

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT ("PILOT Agreement"), effective as of the 23rd day of December, 2020, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT 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 located at 548 Broadway, Monticello, New York 12701 ("Agency") 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 6.9± 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, the 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, 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, 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; and

WHEREAS, the Agency and the Company deem it necessary and proper to execute and deliver this PILOT Agreement and to make provision for payments in lieu of taxes by the Company for the benefit of the County, Town, School and Village (collectively referred to as the “Taxing Jurisdictions”).

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:

1. Agreement to make payments in lieu of taxes. As long as the Agency holds a leasehold interest in the Project, the Company agrees to pay to the Agency at 548 Broadway, Monticello, New York 12701, or at such other address as shall be designated from time to time by the Agency, a payment in lieu of tax (“PILOT Payment”) on or before the dates indicated below computed in accordance with this PILOT Agreement.

2. Computation of PILOT Payments; Outside the Empire Zone. With respect to all real property and improvements included in the Project that are not located in the Empire Zone, the Company shall make a PILOT Payment to the Agency on or before December 15, 2021 and each December 15th thereafter during the term of this PILOT Agreement, the Company shall pay to the Agency a PILOT Payment equal to the total value subject to PILOT for the applicable year listed below multiplied by the equalization rate defined in ¶4 multiplied by the tax rates defined in ¶5 less any amount paid under this ¶2.

Payment Due Date	Present Value	Improvement Value	Exemption Percentage	Exemption Amount	Improvement Value Net of Exemption	Total Value Subject to PILOT
December 15, 2021	\$617,540	\$1,435,000	20%	\$287,000	\$1,148,000	\$1,765,540
December 15, 2022	\$617,540	\$1,435,000	10%	\$143,500	\$1,291,500	\$1,909,040
December 15, 2023	\$617,540	\$1,435,000	10%	\$143,500	\$1,291,500	\$1,909,040

3. Computation of PILOT Payments; Within the Empire Zone. With respect to all real property and improvements included in the Project that are located in the Empire Zone, the Company shall make a PILOT Payment to the Agency on or before December 15, 2021 and each December 15th thereafter during the term of this PILOT Agreement as follows:

- (a) With respect to each year during the Company's benefit period, as defined in Section 14(a)(1) of the New York Tax Law, for which the Company is entitled to claim the QEZE Credit for Real Property Taxes ("CRPT") the Company shall make PILOT Payments to the Agency in an amount equal to the tax payment the Company would pay to the Taxing Jurisdictions, if the Agency had no involvement with the Project.
- (b) Notwithstanding subparagraph a above, in the event that the legislation establishing the CRPT is amended, and as a result of such amendment the Company is no longer entitled to claim the CRPT at the same overall benefit levels as provided for under current law, the Company shall pay to the Agency on or before December 15, 2021 and each December 15th thereafter a PILOT Payment equal to the total value subject to PILOT for the applicable year listed below multiplied by the equalization rate defined in ¶4 multiplied by the tax rates defined in ¶5 less any amount paid under ¶2 above:

Payment Due Date	Present Value	Improvement Value	Exemption Percentage	Exemption Amount	Improvement Value Net of Exemption	Total Value Subject to PILOT
December 15, 2021	\$619,000	\$6,025,000	20.00%	\$1,205,000	\$4,820,000	\$5,439,000
December 15, 2022	\$619,000	\$6,025,000	10.00%	\$602,500	\$5,422,500	\$6,041,500
December 15, 2023	\$619,000	\$6,025,000	10.00%	\$602,500	\$5,422,500	\$6,041,500

4. Equalization Rate. For the purposes of determining the amount of the PILOT Payment, the equalization rate shall be the equalization rate for the Town used by the County to allocate and levy County taxes in connection with the January 1st tax roll immediately

preceding the due date of the PILOT Payment. In the event that the equalization rate shall exceed one-hundred (100%) percent, the equalization rate used in determining the amount of the PILOT Payment shall be one-hundred (100%) percent.

5. Tax Rates. For the purposes of determining the amount of the PILOT Payment, the tax rates for each Taxing Jurisdiction shall mean the last rate used for levy of taxes by each such jurisdiction. For the Liberty Central School District (“School”) tax purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the School tax year that began in the calendar year in which the PILOT Payment is due¹. For Village tax purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the tax year that began in the calendar year in which the PILOT Payment is due². For County and Town purposes, the tax rates used to determine the PILOT Payment shall be the tax rates relating to the calendar year in which the PILOT Payment is due³. The chart that follows sets forth the years of the overall twenty (20) year period governed by this PILOT Agreement; the date that a PILOT Payment is due; and the appropriate tax periods utilized in determining the tax rates for computing the PILOT Payment.

Year	Payment Date	School Fiscal Year Beginning	Village Fiscal Year Beginning	County/Town/School District
18	December 15, 2021	July 1, 2021	June 1, 2021	January 1, 2021
19	December 15, 2022	July 1, 2022	June 1, 2022	January 1, 2022
20	December 15, 2023	July 1, 2023	June 1, 2023	January 1, 2023

The final PILOT Payment provided for under this PILOT Agreement which is due on December 15, 2023 is attributable to the 2023-2024 Village, 2023-2024 School and 2024 County and Town tax years. The termination date (February 1, 2024) of the Lease Agreement, dated December 23, 2020 and the Leaseback to Company, dated December 23, 2020 (collectively, “the Lease/Leaseback Documents”) has been selected solely for the purpose of permitting the Assessor of the Town, the municipality in which the Land subject to the lease/leaseback is situated who assesses said Land, to place the subject Land back on the assessment roll for the purposes of the 2024-2025 Village, 2024-2025 School and 2025 County and Town tax years. The termination of the Lease/Leaseback Documents on February 1, 2024 is not intended to be deemed a transfer of title or acquisition of property as referred to in or envisioned by Real Property Tax Law §520 which would permit the Assessor of the Town to assess such Land and subject it to taxation for the unexpired portion of the 2023-2024 Village, 2023-2024 School and 2024 County and Town tax years; such action by the Assessor would not be consistent with the intent and spirit of this PILOT Agreement, by which the final PILOT Payment to be made on December 15, 2023 is

¹ For School tax purposes, the PILOT Payment is paid in arrears.

² For Village tax purposes, the PILOT Payment is paid in arrears.

³ For County and Town tax purposes, although the tax rate used to compute a PILOT Payment is the tax rate used to compute the prior calendar year’s tax bill, the PILOT Payment paid in that year covers the succeeding tax year. For example, the portion of the PILOT Payment owed to the County and Town due on December 15, 2021 shall be computed using the 2021 tax rate, but the PILOT Payment shall cover the tax period for the calendar year 2022. In other words, for County and Town purposes, the PILOT Payment is paid in advance.

intended to constitute the sole and agreed payment to be made by the Company in lieu of real property taxes which would otherwise be due and payable for the 2023-2024 Village, 2023-2024 School and 2024 County and Town tax years.

6. Other Agreements Relating to PILOT Payments.

(a) Intentionally omitted.

(b) The Agency shall remit to the Taxing Jurisdictions any PILOT Payment (and other amounts received hereunder) within thirty (30) days of receipt and shall allocate that PILOT Payment among the Taxing Jurisdictions in the same proportion as normal taxes would have been allocated but for the Agency's involvement.

7. Additional Payments. In addition to the PILOT Payments, if any, to be made by the Company to the Agency pursuant to this PILOT Agreement, the Company shall pay to the Agency all special assessments, special ad valorem levies, and any other charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. Such payments shall be made within ten (10) days after the date upon which a bill shall be rendered by the Agency to the Company. Such charges shall be paid without adjustment, exemption or other deduction provided; in each case, however, to the Company's right to obtain exemption and credits, if any, which would be afforded a private owner of the Facility. The Company hereby authorizes the Agency to request that any Taxing Jurisdiction bill the Company directly for all special assessments, special ad valorem levies and any other charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. In the event the Company is directly billed for such charges, the Company shall pay such charges within the time in which such statement or bill may be paid without interest or penalty.

8. Determination of Valuation of the Project. The Agency and the Company have agreed upon the Total Value Subject to PILOT of the Project. Such valuation was made without regard to the actual cost of construction of improvements to be made at the Facility. Such valuation shall not be increased or decreased if the Facility or any related work on or improvements are completed in substantial conformity with the plans and specifications. If there is a substantial change relating to the Facility or any related work or improvements during the construction phase, the Agency may redetermine the improvement value of the Facility. An increase (or decrease) in building size shall not be deemed to be a substantial change unless such increase (or decrease) is more than ten (10%) percent of the Building's square feet prior to the increase (or decrease).

9. Valuation of Additions to the Facility. If there shall be an addition constructed to the Building, or if there shall be any additional buildings or other structures constructed on the Land, the Company shall promptly notify the Agency of such addition that adds incremental value to the facility (“Addition”). The notice to the Agency shall contain a copy of the application for a building permit, plans, specifications, and any other relevant information that the Agency may request. Upon the earlier of substantial completion of the Addition, or the issuance of a Certificate of Occupancy, there shall be an increase in the PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total Value Subject to PILOT caused by such Addition. Absent an agreement to the contrary, the Total Value Subject to PILOT caused by any Addition shall be subject to calculation of PILOT Payments as contemplated by ¶s 2 and 3 hereof. If the Company shall disagree with the Agency’s determination of the Total Value Subject to PILOT for any Addition, then and in that event the Total Value Subject to PILOT shall be the assessed value of the Addition as determined by the Town Assessor. If there shall be a reduction by way of condemnation or other taking, the Company shall promptly notify the Agency of such reductions. The Agency shall notify the Company of any proposed decrease in the Total Value Subject to PILOT caused by any such condemnation taking. If the Company shall disagree with the Agency’s determination of the Total Value Subject to PILOT caused by any reduction by way of condemnation or other taking, then and in that event the Agency’s determination of the Total Value Subject to PILOT shall be the assessed value as determined by the Town Assessor.

10. Employment Obligations.

(a) Employment Goals.

(i) Employment Goal Definitions: For the purpose of this PILOT Agreement, the following terms shall have the meaning set forth in each definition:

(1) “Employee” shall mean a person first employed by the Company at the Facility on or after February 19, 2002.

(2) “Full-Time Equivalent Employee” or “FT” shall mean an employee who is scheduled to work 35 hours in any seven (7) day period at the Facility.

(3) “Base Compensation” shall be determined in accordance with the provisions of the Fair Labor Standards Act.

(4) “At the Facility” shall mean that a FT is employed primarily at the Facility.

(ii) FT Employment Goals: The Company agrees that a FT- employment goal of fifty (50) jobs shall be maintained for every FT Employment Year (as defined below) ending on or prior to September 30, 2012. On or after October 1, 2012, the Company agrees that a FT – employment goal of two

hundred fifty (250) jobs shall be maintained for every FT Employment Year (as defined below).

The Company shall file with the Agency not later than November 1, 2013 and on November 1st of each year thereafter a statement certified under oath setting forth the actual FT's employed at the Facility for the preceding October 1st to September 30th period (each a "FT Employment Year"). Such statement shall contain such additional information as the Agency may reasonably request. The Company shall make available to the Agency such information as it may reasonably request to verify the information provided to the Agency, including but not limited to State and federal employment tax forms and payroll records of the Company, subject to the Company's trade secret/proprietary and confidential business information requirements. "Actual average FT- employment" shall be determined by adding the actual FTEs employed in each month of the applicable FT Employment Year and dividing such sum by twelve (12).

- (iii) Computation of PILOT Payment In Accordance with ¶2 or ¶3(b) (if applicable), If FT Goals Not Attained: In the event the Company makes a PILOT Payment to the Agency in the manner contemplated by ¶2 or ¶3(b) (if applicable), and the FT-employment goal is not attained with respect to the FT Employment Year preceding the PILOT Payment due date, the amount due ("Adjusted PILOT Payment") shall be the amount calculated in ¶2 or ¶3(b) (if applicable) hereof, plus an amount equal to the tax calculated as if an exemption under RPTL §485-b were in effect, less the amount calculated in ¶2 or ¶3(b) (if applicable), times the percentage:

(1) the numerator of which is equal to two hundred fifty (250) minus the actual average FT employment for the prior calendar year, and

(2) the denominator of which is two hundred fifty (250).

By way of example, if (i) the actual average FT employment for the 2014 - 2015 FTE Employment Year is two hundred (200); (ii) the Town equalization rate used by the County to allocate 2016 taxes is 75% percent; (iii) the Town combined School, County, Town and Village rate relating to the June 1, 2016 Village tax, September 1, 2016 School tax and January 1, 2016 County and Town tax bills is \$55.00 per \$1,000.00 of assessed value; (iv) the assessed value of the Facility on the 2015 Final Assessment Roll is \$1,350,000.00 Dollars full value with \$1,250,000.00 of improvement value eligible for the §485-b exemption at a rate of 40% percent; and (v) assuming the PIOT Payment for the portion of the property located within the Empire Zone was calculated under ¶3(a), then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

PILOT Payment

$$\begin{aligned} \text{PILOT Payment} &= \text{PILOT Payment Formula} \\ \$34,134.38 &= \$827,500.00 \times 75\% \times \$55.00/\$1,000.00 \end{aligned}$$

Tax under §485-b

$$\begin{aligned} \text{Tax under §485-b} &= \text{Assessed Value} - \text{§485-b Exemption} \times \text{Tax Rates} \\ \$46,750.00 &= \$1,350,000.00 - (\$1,250,000.00 \times 40\%) \times \$55.00/\$1,000.00 \end{aligned}$$

Adjusted PILOT Payment

$$\begin{aligned} \text{Adjusted PILOT Payment} &= \text{PILOT Payment} + [(\text{tax under §485-b} - \text{PILOT Payment}) \times \\ &\quad \text{Percentage of Underemployment}] \\ \$36,657.50 &= \$34,134.38 + [(\$46,750.00 - \$34,134.38) \times 50\% / 250] \end{aligned}$$

In no event shall the Adjusted PILOT Payment exceed the amount payable if the Facility were subject to taxation and a §485-b exemption had been granted to eligible portion of the Facility.

- (b) Job Posting and Hiring Requirements. The Company agrees that it shall comply with the provisions of General Municipal Law §858(b) which requires that unless otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the Agency shall be listed with the administrative entities of the service delivery area created by the Federal Job Training Partnership Act (P.L.No. 97-300) serving the County and the State Department of Labor Community Services Division. Except as otherwise provided by collective bargaining contracts or agreement, the Company will first consider for new employment opportunities persons eligible to participate in the Federal Job Training Partnership (P.L.No. 97-300) program who shall be referred by administrative entities of the service delivery area servicing the County or by the State Department of Labor Community Services Division.

The Company acknowledges that it is not now bound by the provisions of collective bargaining contracts or agreements which limit or restrict the Company from listing such employment opportunities or from giving first consideration to persons eligible to participate in job training partnership act programs. The Company agrees not to enter into any collective bargaining contracts or agreements that create such restriction or limitation, unless the union or employee organization with which the Company shall negotiate a collective bargaining contract or agreement has a bona fide program for apprenticeship in such union or has a comparable program for providing employment opportunities to persons eligible to participate in such Job Training Partnership Act Programs under apprenticeship programs conducted by such union or employee organization. The Company agrees that any agreement which creates or imposes or changes any such restriction or limitation shall be first

submitted to the Agency for review prior to ratification of such agreement. The Company shall provide the Agency with copies of collective bargaining contracts or agreements hereinafter executed.

The Company shall submit to the Agency a statement detailing the manner in which the Company has complied with the provisions of this section of this PILOT Agreement. Such statement (together with documentation of each such referral and plan of hiring) shall be made under oath and shall be submitted no later than November 1st (or such other date as the parties shall agree) of each year during the term of this PILOT Agreement. After an audit by the Agency and a determination that there has been a failure for a period of two (2) years to list such job opportunities as herein provided or to hire and retain persons eligible for Job Training Partnership Act Programs without a reason for the failure to do so shall give rise to a presumption of intentional non compliance with the provision of this section.

- (c) Equal Opportunity Requirements. During the term of this PILOT Agreement, the Company shall be in compliance with the County "Equal Opportunity Policy Statement," providing equal employment opportunity without regard to age, race, religion, creed, color, and other non-merit factors in compliance with State and federal laws.
- (d) Defaults and Remedies Relating to Employment Obligations. The following remedies shall apply to Employment Obligation defaults:
 - (i) Employment Goal Filing: If the Company shall fail to file a certification of FTEs employed prior to the time such statement is required to be filed with the Agency, the Agency may make the calculation of the PILOT Payment based on no FTEs for the affected year and the amount so calculated shall be paid. If the Company thereafter files such a statement and the filing results in a determination that the Company has made an overpayment, the Agency shall refund to the Company an amount equal to ninety (90%) percent of the overpayment plus interest at the then prevailing rate, less the actual costs incurred by the Agency to enforce this provision of this PILOT Agreement. In the Agency's sole discretion, such refund may be applied as a credit against the next succeeding PILOT Payment.
 - (ii) Employment Eligibility Requirements: If the Company fails to provide information reasonably requested by the Agency necessary to determine the eligibility of one or more persons to be considered as a FTE, the Agency may, upon fifteen (15) days notice to the Company, compute the PILOT Payment as if the person(s) were not eligible employees. No calculation so made shall be subject to recomputation.
 - (iii) Compliance with Other Hiring Requirements: If the Company shall fail to comply with the Job Posting and Hiring Act requirements set forth in ¶10(b)

or the Equal Opportunity requirements set forth in ¶10(c), the Agency, upon thirty (30) days' notice to the Company, may disallow in the calculation of the PILOT Payment any FTEs hired in violation of the foregoing requirements.

- (iv) Intentional Non-Compliance: In the event of a finding by the Agency of intentional non-compliance with the Job Posting and Hiring requirements set forth on ¶10(b), or the Equal Opportunity requirements set forth in ¶10(c), the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL §485-b.
- (v) Continuous Underemployment: If the Company shall fail for a period of two (2) consecutive years to employ at least two (2) FTEs for each year, the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL §485-b. Such an adjustment shall relate to the exemption level only, and not the valuation of the Project.
- (vi) Payment Required: Timely payment of all amounts due shall be made by the Company notwithstanding any dispute related to the calculation of the PILOT Payment.
- (vii) Condition Precedent to Suit: It shall be a condition precedent to the institution of any action or proceeding by the Company against the Agency with respect to the calculation of any amount claimed to be due the Agency that all amounts claimed to be due shall have been paid to the Agency by the Company prior to the institution of such action or proceeding.

11. Company Representations and Warranties.

- (a) The Company is duly authorized under all applicable provisions of law to enter into and perform this PILOT Agreement. The Company's entry into and performance of this PILOT Agreement will not violate any applicable provisions of law and, except as otherwise disclosed to the Agency and its counsel, will not result in a breach of or a default under any agreement of instrument to which the Company is a party and will not result in the creation of any lien, charge or encumbrance upon any of the assets of the Company under any such agreement or instrument.
- (b) The Company is not a party to any agreement or subject to any restriction (including without limitation any agreement among or between its shareholders) that materially and adversely affects its business assets or financial condition.
- (c) When executed, this PILOT Agreement will be a valid and binding obligation of the Company.

12. The Company's Right to Challenge. Except as otherwise provided in this PILOT Agreement, the Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Agency was not involved with the Project. Except as otherwise provided in this PILOT Agreement, the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency was not involved with the Project, with respect to the assessed value of the Facility by any of the Taxing Jurisdictions and shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment. In the event that a transfer occurs after a tax status date for real property tax, PILOT Payments for any tax, which is paid in arrears under the PILOT Agreement shall continue to be due and owing.
13. Involuntary Termination of Agreement. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the Company's obligations hereunder shall, to such extent, be amended.
14. Event of Default. During the term of this PILOT Agreement, the following shall be an event of default:
 - (a) The failure to make PILOT Payments within the time allowed for payment, time being of the essence;
 - (b) The happening of an Event of Default under the Leaseback to Company, by and between the Agency and the Company of even date herewith ("Leaseback Agreement");
 - (c) The adjudication of the Company as a bankrupt and the failure to vacate, set aside or terminate such adjudications within ninety (90) days thereafter;
 - (d) The failure of the Company to pay the amounts required to be paid pursuant to Sections 2.6 or 3.3 or 3.7 of the Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company;
 - (e) The appointment by any court of a receiver or trustee to take possession of all, or substantially all, of the assets of the Company which said appointment shall not have been discharged within a period of ninety (90) days after the filing of same;
 - (f) The making by the Company of an assignment for the benefit of creditors;
 - (g) The abandonment of the Facility by the Company for a period of thirty (30) consecutive days or more, unless such abandonment is caused by fire or other catastrophe, war, terrorist act, act of God or governmental order or decree without

fault of the Company contributing thereto; provided, however, that in the event of fire or other catastrophe, if the Company elects within ninety (90) days from the happening of such event to reconstruct the Facility the same will not constitute a default;

- (h) The attachment, execution or other seizure of all or substantially all of the assets of the Company, which such attachment, execution or other seizure is not discharged within a period of sixty (60) days after the date of levy; or
 - (i) The failure, refusal or neglect of the Company to perform, keep or observe any of the terms, covenants and agreements herein contained on the part of the Company to be performed, kept or observed.

15. Intentionally omitted.

16. Remedies On Other Defaults; Termination. Upon the happening of any event of default as defined in ¶14 (a - g) hereof, after thirty (30) days written notice to the Company specifying the event of default, if the default shall not be remedied within such thirty (30) day period or such other longer period specified in ¶'s 14(c), (e), (g) and (h), (or if, with reasonable diligence the default cannot be remedied within such thirty (30) day period or such longer period as specified in ¶'s 14(c), (e), (g) and (h), then within such extended period as may be reasonably required therefor) the Agency, at its option, may take any action hereinafter set forth and all such remedies shall be cumulative and not exclusive:

- (i) Recover damages for the breach of any covenant or condition hereof;
- (ii) Seek an injunction to bar any actual or threatened violation or breach of this PILOT Agreement;
- (iii) Seek any other remedy authorized by law or in equity; and
- (iv) Terminate this PILOT Agreement, without prejudice or limitation as to all other rights or remedies herein and/or under law or in equity. Such termination may be accomplished by terminating the Leaseback Agreement and conveying title to the Equipment, all as determined by the Agency, from the Agency to the Company. The Company hereby appoints the Agency's Chief Executive Officer, Chairman or Vice Chairman as its attorney-in-fact for the limited purpose of signing any forms necessary to effectuate the foregoing. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

17. Legal Fees on Default. If the Agency shall be required to take any action to enforce this PILOT Agreement or to collect any amount due hereunder, the Company shall be liable to pay, in addition to any other costs and expenses incurred by the Agency, its reasonable legal fees and the reasonable fees of any experts, accountants, or other professionals retained by it, without regard to whether the Agency shall have instituted any lawsuit or

action at law or in equity in any court or before anybody, provided such expenses were actually and necessarily incurred.

18. Late charges. If any PILOT Payment is not made by the due date, or if any other payment required to be made hereunder is not made when due by the last day of any applicable cure period, the Company shall pay penalties and interest as provided herein. With respect to PILOT Payments, if said payment is not received by the due date, the Company shall pay, in addition to the PILOT Payment, a late charge equal to five percent (5%) of the amount due. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment penalty in the amount of one (1%) percent per month until the payment is made. With respect to all other payments due hereunder, if said payment is not received when due or by the last day of any applicable cure period, the Company shall pay, in addition to said payment, the greater of (a) a late charge equal to five (5%) percent of the amount due plus interest on said payment equal to one (1%) percent per month or fraction thereof until said payment, penalty and interest is paid in full; or (b) penalties and interest which would have been incurred had payments made hereunder been made to the Taxing Jurisdictions.

19. Indemnification. The Company shall indemnify, defend and hold the Agency (and its chief executive officer, executive director, directors, officers, members, agents (except the Company), employees, servants and their successors, representatives and assigns) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including expenses incurred by the Agency (and its chief executive officer, executive director, directors, officers, members, agents (except the Company), employees, servants and their successors, representatives and assigns) in defending any claim, suit or action which may result as a result of the foregoing; provided, however the Company shall have no responsibility with respect to liability resulting from the Agency's (including the Agency's chief executive officer, executive director, directors, officers, members, agents (except the Company), employees, servants and their successors, representatives and assigns) 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 apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this PILOT Agreement.

20. 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.

21. General Provisions.

- (a) Notices. All notices provided for by this PILOT 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, MD 3A-160C
Plano, Texas 75024

- (b) Assignment. This PILOT Agreement may not be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits hereunder without the prior written consent of the Agency, which consent may be withheld by the Agency in its sole and absolute discretion.
- (c) Binding Effect. This PILOT Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- (d) Waiver. No waiver of any of the provisions of this PILOT 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.
- (e) Severability. If any provision of this PILOT Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or

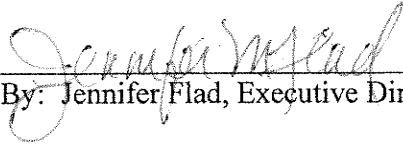
other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this PILOT Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this PILOT Agreement.

- (f) Governing Law, Venue. This PILOT Agreement shall be governed by and construed in accordance with the laws of the State. The parties hereby designate a court of proper jurisdiction located in the County, State as the exclusive venue for resolution of any disputes which may arise under or by reason of this PILOT Agreement.
- (g) Survival of Obligations. The obligations of the Company to make the PILOT Payments, which are due only prior to expiration of this PILOT Agreement and all of the Company's indemnification obligations shall survive any termination or expiration of this PILOT Agreement.
- (h) Section Headings Not Controlling. The headings of the several sections in this PILOT 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 PILOT Agreement.
- (i) Entire Agreement. This PILOT Agreement together with the Leaseback Agreement set 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 PILOT Agreement may not be amended in any respect, except by a written amendment expressly referring to this PILOT Agreement and executed by the parties to be bound thereby.


60411-007v6

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the date first written above.

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY


By: Jennifer Flad, Executive Director

FRITO-LAY, INC.


By: Thomas Rao
Title: SR. Vice President, Supply Chain Frito Lay