

December 2, 2021

**HARRIS BEACH PLLC**  
ATTORNEYS AT LAW

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RGAENZLE@HARRISBEACH.COM

**VIA CERTIFIED MAIL - RECEIPT #:**  
**9489 0090 0027 6342 0893 10**

Ms. Lisa A. Chutka, Assessor  
Wallkill Town Hall  
99 Tower Drive  
Middletown, New York 10941

Re: Orange County Industrial Development Agency ("OCIDA")  
Assignment and Assumption from Fairbanks MFG LLC to Frito-Lay, Inc. of the  
Project located at 79 Industrial Place Ext. in the Town of Wallkill, Orange  
County, NY

Dear Ms. Chutka:

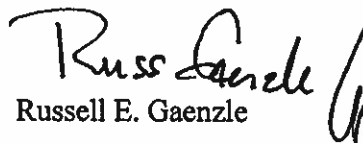
Enclosed herewith please find a copy of the executed Assignment and Assumption of Agreements (the "Assignment and Assumption"), from Fairbanks MFG LLC (as "Assignor") to Frito-Lay, Inc. (as "Assignee") in connection with the Project located at 79 Industrial Place Ext. in the Town of Wallkill, Orange County, New York. This Assignment and Assumption is being simultaneously delivered to the Orange County Clerk for recording.

This Agreement assigns to the Assignee all of the benefits previously afforded the Assignor under the Lease Agreement, Leaseback Agreement, Environmental Compliance Agreement and Payment-In-Lieu-Of-Tax Agreement (the "PILOT Agreement"; and collectively with the Lease, Leaseback and Environmental Compliance Agreements, the "Project Documents" and more particularly described in the Assignment and Assumption), each by and between Assignor and the Orange County Industrial Development Agency.

This is to inform you that the existing PILOT Agreement for this property is to remain in effect and Assignee should receive the partial real property tax abatement for the remainder of the PILOT Agreement term. A copy of the PILOT Agreement is attached for your reference.

Please contact me if you have any questions. Thank you.

Very truly yours,

  
Russell E. Gaenzle

Enclosures  
cc: OCIDA  
Kathleen Alfano  
Attached Distribution List

DISTRIBUTION LIST

Honorable Steven M. Neuhaus  
Orange County Executive  
255 Main Street  
Goshen, New York 10924  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6342 0893 27

Mr. Frank DenDanto III, Supervisor  
Wallkill Town Hall, Building A  
99 Tower Drive  
Middletown, New York 10941  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6342 0893 41

Mr. Eric Ruscher  
Real Property Tax Service  
255 Main Street  
Goshen, New York 10924  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6342 0893 34

Ms. Amy Creeden, Interim Superintendent  
Enlarged City School District of Middletown  
223 Wisner Avenue Extension  
Middletown, New York 10940  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6342 0893 58

Mr. John Williams, Board President  
Enlarged City School District of Middletown  
223 Wisner Avenue Extension  
Middletown, New York 10940  
CERTIFIED MAIL RECEIPT #:  
9489 0090 0027 6342 0893 65

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**ASSIGNMENT AND ASSUMPTION OF AGREEMENTS**

made by and between

**FAIRBANKS MFG LLC,  
as Assignor**

and

**FRITO-LAY, INC.,  
as Assignee**

with acknowledgment by

**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**Location of Premises:**

Street Address: 79 Industrial Place Ext.  
Village and Town: Wallkill  
County: Orange  
State: New York

**Tax Map Number:**  
36-2-37.11

**Dated: November 1, 2021**

**Record and Return To:**

Lori Palmer, Paralegal  
Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534

## · ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

**THIS ASSIGNMENT AND ASSUMPTION OF AGREEMENTS** (the "Assignment and Assumption"), dated as of November 1, 2021 (the "Effective Date"), is made by and between **FAIRBANKS MFG LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, with offices at c/o Medora Snacks LLC, 79 Industrial Place Ext., Middletown, New York 10940 (the "Assignor") and **FRITO-LAY, INC.**, a corporation duly organized and validly existing under the laws of the State of Delaware and authorized to conduct business in the State of New York, with offices at 7701 Legacy Drive, Plano, Texas 75024-4009 (the "Assignee"); with acknowledgement and consent of the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency").

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Project Documents (as hereinafter defined). The Agency is executing this document in its capacity as leasehold title holder only for the purpose of consenting to this Assignment and Assumption as contemplated herein.

### W I T N E S S E T H:

WHEREAS, by resolutions adopted by the Agency on May 15, 2013 and June 20, 2013, the Agency previously authorized the execution of certain documents with respect to the Project (as defined below), including (i) that certain Lease Agreement, dated as of July 1, 2013 (the "Lease Agreement"), by and between the Agency and Fairbanks MFG LLC ("Fairbanks"); (ii) that certain Leaseback Agreement, dated as of July 1, 2013, by and between the Agency and Fairbanks (the "Leaseback Agreement"); (iii) a certain Environmental Compliance and Indemnification Agreement, dated as of July 1, 2013, by the Company (the "Environmental Compliance Agreement"); and (iv) that certain Payment-in-Lieu-of-Tax Agreement, dated as of July 1, 2013, by and between the Agency and Fairbanks (the "PILOT Agreement") (collectively, the Lease Agreement, the Leaseback Agreement, the Environmental Compliance Agreement, the PILOT Agreement and related documents are hereinafter referred to as, the "Project Documents"); and

WHEREAS, pursuant to the Project Documents, the Agency provided financial assistance to Fairbanks in the form of (a) a sales tax exemption for purchases and rentals related to the acquisition, renovation and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, the Project consisted of: (A) the acquisition by the Agency of a leasehold or other interest in an approximately 5.7-acre parcel of land located at 79 Industrial Place Ext. in the Town of Wallkill, Orange County, New York (the "Land") and the existing improvements located thereon consisting principally of an approximately 51,408 square-foot building, parking and related improvements (the "Existing Improvements"), (B) the renovation of the Existing Improvements and construction on the Land of an approximately 16,860 square-foot addition to the Existing

Improvements to accommodate the Company's expanding food manufacturing and distribution business (the "Improvements"); (C) the acquisition and installation in and around the Existing Improvements and the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); all to be used by the Company in its business of manufacturing and distributing snack foods; and

WHEREAS, Assignor has informed the Agency that Assignor and Assignee have entered into a purchase agreement whereby Assignee will acquire the Facility, and as a result thereof indirectly acquire all of the Assignor's right, title and interest and obligations under the Project Documents, as the same may be amended from time to time; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's rights, title, interest, duties, obligations and liabilities under the Project Documents, and the Assignee desires to accept such assignment and to assume all of such rights, title, interest, duties and obligations and liabilities of Assignor thereunder; and

NOW THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment by Assignor.

(a) Assignor hereby sells, assigns, transfers, conveys and sets over unto the Assignee all of the Assignor's rights, title, interest, duties, obligations and liability in, to and under the Project Documents first arising from and after the Effective Date.

(b) The Assignee hereby accepts such assignment, and the Assignee hereby covenants to operate and maintain the Project, during the term of the Project Documents, such that it constitutes a "project" under Title I of Article 18-A of the General Municipal Law of the State of New York.

(c) Assignor hereby agrees and consents that this Assignment and Assumption shall in no way be construed as a waiver or release of any claims or rights that the Agency may have at any time against the Assignor, and the Agency expressly reserves any such claims or rights and the right to pursue the same at law or in equity.

2. Assumption by Assignee. The Assignee hereby assumes the performance of all of the obligations, terms, covenants and conditions of the Project Documents on Assignor's part first to be performed thereunder first arising from and after the Effective Date and will perform all of the obligations, terms, covenants and conditions of the Project Documents on Assignee's part to be performed from and after the Effective Date, all with the same force and effect as though the Assignee had signed the Project Documents as a party named therein.

3. Indemnity of Assignee. The Assignee does hereby agree, for the Assignee and for the

Assignee's legal representatives, successors and assigns, to indemnify, defend and save Assignor and Assignor's successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by the Assignee under the Project Documents from and after the Effective Date.

4. Indemnity of Assignor. Assignor does hereby agree, for Assignor and for Assignor's successors and assigns, to indemnify, defend and save the Assignee and the Assignee's legal representatives, successors and assigns harmless from and against any and all claims, losses, suits and expenses (including, but not limited to, reasonable attorneys' fees and litigation expenses) asserted or first arising in connection with the performance by Assignor under the Project Documents prior to the Effective Date.

5. Consent of Agency; Indemnity of Assignee and Assignor to Agency. Pursuant to the terms and provisions of the Project Documents, the Agency hereby consents to this Assignment and Assumption, and acknowledges its consent below by and through its duly authorized officer. It being expressly understood and agreed that each of Assignor and the Assignee, jointly and severally, agree and covenant that each of Assignor and the Assignee hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend and hold the Agency and its members, officers, agents and employees harmless from and against, any and all costs or liabilities that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to this Assignment and Assumption, including without limitation, all causes of action and reasonable attorneys' fees and litigation expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing.

6. Representations and Warranties of Assignor. Assignor hereby represents and warrants to the Assignee that (a) there have been no prior assignments of the Project Documents made by Assignor to any other party, (b) that the Project Documents are being assigned to the Assignee free and clear of all liens and encumbrances, and (c) Assignor has complied with all provisions of the Project Documents regarding assignment, including but not limited to Section 6.3 of the Leaseback Agreement. The representations and warranties of Assignor set forth herein shall survive the closing of the transactions contemplated by the Lease Agreement and the Leaseback Agreement and the delivery of this Assignment and Assumption. The Agency hereby acknowledges Assignor's compliance with the provisions of the Lease Agreement and the Leaseback Agreement regarding assignment.

7. Counterparts. This Assignment and Assumption may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which together shall constitute one and the same instrument.

8. Binding Effect. Each reference herein to a party hereto shall be deemed to include its successors and assigns, all of whom shall be bound by this Assignment and Assumption and in whose favor the provisions of this Assignment and Assumption shall inure.

9. Entire Agreement. This Assignment and Assumption represents the entire agreement between the parties hereto with respect to the subject hereof and supersedes all prior negotiations, either written or oral.

10. Further Assurances. Assignor and the Assignee agree to deliver to each other such further instruments and/or documents as reasonably requested and for the purpose of carrying out or consummating the transactions contemplated by this Assignment and Assumption.

*[Remainder of Page Intentionally Left Blank]*

**[Signature Page to Assignment and Assumption of Agreements]**

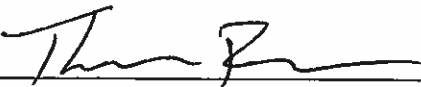
IN WITNESS WHEREOF, the parties hereto have executed and delivered this Assignment and Assumption of Agreements as of the date first above written.

**FAIRBANKS MFG LLC**

**By: Frito-Lay, Inc., its Successor**

By: 

**FRITO-LAY, INC.**

By: 



[Acknowledgment Page to Assignment and Assumption of Agreements]

STATE OF Texas )  
COUNTY OF Collin ) ss.:

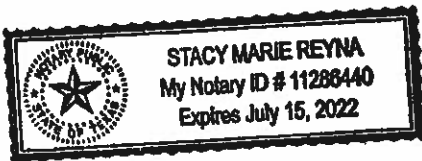
On the 29th day of November, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Rao, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Stacy Marie Reyna  
Notary Public

STATE OF Texas )  
COUNTY OF Collin ) ss.:

On the 29th day of November, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas Rao, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Stacy Marie Reyna  
Notary Public

**ACKNOWLEDGMENT OF  
ASSIGNMENT AND ASSUMPTION OF AGREEMENTS**

The undersigned hereby acknowledges receipt of notice of the Assignment and Assumption of Agreements, by and between **FAIRBANKS MFG LLC** (the "Assignor") and **FRITO-LAY, INC.** (the "Assignee"), dated as of November 1, 2021 (the "Assignment and Assumption"), pursuant to which Assignor assigns all of Assignor's rights, title, interest, duties, obligations and liabilities under the Project Documents (as defined in the Assignment and Assumption) first arising from and after the Effective Date (as defined in the Assignment and Assumption) and the Assignee accepts such assignment and assumes all of Assignor's rights, title, interest, duties, obligations and liability into and under the Project Documents first arising from and after the Effective Date. The foregoing shall not be construed, however, as a waiver or release of any claims or rights that the undersigned may have at any time against Assignor, and the undersigned expressly reserves any such claims or rights and the right to pursue the same at law or in equity.


IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of this 17<sup>th</sup> day of November, 2021.

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Michael Torelli

STATE OF NEW YORK     )  
COUNTY OF ORANGE    ) ss.:

On the 17<sup>th</sup> day of November, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **Michael Torelli**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY.**

**AND**

**FAIRBANKS MFG LLC**

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**PAYMENT IN LIEU OF TAX AGREEMENT**

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**Premises & Tax Map Number:**

**79 Industrial Place Ext. (Tax Map ID No. 36-2-37.11) in  
the Town of Wallkill, Orange County, New York**

**Dated as of July 1, 2013**

**Affected Tax Jurisdictions:**

**Orange County  
Town of Wallkill  
Middletown Central School District**

## **PAYMENT IN LIEU OF TAX AGREEMENT**

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "PILOT Agreement"), dated as of the 1<sup>st</sup> day of July, 2013, is by and between the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency") and **FAIRBANKS MFG LLC**, a limited liability company formed and validly existing under the laws of the State of New York, with offices at c/o Medora Snacks LLC, 79 Industrial Place Ext., Middletown, New York 10940 (the "Company").

### **WITNESSETH:**

WHEREAS, the Agency was created by Chapter 390 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition by the Agency of a leasehold or other interest in an approximately 5.7-acre parcel of land located at 79 Industrial Place Ext. in the Town of Wallkill, Orange County, New York (the "Land") and the existing improvements located thereon consisting principally of an approximately 51,408 square-foot building, parking and related improvements (the "Existing Improvements"), (B) the renovation of the Existing Improvements and construction on the Land of an approximately 16,860 square-foot addition to the Existing Improvements to accommodate the Company's expanding food manufacturing and distribution business (the "Improvements"); (C) the acquisition and installation in and around the Existing Improvements and the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); all to be used by the Company in its business of manufacturing and distributing snack foods; and

WHEREAS, in order to induce the Company to acquire, construct, renovate and equip the Facility, the Agency is willing to take a leasehold interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility pursuant to the terms and conditions of a certain Lease Agreement, from the Company to the Agency, dated as of the date hereof (the "Lease Agreement") and sublease said Land, Existing Improvements, Improvements and Equipment constituting the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, from the Agency to the Company, dated as of the date hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Orange County (the "County"), the Town of Wallkill (the "Town"), and the Middletown Central School District (the "School District" and, collectively with the County, and the Town the "Affected Tax Jurisdictions").

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

**Section 1 - Payment in Lieu of Ad Valorem Taxes:**

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2014**) (the "Taxable Status Date") of New York State Form RP-412-a "Application For Real Property Tax Exemption" (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes commencing with the 2015 Town and County tax year and the 2014-2015 School District tax year. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the Town, County and School. The Company shall provide to the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act as in effect on the date of closing; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. **Payee.** As long as the Facility is leased by the Company to the Agency or under the Agency's jurisdiction, control or supervision, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before **January 1** of each calendar year for Town and County taxes and, on or before **September 1** of each calendar year for School District taxes (collectively, the "Payment Date"), commencing on **September 1, 2014** and **January 1, 2015**, respectively, an amount equal to the Total PILOT payment, as described on **Schedule A** attached hereto.

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder (if any) within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2014/2015 School District fiscal tax year through the 2023/2024 School District fiscal tax year, and (ii) the 2015 County and Town calendar tax year through the 2024 County and Town calendar tax year. This PILOT Agreement shall expire on December 31, 2024; provided, however, the Company shall pay the 2024/2025 School District tax bill and the 2025 County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for

the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of years elapsed under the Sale Agreement), supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 2 - Special District Charges, Special Assessments and other Charges. Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section 3 - Transfer of Facility. In the event that the Facility is transferred from the Agency to the Company (the lease/leaseback agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section 1 herein, or this PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section 4 - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise 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 or the validity or amount of any tax equivalent provided for herein.

4.2 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 Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5 - Changes in Law. 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 obligations of the Company hereunder shall, to such extent, be null and void.

#### Section 6 - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section 1 hereof within thirty (30) days of the Payment Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Lease Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section 1 herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section 1 herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section 7 - Assignment. No portion of any interest in this PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

#### Section 8 - Miscellaneous.

8.1 This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.



8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Orange County Industrial Development Agency  
Orange County Business Accelerator  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attn: Chairman

With a Copy to: Kevin Dowd, Esq.  
46 Daisy Lane  
Montgomery, New York 12549

And to: Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Russell E. Gaenzle, Esq.

To the Company: Fairbanks MFG LLC  
c/o Medora Snacks LLC  
79 Industrial Place Ext.  
Middletown, New York 10940  
Attn: Michael Ehrenberg, CFO

With a copy to: Ronald S. Kossar, Esq.  
402 East Main Street  
P.O. Box 548  
Middletown, New York 10940

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. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Orange County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this PILOT Agreement on its behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any

modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

*[Remainder of Page Intentionally Left Blank]*

**[Signature Page to PILOT Agreement]**

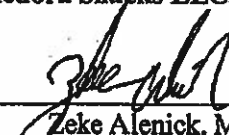
IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and year first above written.

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Robert Armistead, Chairman

**FAIRBANKS MFG LLC**

By: Medora Snacks LLC, its Managing Member

By:   
Zeke Alenick, Member

**SCHEDULE A**  
**TO**  
**PILOT AGREEMENT DATED AS OF JULY 1, 2013**  
**BY AND BETWEEN THE**  
**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**  
**AND FAIRBANKS MFG LLC**

"Total PILOT Payment" shall be calculated as follows:

<u>PILOT Year</u>	<u>County and Town Tax Year</u>	<u>School Tax Year</u>	<u>Total Taxable Valuation</u>
Year 1	2015	2014/2015	Base Valuation, plus (Added Value x .00)
Year 2	2016	2015/2016	Base Valuation, plus (Added Value x .10)
Year 3	2017	2016/2017	Base Valuation, plus (Added Value x .20)
Year 4	2018	2017/2018	Base Valuation, plus (Added Value x .30)
Year 5	2019	2018/2019	Base Valuation, plus (Added Value x .40)
Year 6	2020	2019/2020	Base Valuation, plus (Added Value x .50)
Year 7	2021	2020/2021	Base Valuation, plus (Added Value x .60)
Year 8	2022	2021/2022	Base Valuation, plus (Added Value x .70)
Year 9	2023	2022/2023	Base Valuation, plus (Added Value x .80)
Year 10	2024	2023/2024	Base Valuation, plus (Added Value x .90)

For the term of this PILOT Agreement, the Company shall continue to pay full taxes based on the assessed value of the Land before the completion of any Project improvements (the "Base Valuation"). During the term of this PILOT Agreement, the Base Valuation shall be increased from time to time by the percentage increase in the assessed valuation in all taxable real property in the Town of Wallkill, Orange County, New York, as of the respective tax status date for the tax year for which the recalculation is being made. The Total Taxable Valuation for each Total PILOT Payment shall be calculated such that a graduated abatement factor ("Abatement Factor") shall be applied to the increased assessed valuation attributable to the Improvements made to the Project Facility by the Company, as an Agent of the Agency, for the Project (the "Added Value"). The abatement schedule shall allow for a 100% exemption from taxation for the Added Value in the first PILOT Year, with such exemption being eliminated in 10% increments on an annual basis.

Once the Total Taxable Valuation is established using the Abatement Factor, the Total PILOT Payment shall be determined by multiplying the Total Taxable Valuation by the respective tax rate for each affected tax jurisdiction (after application of any applicable equalization rate). After the tenth PILOT Year, the Project Facility shall be subject to full taxation by the affected taxing jurisdictions.

Total Taxable Valuation = Base Valuation + (Added Value x Abatement Factor)  
Total PILOT Payment = Total Taxable Valuation (after equalization) x Tax Rate