or permit any waste to the Facility. The Company agrees that during the Lease Term it will (i) keep the Facility in reasonably safe condition; (ii) make all reasonable repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) use and maintain the Facility in a sound and prudent manner; and (iv) operate the Facility such that it continues to qualify under the Act and pursuant to the terms contained herein. The Company will indemnify, defend and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with this subsection (a).
- (b) The Company, at its own expense, and with the prior written approval of the Agency (which shall not be unreasonably withheld) from time to time may make any structural additions, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; provided, however, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements, except to the extent (i) the Company is acting as agent for the Agency which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law. The Company agrees to deliver to the Agency all documents that may be necessary or appropriate to transfer to the Agency a leasehold interest in the additions, modifications or improvements so made to the Facility.

3.2. Intentionally Deleted

3.3. Taxes, Assessments and Utility Charges.

- (a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery,

equipment or with respect to the Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all payments under a certain Payment in Lieu of Taxation Agreement, dated as of December 23, 2020 by and between the Agency and the Company ("PILOT Agreement"); (iii) all utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the Lease Term.

- (b) The Company, at its own expense, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Agency reasonably requests payment prior to settlement.

3.4. Insurance Required. At all times throughout the Lease Term the Company shall maintain or cause to be maintained the following insurance:

- (a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company.
- (b) Worker's Compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.
- (c) Commercial General Liability Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable Worker's Compensation Law, and \$2,000,000 general aggregate; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

3.5. Additional Provisions Respecting Insurance.

- (a) The commercial general liability policy shall list Agency as an additional insured. All insurance shall be procured and maintained with insuring company(ies) with AM Best financial strength ratings of "A" or higher and financial size categories of "VII" or greater and authorized to write such insurance in the State. All policies evidencing such insurance shall provide for payment of the losses of the Company and the Agency as their respective interest may appear. Should any of the above described policies be cancelled before the expiration date thereof, the Company or Company's representative will mail thirty (30) days written notice to the certificate holder.
- (b) All such certificates of insurance of the insurers evidencing that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the Lease Term. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

3.6. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

- (a) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and
- (b) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the premium for such insurance. The Company shall, on demand, reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION AND CONDEMNATION

4.1. Damage or Destruction.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:
 - (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;

- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement; and
- (iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

- (b) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.
- (c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

4.2. Condemnation.

- (a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

- (i) restore the Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or
- (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Facility subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

- (b) The Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a), if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.
 - (c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.
 - (d) The Company hereby waives the provisions of Real Property Law Section 227 or any law of like import now or hereafter in effect.
- 4.3. Condemnation of the Company-Owned Property. The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

- 5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.
- 5.2. Hold Harmless Provisions. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's financing, constructing, installing, equipping and leasing of the Facility to the Company, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions that may arise as a result of any of the foregoing; provided, however, the Company shall have no responsibility with respect to liability resulting solely from the Agency's gross negligence or intentional misconduct. The foregoing indemnities shall apply notwithstanding the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this Leaseback Agreement.
- 5.3. Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The

Agency shall honor and comply with any reasonable restricted access policy of the Company relating to the Facility.

- 5.4. Agreement to Provide Information. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation.
- 5.5. Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and financial affairs of the Company's ultimate parent, PepsiCo, Inc.
- 5.6. Compliance With Orders, Ordinances, Etc.
 - (a) The Company agrees that it will, throughout the Lease Term, comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, State, County, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.
 - (b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom.
- 5.7. Discharge of Liens and Encumbrances.
 - (a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.
 - (b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with the prior written notice to the Agency may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency thereby causing a lien to be removed.

- 5.8. Depreciation, Deductions and Investment Tax Credit. The Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property".

ARTICLE VI

RESTRICTION ON TRANSFER; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

6.1. Restriction on Transfer of Facility.

- (a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company ("Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, Lender and the Company, for purposes of financing the construction, installing, equipping and improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns the Agency shall not transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 hereof or its rights to be indemnified under Sections 1.2(e), 1.2(h), 2.1, 3.1(a) and 5.2 herein (collectively referred to as "Unassigned Rights").

6.2. Removal of Equipment.

- (a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility (provided the Company shall not do any damage to the Facility) and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.
- (b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in releasing any item of Equipment removed pursuant to this Section 6.2.
- (c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

6.3. Maintaining Existence and Assignment and Subleasing.

- (a) The Company agrees during the Lease Term, it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets without the prior written consent of the Agency which consent will not be unreasonably withheld or delayed in each instance.
- (b) This Leaseback Agreement may not be assigned in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency in each instance. A transfer in excess of fifty (50%) percent of the equity voting interests of the Company or any other material change the management of the Company shall be deemed an assignment and require the prior written consent of the Agency, which consent will not be unreasonably withheld or delayed in each instance. Any assignment or subleases shall be on the following conditions, as of the time of each assignment and sublease:
 - (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;
 - (ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned;
 - (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption; and
 - (iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act.
- (c) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company at its cost shall furnish to the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

ARTICLE VII

DEFAULT

7.1. Events of Default Defined.

- (a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:
 - (i) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 or 3.3 or 3.7 hereof and such failure shall have continued for a period of -thirty (30) days after the Agency gives written notice of such failure to the Company; or

- (ii) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Leaseback Agreement that shall have continued for a period of thirty (30) days after the Agency gives written notice of such breach to the Company; or
 - (iii) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or
 - (iv) If any representation or warranty of the Company contained in this Leaseback Agreement is incorrect in any material respect; or
 - (v) Any default by the Company under the PILOT Agreement that shall have continued for a period of time beyond the cure period(s) provided for in the PILOT Agreement.
- (b) Notwithstanding the provisions of 7.1 (a), if by reason of *force majeure* either party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as it is affected by such *force majeure*, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of *force majeure* shall not excuse, delay or in any way diminish the obligations of the Company to or make the payments required by Sections 2.6, 3.3 and 3.7 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.4, 5.5, 5.6 and 5.7 hereof. The term "*force majeure*" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, terrorist acts, priorities or orders of any kind of the government of the United States of America or of the State or any of its departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The

party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

- 7.2. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:
- (i) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable:
 - (i) all unpaid installments of rent payable pursuant to Section 2.6 hereof and
 - (ii) the sums under Sections 3.3 and 3.7 hereof; and (iii) all other payments due under this Leaseback Agreement.
 - (ii) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.
 - (iii) Take any other action at law or in equity which may appear necessary or desirable including, without limitation, to seek and obtain damages and specific performance or other monetary or equitable relief, and to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.
 - (iv) Terminate this Leaseback Agreement. Such termination is in addition to all other rights and remedies available to the Agency hereunder and without mitigation of such rights and remedies. The Company hereby appoints the Chairman of the Agency as its attorney-in-fact for the limited purpose of signing any forms which are necessary to accomplish such termination. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.
- 7.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Leaseback Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of

the Company herein contained, or for obtaining other relief, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

- 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE VIII

EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY

8.1. Early Termination of Agreement.

- (a) The Company shall have the option at any time, for any reason or for no reason, to terminate this Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.
- (b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof, the sums due under Sections 3.3 or 3.7 hereof, and all other payments due under this Leaseback Agreement, upon written notice to the Company of the occurrence of an Event of Default hereunder.

8.2. Option to Terminate Agency's Leasehold Interest in the Facility. Upon expiration or earlier termination of this Leaseback Agreement in accordance with Section 2.5, 7.2 or Section 8.1 hereof, the Company shall pay all sums due under Sections 2.6, 3.3 and 3.7 hereof and all other sums due under this Leaseback Agreement ("Termination Payment").

8.3. Termination of Leaseback.

- (a) Pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Termination Payment, deliver to the Company all necessary documents to reflect termination of this Leaseback Agreement, subject only to the following:
 - (i) any liens to which the Facility was subject when leased to the Agency;
 - (ii) any liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced; and
 - (iii) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Leaseback Agreement.

- (b) The Agency shall release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).
- (c) Upon termination of this Leaseback Agreement, the Lease Agreement and the PILOT Agreement of even date herewith shall also terminate.

ARTICLE IX

GENERAL PROVISIONS

9.1. Notices. All notices provided for by this Leaseback Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Executive Director

with a copy to:

GARIGLIANO LAW OFFICES, LLP
449 Broadway
P.O. Drawer 1069
Monticello, New York 12701-1069
Attn: Agency Counsel

To the Company:

Frito-Lay, Inc.
7701 Legacy Drive
Plano, Texas 75024
Attn: - Economic Development
Email: EconomicDevelopment@pepsico.com

with a copy to:

Frito-Lay, Inc. Law Department
7701 Legacy Drive
Plano, Texas 75024

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section 9.1. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section 9.1.

- 9.2. Binding Effect. This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- 9.3. Waiver. No waiver of any of the provisions of this Leaseback Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 9.4. Severability. If any provision of this Leaseback Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Leaseback Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Leaseback Agreement.
- 9.5. Governing Law, Venue. This Leaseback Agreement shall be governed, construed and enforced in accordance with the laws of the State for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction located in the County as the exclusive venue for resolution of any disputes which may arise under or by reason of this Leaseback Agreement.
- 9.6. Survival of Obligations. The obligations of the Company to make payments required by Sections 2.6, 3.3 and 3.7 hereof, all other payments due under this Leaseback Agreement and all indemnities shall survive any termination or expiration of this Leaseback Agreement.
- 9.7. Section Headings Not Controlling. The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.
- 9.8. Recording and Filing. This Leaseback Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of the County, of the State, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 9.9. Merger of Agency.
- (a) Notwithstanding anything to the contrary or otherwise contained in this Leaseback Agreement, nothing contained in this Leaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of its leasehold interest in the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to lease the Facility under the terms and provisions hereof and the PILOT Agreement, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Leaseback Agreement and

PILOT Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

- (b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of its leasehold interest, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

9.10. No Recourse; Special Obligation.

- (a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not any director, officer, employee, member, agent (other than the Company) or representative of the Agency in his individual capacity, and the directors, officers, employees, members, agents (other than the Company) or representatives of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.
- (b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).
- (c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its directors, officers, employees, members, agents (other than the Company) or representatives of the

Agency shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its directors, officers, employees, members, agents (other than the Company) and representatives of the Agency against all liability expected to be incurred as a result of compliance with such request.

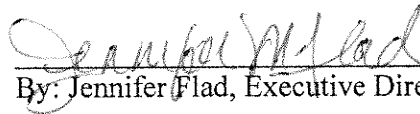
- (d) The obligations and agreements of the Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents, employees or representatives of the Company in his or their individual capacity, and the members, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents and employees or representatives of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

9.11. Entire Agreement. This Leaseback Agreement together with the Lease Agreement and the PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Leaseback Agreement may not be amended in any respect, except by a written amendment expressly referring to this Leaseback Agreement and executed by the parties to be bound thereby.

60411-003v7

IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in its respective names, all as of the date first above written.

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY


By: Jennifer Flad, Executive Director

FRITO-LAY, INC.



By: Thomas Rao
Title: Sr. Vice President, Supply Chain FritoLay

EXHIBIT A
LEASE TO AGENCY

SCHEDULE A

LAND DESCRIPTION

113.-1-10

113.-2-2

113.-2-3

113.-2-6

113.-3-1.1

113.-3-5.1