

TROY INDUSTRIAL DEVELOPMENT AUTHORITY

AND

THE COOKIE FACTORY LLC

WITH ACKNOWLEDGMENT BY AND GUARANTY OF

FRATELLO'S HOLDINGS, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of January 13, 2014

Affected Tax Jurisdictions:

Rensselaer County

City of Troy

Enlarged City School District of Troy

Street Address: 41-61 River Street, Troy, New York 12180

TMID No.: 100.76-4-2

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 13th day of January, 2014, by and between the **TROY INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 433 River Street, 5th Floor, Troy, New York 12180 (the "Authority") and **THE COOKIE FACTORY LLC**, a New York limited liability company having offices at 520 Congress Street, Troy, New York 12180 (the "Company") with acknowledgment and guaranty of **FRATELLO'S HOLDINGS, LLC**, a New York limited liability company having offices at 520 Congress Street, Troy, New York 12180.

WITNESSETH:

WHEREAS, by Title 11 of Article 8 of the Public Authorities Law of the State of New York (the "State"), as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the "Act"), the Authority was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Company has submitted an application (the "Application") to the Authority requesting the Authority's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Authority of a leasehold or other interest in a certain parcel of real property located at 41-61 River Street, Troy, New York 12180 (the "Land", being comprised of approximately 0.76 acres of real property and more particularly identified as TMID No. 100.76-4-2) and the existing improvements located thereon, including an approximately 27,625 square foot building structure and related improvements (the "Existing Improvements"); (B) the renovation, reconstruction, refurbishing and equipping by the Company as agent of the Authority of the Existing Improvements to provide for a baked goods production and packaging facility, including internal production, packaging, storage and office space, along with external site improvements, including parking, curbage and other site improvements (collectively, the "Improvements"); (C) the acquisition of and installation in and around the Land, Existing Improvements and Improvements of certain machinery, fixtures, equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and (D) the lease of the Authority's interest in the Facility back to the Company; and

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

WHEREAS, pursuant to Section 1963 of the Act, the Authority 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 Authority 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 Authority for the benefit of the County of Rensselaer (the "County"), the City of Troy (the "City"), and the Enlarged City School District of Troy (hereinafter the "School District" or "School" and, collectively with the County and the City, 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 I - Payment in lieu of Ad Valorem Taxes:

1.1 A. Subject to the completion and filing by the Authority on or before the taxable status date of 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 RPTL Section 412 and Section 1963 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Land and Existing Improvements, and Improvements once constructed, shall be fully exempt from Real Estate Taxes commencing with the 2015 City and County tax years and the 2014/2015 School tax year, and continuing through the termination date, as defined herein. **The Company shall timely pay all Real Estate Taxes levied and accruing against the Facility prior to the above-described tax years.** For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, City and School. The Company shall provide to the Authority 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 Leaseback 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 Authority, 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; (ii) neither the Facility nor any part of or interest therein has been declared in default under any document for which an interest in the Facility could be sold, forfeited or lost; and (iv) neither the Company nor the Authority, 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 Authority, and releases the Authority 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 Authority 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 owned by the Authority or leased by the Company to the Authority, or under the Authority's jurisdiction, control or supervision, the Company agrees to pay annually in the aggregate to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before **February 1** (City and County) and **October 1** (School) of each year (collectively, the "Payment Dates"), commencing on **October 1, 2014**, an amount equal to the Total PILOT payment, as defined in Schedule A, 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 Authority 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 Authority'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 Authority shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, City 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 allocation of the Total 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 Agreement (excluding the Improvements, as defined herein), the Company shall notify the Authority of such future addition ("Future Addition"). The notice to the Authority shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Authority 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 Authority 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 Authority, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Authority, the Company shall pay the increased Total PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT 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 Authority'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 shall be deemed to include (i) the 2015 County and City tax year through the 2024 County and City tax year, and (iii) the 2014-2015 School tax year through the 2023-2024 School tax year. This PILOT Agreement shall expire on December 31, 2024; *provided, however*, the Company shall pay the 2030 County and City tax bill and the 2024-2025 School tax bill on the dates and in the amounts as if the Authority 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 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 lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b and 485-e 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 II - Special District Charges, Special Assessments and Other Charges

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to any library and business improvement district charges), and pure water charges and sewer charges (collectively, "Special District Charges") are to be paid in full in accordance with normal billing practices, subject to any applicable exemptions afforded according to the laws of the State, County or City, as may be amended from time to time.

Section III - Transfer of Facility.

3.1 In the event that the Lease Agreement is 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 I herein, or this 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 (taking into account any Total PILOT Payment previously made by the Company for the applicable PILOT year) 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 IV - 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 Special District Charge, special assessment or change in assessment with respect to the Added Value of the Facility by any of the Affected Tax Jurisdictions relating to any Special District Charge and/or such Added Value 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 proposed Special District Charge and/or such Added Value. However, the Company shall in all events make timely payments of all Total PILOT Payments due hereunder and no assessment challenge by the Company shall affect or cause to invalidate the amount of any tax equivalent provided for herein with respect to the Base Value.

4.2 Where appropriate pursuant to the provisions of this Section IV, 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 V - Changes in Law.

5.1 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 VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company (or any authorized assignee hereunder) to: (i) make the payments described in Section I on or before the Payment Date (the "Delinquency Date"), and such failure continues and remains uncured for a period of thirty (30) days after written notice thereof is sent to the Company; (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, and such failure continues and remains uncured for a period of thirty (30) days after written notice thereof is sent to the Company; (iii) the occurrence and continuance of any events of default after the expiration of any applicable notice and cure periods under the Leaseback Agreement; or (iv) the occurrence and continuance of any events of default after the expiration of any applicable notice or cure periods under any Permitted Mortgage, as defined within the Leaseback Agreement. Upon the occurrence and during the continuance of any Event of Default hereunder, in addition to any other right or remedy the Authority and/or the Affected Tax Jurisdictions may have at law or in equity, the Authority and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Authority 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 Authority 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 applicable provisions of the Act and the Company shall immediately notify the Authority 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 I herein are not made by the Delinquency Date, 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 I herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 herein, the 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 VII - Assignment.

7.1 No portion of any interest in this 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 Authority, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This 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, or by overnight delivery by a nationally recognized delivery services, as follows:

To the Authority:

Troy Industrial Development Authority
433 River Street, 5th Floor
Troy, New York 12180
Attn: Chief Executive Officer

To Authority Counsel:

Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company:

The Cookie Factory LLC
520 Congress Street
Troy, New York 12180
Attn: Chris M. Alberino

To Company Counsel:

Matthew J. Turner, Esq.
54 2nd Street
Troy, New York 12180

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 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 courts located in the City of Albany, New York and/or state courts located in the City of Troy, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Authority hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Authority by the Company. Neither member of the Authority nor any person executing this Agreement on its behalf shall be liable personally under this 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 Authority, or of any successor or political subdivision, either directly or through the Authority 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 Agreement.

8.5 Notwithstanding anything contained herein to the contrary, the Authority, at its sole but reasonable discretion and on a case-by-case basis, may reasonably determine, (but shall not be required to do so) with respect to the Facility, that the Facility has failed to meet its intended goals and to require the Company to agree to the recapture by the Authority of the value of any or all exemptions from taxation granted with respect to the Facility by virtue of the Authority's involvement. Events that the Authority may determine will trigger recapture are to (i) sale or closure of the Facility; (ii) significant employment reduction; (iii) significant change in use in the Facility; and (iv) significant change in business activities of the Company. If the Authority determines to provide for the recapture with respect to the Facility, the Authority also

shall, in its sole but reasonable discretion determine the timing and percentage of recapture. The Authority shall notify the Company in writing within thirty (30) days of any such occurrence of its intent to recapture PILOT Benefits (or any portion thereof), with any such election by the Authority to be subject to the Company's right to cure such occurrence for a period of thirty (30) days following its receipt of such written notice.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to PILOT Agreement]

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

TROY INDUSTRIAL
DEVELOPMENT AUTHORITY

By:

A handwritten signature in black ink, appearing to read "William Dunne", written over a horizontal line.

William Dunne, Executive Director

THE COOKIE FACTORY LLC

By:

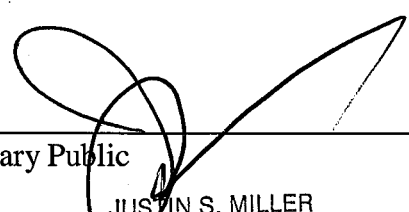
A handwritten signature in black ink, appearing to read "Chris M. Alberino", written over a horizontal line.

Chris M. Alberino, Managing Member

State of New York)
County of Rensselaer) ss.:

On the 13th day of January in the year 2014, before me, the undersigned, personally appeared CHRIS M. ALBERINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public


JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

State of New York)
County of Rensselaer) ss.:

On the 13th day of January in the year 2014, before me, the undersigned, personally appeared WILLIAM DUNNE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public


JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

PERFORMANCE GUARANTY

For good and valuable consideration, FRATELLO'S HOLDINGS, LLC, a New York limited liability company having offices at 520 Congress Street, Troy, New York 12180 (the "Guarantor"), hereby irrevocably, absolutely and unconditionally guarantees to the Authority and its assigns the full and prompt payment of all indebtedness, liabilities and obligations of the Company hereunder including, without limitation, the payment of the principal amount of the respective obligations and all interest, fees, costs and expenses. The within guarantees are independent of and in addition to any other guaranty, endorsement, collateral, remedy, statutory right or other agreement held by the Troy Industrial Development Authority or its assigns and are a guaranty of payment and performance, not of collection.

Dated: As of January 13, 2014

FRATELLO'S HOLDINGS, LLC

By: CM Alberino M M
Chris M. Alberino, Managing Member

State of New York)
County of Rensselaer) ss.:

On the 13th day of January in the year 2014, before me, the undersigned, personally appeared CHRIS M. ALBERINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

JUSTIN S. MILLER
Notary Public, State of New York
No. 02MI6020242
Qualified in Albany County
Commission Expires June 8, 2015

SCHEDULE A
PILOT AGREEMENT
TROY INDUSTRIAL DEVELOPMENT AUTHORITY AND
THE COOKIE FACTORY LLC

“Total PILOT Payment” shall be calculated as follows:

<u>PILOT Year</u>	<u>County and City Tax Year</u>	<u>School Tax Year</u>	<u>Total Taxable Valuation</u>
Year 1	2015	2014-15	Base Valuation, plus (Added Value x .00)
Year 2	2016	2015-16	Base Valuation, plus (Added Value x .00)
Year 3	2017	2016-17	Base Valuation, plus (Added Value x .00)
Year 4	2018	2017-18	Base Valuation, plus (Added Value x .00)
Year 5	2019	2018-19	Base Valuation, plus (Added Value x .00)
Year 6	2020	2019-20	Base Valuation, plus (Added Value x .50)
Year 7	2021	2020-21	Base Valuation, plus (Added Value x .50)
Year 8	2022	2021-22	Base Valuation, plus (Added Value x .50)
Year 9	2023	2022-23	Base Valuation, plus (Added Value x .50)
Year 10	2024	2023-24	Base Valuation, plus (Added Value x .50)

For the term of this PILOT Agreement, the Company shall pay full taxes based on a Full Market Value (as may be equalized) to be fixed at \$520,000.00 for the term hereof (the “Base Valuation”). 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 Facility by the Company, as an Agent of the Authority, for the Project (the “Added Value”). The abatement schedule shall allow for a 100% exemption from taxation for the Added Value in PILOT Years one through five, with such exemption being reduced to 50% in PILOT Years six through ten. 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 fifteenth PILOT Year, the 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