

AGENT AND FINANCIAL ASSISTANCE AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE AGREEMENT (herein, the "Agreement"), is made as of January 13, 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 domestic limited liability company having offices at 520 Congress Street, Troy, New York 12180 (the "Company").

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 requested 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, by Resolution dated September 9, 2013 (the "Resolution"), the Authority authorized the undertaking of the Project and appointed the Company to act as its agent for the purposes of acquiring, constructing and/or equipping the Facility, all subject to the Company and Operator entering into this Agreement; and

WHEREAS, pursuant to the Resolution, the Authority authorized the provision to the Company of certain benefits, exemptions and other financial assistance (the "Financial Assistance") consisting of (i) state and local sales and use tax exemptions on the acquiring, constructing and/or equipping of the Facility, (ii) mortgage recording tax exemption(s) for financings undertaken by the Company in connection with the construction and equipping of the Facility; and (iii) a real property tax abatement through a certain Payment in Lieu of Taxes

Agreement, dated as of the date hereof and entered into by the Authority and the Company with acknowledgment and guaranty of the operator (the "PILOT Agreement"); and

WHEREAS, the Authority requires, as a condition and as an inducement for it to provide the Financial Assistance and the Authority's execution and delivery of a certain Leaseback Agreement, dated as of the date hereof (the "Leaseback Agreement"), that the Company provide assurances with respect to the recapture of the Financial Assistance on the terms herein set forth; and

WHEREAS, the Authority desires to memorialize the appointment of the Company as agent of the Authority to undertake the Project pursuant and subject to the terms herein contained.

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:

1. Scope of Agency. The Authority hereby confirms its appointment of the Company as the true and lawful agent of the Authority to undertake the Project pursuant to the Resolution. The Company hereby agrees to limit its activities as Agent for the Authority under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as Agent of the Authority shall expire on **October 31, 2014**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Authority shall not exceed the amounts identified in the Resolution and Section 2(i) of this Agreement.

All contracts entered into as Agent for the Authority shall include the following language:

This contract is being entered into by The Cookie Factory LLC (the "Agent"), as agent for and on behalf of the Troy Industrial Development Authority (the "Authority"), in connection with portions of a certain project of the Authority for the Agent located at 41-61 River Street, Troy, New York. The labor, materials and consumables to be utilized in furtherance of the foregoing shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Authority; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax exemption letter. This contract is non-recourse to the Authority, and the Authority shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, nor shall the Authority be liable for payment upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Authority to proceed with the Project and appoint the Company as agent to undertake same:

(a) The Company (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, (ii) has the authority to enter into this Agreement and (iii) has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Authority and the leasing thereof by the Authority to the Company (and sublease thereof by the Company) will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Authority has found that, based on the Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Authority harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Facility in accordance with this Agreement and as a qualified "project" under the Act.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(f) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto

any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this Section, shall immediately notify the Authority in writing with full details regarding the same. The Company hereby releases the Authority from liability with respect to, and agrees to defend, indemnify, and hold harmless the Authority, its executive director, directors, members, officers, employees, agents (other than the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Authority in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Authority upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent. The Company hereby agrees that at all times during which it is operating the Project, and whether or not this Leaseback Agreement is in effect, to comply with, and ensure compliance by its subtenants or sublessees with, the provisions of the Environmental Compliance and Indemnification Agreement, dated on or about the date hereof (the "Environmental Compliance Agreement").

(g) The Company has provided to the Authority a certificate or certificates of insurance containing all of the insurance provision requirements included herein and the Leaseback Agreement. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(h) Any personal property acquired by the Company or the Operator in the name of the Authority shall be located in the City of Troy, New York, except for temporary periods during ordinary use.

(i) In accordance with Section 1963-b of the Public Authorities Law, the policies of the Authority, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination resulting in the potential recapture of any and all New York State and local sales and use tax exemption benefits and PILOT Agreement benefits, as described below, if the Company receives, or its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project receives, any New York State and local sales and use tax exemption benefits from the Authority, and it is determined by the Authority that:

(1) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Authority to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Authority as part of the Project; or

(4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for financial assistance; or

(5) the Company fails to meet and maintain the thresholds and requirements as described below, as evidenced by submission, on an annual basis beginning in the first year in which the Financial Assistance is conferred by the Authority to the Company or any subagent thereof, through and until the termination of the PILOT Agreement, as so required by the Authority, of written confirmation certifying:

(a) that the total investment actually made with respect to the Project at the time of Project completion equals or exceeds the total project cost as stated in the Company's application for financial assistance;

(b) that there are and remain a minimum number of full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for financial assistance; and

(c) that no Event of Default has occurred under the Leaseback Agreement and PILOT Agreement, each dated as of the date hereof.

The findings made by the Authority with respect to Section 2(i)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(i)(5) with respect to the thresholds and requirements as identified Section 2(i)(5), above, and/or failure to meet such thresholds and requirements may potentially be determined by the Authority, allowing for proper notice, hearing, and the completion of any appeals process, if any, related thereto, to constitute a failure to comply with Section 1963-b of the Public Authorities Law, and/or a failure to comply with a material term or condition to use property or services or Authority financial assistance in the manner approved by the Authority in connection with the Project, and/or a failure to comply with the Authority's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(i)(1), (2), (3) and/or (4) and/or the failure under Section 2(i)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(i)(5) are hereby defined as a "Recapture Event Determination"). If the Authority makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Authority in its efforts to recover or recapture any and all sales and use tax exemption benefits and/or any and PILOT benefits obtained by the Company and (ii) promptly pay over any such amounts to the Authority that the

Authority demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Authority, the New York State Tax Commissioner may assess and determine New York State and/or local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

(h) In accordance with the Resolution, the Company further covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$200,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Authority, subject to Section 2(i) of this Agreement, cannot exceed \$16,000.00.

(i) The Company acknowledges and understands that a Recapture Event Determination made with respect to this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future state and local sales and use tax exemptions, mortgage recording tax exemptions, and/or real property tax abatements with respect to the Project, and may result, in the sole discretion of the Authority, of loss and forfeiture of same with respect to a Recapture Event Determination made regarding this Agreement.

3. Hold Harmless Provision. The Company hereby releases the Authority from, and agree that the Authority shall not be liable for, and agree to indemnify, defend and hold the Authority and its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns harmless from and against, any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Authority's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Authority, or any of its respective executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Authority or any other person or entity to be indemnified.

4. Insurance Required. Effective as of the date hereof and until the Authority consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto. Such insurance shall be provided, in whole or in part, either through insurance carriers meeting the requirements of this Agreement or through a funded self-insurance program, and shall include, but not necessarily be limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Authority or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4(a) hereof shall name the Authority as a named insured and all other insurance required by Section 4 shall name the Authority as an additional insured other than Workers' Compensation Coverage. The Company shall cause all contractors and agents of the Company undertaking the Project to carry and provide evidence of insurance as required within Section 4(c) hereof, with the Authority named as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Authority as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Authority.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Authority on the date hereof. Prior to expiration of any such policy, the Company shall furnish the Authority evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

6. 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.

7. 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 a nationally-recognized overnight courier, addressed as follows:

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

With a copy to: 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

With a copy to: 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. 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 or state courts located in Rensselaer County, New York.

9. The obligations of Company under this Agreement shall be absolute and unconditional and shall remain in full force and effect until the PILOT Agreement has expired or been terminated.

10. All warranties, representations, and covenants made by Company herein shall be deemed to have been relied upon by the Authority and shall survive the delivery of this Agreement to the Authority regardless of any investigation made by the Authority. This Agreement shall survive any termination or expiration of the Leaseback Agreement, as described below.

11. Other than as allowed under the Leaseback Agreement, the Company agrees not to take title to any real property as agent for the Authority. At any time prior to the expiration hereof, the Authority can transfer title to the Company of all assets acquired by the Company as

agent for the Authority. Additionally, at any time prior to the expiration hereof, the Company can demand that the Authority transfer title to the Company with respect to all assets acquired by the Company as agent for the Authority, provided all amounts owed the Authority have been paid current.

12. By executing this Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Authority for (1) legal services, including but not limited to those provided by the Authority's general counsel or bond/transaction counsel, (2) other consultants retained by the Authority, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Authority, and (3) with respect to enforcing this Agreement (including reasonable attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Authority of all charges referred to above, as well as all other actual costs and expenses incurred by the Authority in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the inability of the Authority or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

[THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to Agent and Financial Assistance Agreement]

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

TROY INDUSTRIAL
DEVELOPMENT AUTHORITY

By:



William Dunne, Executive Director

THE COOKIE FACTORY LLC

By:

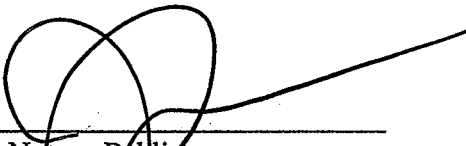


Chris M. Alberino, Managing Member

[Acknowledgment Page to Agent and Financial Assistance Agreement]

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

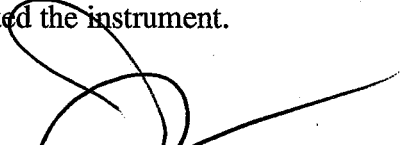
On the 13th day of January in the year 2014, before me, the undersigned, personally appeared WILLIAM DUNNE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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

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

On the 12th 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