
LEASE
[MBR Site]

1. **Date.** The date of this Lease (the "Lease") is MAY 26/2010, 2009 (the "Effective Date").

2. **Parties.** The parties to this Lease are as follows:

A. City of Casa Grande, Arizona
510 E. Florence Blvd.
Casa Grande, AZ 85122

"Landlord"

B. Frito-Lay, Inc.
7701 Legacy Dr.
Plano, TX 75024

"Tenant"

C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party" or collectively as the "Parties."

3. **Lease of the Premises.**

A. **Premises.** Landlord leases to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained in this Lease, the surface of and air rights above that certain parcel of real property consisting of approximately 173,073 square feet, and any and all other improvements presently existing on such parcel, generally located in Casa Grande, Pinal County, Arizona, as more particularly described in Exhibit "A" attached hereto, which real property is referred to in this Lease as the "Property" and which Property, together with the improvements presently situated on the Property or to be constructed on the Property is referred to as the "Premises," subject, however, to:

(1) Other covenants, restrictions, easements, agreements, and reservations, if any.

(2) Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of Casa Grande and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction.

(3) The condition and state of repair of the Premises as the same may be on the Commencement Date.

B. Term. The term of this Lease shall commence on the date of execution of this Lease ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the Rental Period, unless this Lease is sooner terminated as hereinafter provided.

4. Definitions.

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this agreement:

(a) "Affiliate": With respect to Tenant (including all entities which have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of fifty percent (50%) or more of outstanding interests in terms of value or voting power of Tenant.

(b) "Commencement Date": As defined in Section 3(B).

(c) "Event of Default": As defined in Section 19(A).

(d) "Impositions": As defined in Section 6(A).

(e) "Landlord": The City of Casa Grande, Arizona.

(f) "MBR Improvements": As defined in Section 12(A).

(g) "MBR Site": As defined in Section 12(A).

(h) "Mortgagee": The holder, trustee, or beneficiary of any Permitted Mortgage.

(i) "Option Period": As defined in Section 27(B).

(j) "Permitted Mortgage": Any Mortgage or security interest not held by a Related Party (unless such Related Party is approved by Landlord) that constitutes a lien upon this Lease, the leasehold estate hereby created, and/or Tenant's interest in the MBR Improvements or other improvements constructed on the Premises.

(k) "Permitted Mortgagee": The beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

(l) "Premises": As defined in Section 3(A) and described in Exhibit "A."

(m) "Property": As defined in Section 3(A).

(n) "Purchase Option": As defined in Section 27(A).

(o) "Rental Period": The period beginning on the Commencement Date and ending twenty-five (25) years from the first day of the month following the date of issuance of the Certificate of Occupancy for the MBR Improvements, but in no event later than the term of the Development Agreement described in Section 12(A).

(p) "Sublease": Any agreement, written or oral, by which Tenant gives any individual or entity any rights of use or occupancy of or any benefit flowing from the Premises or a portion thereof, including a permit, license or concession.

(q) "Tenant": Frito-Lay, Inc., a Delaware corporation, and its successors and assigns.

(r) "Unavoidable Delays": As defined in Section 26.

5. Rent

A. Net Rent.

(1) Base and Adjustments. Tenant shall pay to Landlord, at Landlord's address set forth in Section 22, during the term of this Lease a net annual rental of Five Thousand and no/100 Dollars ("Net Rent").

(2) Annual Installments. All payments of annual Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the date of issuance of the Certificate of Occupancy for the improvements to be constructed pursuant to Article 10 of this Lease.

(3) Additional to Other Payments. Net Rent shall be in addition to and over and above all of the other payments to be made by Tenant as hereinafter provided.

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, which may arise or become due during the term hereof shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations.

C. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed

upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Rental Period, whether foreseen or unforeseen, and however extraordinary shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

6. Additional Payments.

A. "Additional Payments" Defined. Tenant shall pay as Additional Payments during the Term hereof, without notice (except as specifically provided) and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, and government property improvement lease excise tax), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be lawfully assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in paragraph (A) of this Section 4.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. Payments. Tenant shall pay to Landlord, with and in addition to the monthly rental payments, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other impositions directly to the taxing authority or authorities.

C. Contest. Tenant, in its sole election, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon.

D. Assessment Reduction. Tenant in its sole election and without expense to Landlord, may seek at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

E. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Sections 6(C) or 6(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to save Landlord harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

F. Government Property Lease Excise Tax. As required under Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of Arizona Revised Statutes, Section 42-6201, *et seq.*, as amended from time to time. Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises.

7. Insurance.

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in commercially reasonable amounts. Notwithstanding the foregoing, so long as Tenant is Frito-Lay, Inc., or is a publicly-traded company, U:\ATTORNEYS\JHP\15439-1 (Frito-Lay)\Exhibit F with exhibits (2009.7).doc

Tenant may in its sole election either (i) self-insure for all such loss or (ii) satisfy such obligations with such policy or policies of casualty and/or liability insurance as Tenant may from time-to-time maintain on its behalf.

B. Insurable Interests of Parties. Any property policies required by this Section 7 shall be issued in the name of Tenant, and shall name Tenant and Landlord as "loss payees as their interests may appear." Any liability policies required and obtained by Tenant pursuant to this Section 7 shall name Tenant and Landlord as additional insureds. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance (or certificates) required by this Section 7 and delivered to Landlord shall include a provision that the company writing the policy will give Landlord thirty (30) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance.

C. Failure to Maintain Insurance. Subject to Section 7(A), if Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

8. Surrender.

A. Surrender--Removable Property. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, upon the expiration of the term of this Lease or on the sooner termination thereof, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises broom-clean and free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of Tenant or of subtenants, normal wear and tear excepted. Any property of Tenant or any subtenant which shall remain in any building on the Premises after the expiration of the Term hereof or sooner termination thereof shall be deemed to have been abandoned, and may either be retained by Landlord as its property or disposed of in such manner as Landlord may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

B. Waste. Tenant shall not commit or permit any waste or impairment of the Premises.

C. Hazardous Materials. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, within the three (3) months immediately preceding the expiration of this Lease or within (2) two months of any earlier termination of the Lease (unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 31), Tenant shall deliver to Landlord an environmental site assessment prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that the Premises are free of any hazardous materials as they are hereinafter defined or identified by either the United States Environmental Protection Agency or similar State agency as such. If any hazardous materials are identified, Tenant shall be liable for removing the hazard and leaving the Premises in a hazard free condition, except to the extent present on Premises prior to the Commencement Date or as a result of any act or omission of Landlord, its employees, agents, businesses or contractors.

9. Landlord's Performance For Tenant. If Tenant fails to pay any Imposition or make any other payment required to be made under this Lease or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such default, but in any event subject to Section 19, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of twelve percent (12%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

10. Uses And Maintenance.

A. Absence of Warranties. Tenant has leased the Premises after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and nonuses. Tenant accepts the same in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, throughout the Term hereof. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement,

maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. Permitted Uses. The Premises may be used for any lawful use, specifically including but not limited to the construction, use and maintenance of a membrane bioreactor or similar microfiltration, ultrafiltration or nanofiltration equipment and processes (or replacement or evolutionary technologies) in connection with wastewater treatment for Tenant's industrial and manufacturing activities on or adjacent or appurtenant to the Premises. Any permitted use which involves the handling, production and/or storage of Hazardous Materials on the Premises shall be subject to all applicable federal, state and local laws rules and regulations.

C. Maintenance, Repairs, Indemnity. Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in good order, repair, and condition. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

D. Alterations. Tenant may erect any structures, make any improvements, and do any other construction work on the Premises, and alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, and install any fixtures in compliance with Applicable Laws, but only at Tenant's sole cost and expense.

11. Compliance

A. Tenant Obligations. Tenant shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

B. Certificate of Occupancy. Tenant shall obtain any certificate of occupancy (or similar certificate of instrument) with respect to the Premises which may at any time be required by any governmental agency having jurisdiction.

12. **Construction And Operation Of New Improvements**

A. **Project.** The Property is a portion of the real property that is the subject of that certain "Pre-Annexation and Development Agreement" between Landlord (as the City) and Tenant (as the Owner), dated as of November 16, 2009 (the "Development Agreement") and referred to in the Development Agreement as the "MBR Site." As set forth in the Development Agreement, Tenant may (but is not obligated to) construct certain improvements and fixtures on the MBR Site (the "MBR Improvements"). However, the rights and obligations of Landlord and Tenant under this Lease may be conditioned upon the construction of the MBR Improvements or any further or additional improvements on the Property by Tenant.

B. **Construction Requirements.**

(1) All costs of construction of the MBR Improvements, or any other improvements constructed on the Property, shall be borne solely by Tenant.

(2) Tenant will also obtain the approval of the final plans and specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals to Landlord.

(3) Tenant will construct all improvements in a good, careful, proper, and workmanlike manner in accordance with (a) the approved plans and specifications; (b) all provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises; and (c) the requirements of any public or quasi-public body having similar jurisdiction.

C. **Ownership of Buildings and Improvements.**

(1) **During Term.** Prior to receipt of a Certificate of Occupancy (or similar official certificate or instrument establishing the completion of the MBR Improvements and authorizing their operation for their intended purpose), title to all buildings and improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant.

(2) **Upon Completion.** Following issuance of a Certificate of Occupancy and thereafter, except as provided in Section 13(C)(3), title shall be automatically vested in the Landlord without further act, notice or instrument required (the "Accretion"), subject to the rights of any subtenant, leasehold mortgagee and other parties claiming by, through or under Tenant, and with the use and occupancy of the MBR Improvements subject to all terms and conditions of this Lease. There shall be no increase in the rental payment owing to Landlord as a result of the Accretion.

(3) **Ownership at Termination.** Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, on the expiration or sooner termination of this Lease term, title to all buildings and improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of all claims and

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encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the property by Tenant shall be left in a structurally sound, nonleaking condition so as not to become the source of any future environmental contamination or hazard. Upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant agrees to and shall defend, indemnify and hold Landlord harmless from and against all liability and loss which may arise from the assertion of any claims and any encumbrances on such buildings and Improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease.

(4) Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Rental Period, subject to the provisions of Articles 9, 14 and 15 with respect to alterations, damage and destruction and condemnation, Tenant shall prudently manage and operate (or cause to be managed and operate) and will properly maintain the MBR Improvements and all other improvements to the Premises in good repair, reasonable wear and tear excepted.

13. Impairment Of Landlord's Title.

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired. The provisions of this Section 13 are not intended to limit any rights Tenant may have under Section 3 of this Lease.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded.

C. No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. No Agency Intended. The parties acknowledge that Tenant is entitled to construct the MBR Improvements. In connection therewith, the parties agree that Tenant is not the agent of

Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

14. **Inspection.** Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that such entry does not interfere with Tenant's business operations and provided that Landlord shall give Tenant at least seventy-two (72) hours written notice prior to any inspection of any building interior. Notwithstanding the foregoing, the seventy-two (72) hour notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

15. **Indemnification.**

A. Tenant shall indemnify and save Landlord harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused by the active negligence or intentional acts or omissions of Landlord, its agents, employees or contractors, or a failure to act by the Landlord, its agents, employees or contractors when a duty to act is present:

(1) construction of the MBR Improvements or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof, in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, sublessees;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and save the Landlord harmless from any loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense and Tenant shall pay the reasonable fees and disbursements of such attorneys.

E. The provisions of this Section 15 shall survive the expiration or earlier termination of this Lease.

16. **Damage Or Destruction.**

A. **Tenant Repair and Restoration.** If, at any time during the Term hereof, the Premises or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, may at Tenant's sole option proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as

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possible to its value, condition, and character immediately prior to such damage or destruction. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 7, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid to Tenant (or to Landlord, as applicable, if Landlord has procured insurance pursuant to Section 7(C) of this Lease).

C. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant from obligations imposed upon Tenant hereunder.

D. Substantial Damage at End of Term. If 50% or more of the square footage of the improvements constructed on the Premises is substantially damaged or destroyed by fire or other casualty at any time during the last five (5) years of the Rental Period, Tenant may, at its option, terminate this Lease within ninety (90) days after serving upon the Landlord written notice of Tenant's election to so terminate in which case title to the Premises shall be conveyed to Tenant who shall accept conveyance of the Premises in an "as-is" condition.

17. Condemnation

A. Substantial Taking, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, neither Rental Period of this Lease shall not be reduced or affected in any way. In such a case, the Net Rent payable for that part of the balance of the Term hereof occurring prior to the termination or expiration of the Lease, shall be based on the ratio of the remaining square footage of the Premises to the square footage of the Premises prior to the condemnation.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and

appeals therein. Landlord shall, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

18. Assignment, Subletting, Mortgage.

A. Permitted Assignments. Prior to issuance of a final certificate of occupancy for the MBR Improvements, Tenant shall not assign, mortgage, pledge, encumber or in any manner transfer this Lease or any part thereof, or the interest of Tenant in any sublease or the rentals thereunder, without the prior written consent of Landlord, which shall be given or withheld in Landlord's sole and absolute discretion. After issuance of a final certificate of occupancy for the MBR Improvements, Tenant may assign, mortgage, pledge, encumber, sublease or transfer this Lease or any part thereof or interest therein, without the prior written consent of Landlord, provided that no Event of Default has occurred hereunder and further provided that no such assignment shall release Tenant of its continuing obligations hereunder unless it meets the requirements of a "Permitted Assignment," as hereinafter defined.

(1) "Permitted Assignment" shall be any assignment of Tenant's interest in this Lease which meets at least one of the following requirements:

- (a) The assignee is an Affiliate of Tenant.
- (b) The assignment shall be an assignment of the entire interest of Tenant for the remainder of the Rental Period.
- (c) Prior to such assignment the proposed assignee shall submit to Landlord a financial statement, together with reasonable supporting documentation (but not including new appraisals) establishing that such proposed assignee, either by itself or in combination with a guarantor willing to guaranty such proposed assignee's obligations under this Lease, will have at the time of the assignment a net worth satisfactory to Landlord in Landlord's reasonable determination.

(2) Tenant may request Landlord's consent to an assignment which does not meet all of the foregoing requirements, and any such assignment with the written consent of Landlord, which may be given or withheld in its sole discretion, shall also be considered a Permitted Assignment.

(3) The assignee under a Permitted Assignment is herein called a "Permitted Assignee." Upon the occurrence of a Permitted Assignment and the Permitted Assignee's delivery to Landlord of the assumption instrument referred to in Section 18(A)(5) below, the prior Tenant shall be released from liabilities and obligations under this Lease accruing thereafter, and the Permitted Assignee shall be and become and remain liable for the payment of all rents and other sums payable hereunder and for the due performance of all the covenants, agreements, terms and provisions hereof on Tenant's part to be performed throughout the remainder of the Lease Term, from and after the Permitted Assignment; provided, however, that the prior Tenant shall not be released from its liabilities and obligations arising under Section 28 without the express consent of Landlord, which shall not be unreasonably withheld. The provisions hereof shall be operative for and apply to each subsequent Permitted Assignment.

(4) Continuing Liability. The making of any assignment that is not a permitted assignment, shall not operate to relieve Tenant from its obligations under this Lease and, notwithstanding any such assignment, except as otherwise provided in this Article, Tenant shall remain liable for the payment of all Net Rent and Additional Payments and for the due performance of all the covenants, agreements, terms, and provisions of this Lease to the full end of the Term hereof, whether or not there shall have been any prior termination of this lease by summary proceedings or otherwise.

(5) Assignee Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent and Additional Payments, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Tenant's part to be performed to the end of the Term, and every provision of this Lease applicable to Tenant shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

B. Permitted Subleases. Tenant may sublease all or any portion of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by Section 10 of this Lease, subject to the rights of Landlord, and neither the consent of Landlord nor the assumption of this Lease shall be required in connection with such renting or subleasing if all of the conditions set forth below are satisfied. Any Sublease which is permitted by this Section 18(B) is herein referred to as a "Permitted Sublease":

(1) Each Sublease shall be subject and subordinate to this Lease and the rights of Landlord hereunder and the rights of the First Permitted Mortgagee, as provided herein;

(2) Any violation of any provision of this Lease, whether by act or omission by any subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all subtenants with respect to this Lease.

(3) Each such sublease shall provide that in the event such Lease is terminated, the subtenant will attorn to Landlord if Landlord shall accept such attornment upon such termination; and

(4) Each subtenant shall deliver to Landlord an instrument confirming the agreement of such subtenant to attorn to Landlord and to recognize Landlord as the subtenant's landlord under its sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord shall be:

(a) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord), or

(b) subject to any offsets or defenses which the subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord), or

(c) bound by any payment of rent which the subtenant might have paid for more than the current month to any prior landlord (including, without limitation, the then defaulting landlord), or

(d) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by said sublease, or

(e) bound by any obligation to make any payment to the subtenant, or

(f) bound by any modification of the sublease which reduces the basic rent, Additional Payments, supplemental rent or other charges payable under the sublease, or shortens the term thereof, or otherwise materially adversely affects the rights of the landlord thereunder, made without the written consent of Landlord.

C. Permitted Mortgages.

(1) Tenant from time to time during the Term of this Lease may make one or more Permitted Mortgages, provided that:

(a) Each Permitted Mortgage shall cover no interests in real property other than Tenant's interest in the Premises and the subleases;

(b) Tenant or the holder of such Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

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(c) Each Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and Condemnation Awards in the manner provided in this Lease.

(2) For the purpose of this Section 18(C), the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage (a "Permitted Mortgagee"), as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

(3) Notice to Permitted Mortgagees. So long as any Permitted Mortgage shall remain a lien on Tenant's leasehold estate hereunder, Landlord agrees, simultaneously with the giving of any notice required by Section 19 of this Lease to Tenant (i) of default, or (ii) of a termination hereof, to give duplicate copies thereof or of any process in any action or proceeding brought to terminate or to otherwise in any way affect this Lease, to each Permitted Mortgagee as defined in Section 18(C)(2) only, and no such notice to Tenant or process shall be effective unless a copy of such notice is given to the Permitted Mortgagee in the manner herein provided. Concurrently with Tenant, the Permitted Mortgagee will have the same period after receipt of the aforesaid notice by Tenant to remedy the default or cause the same to be remedied plus twenty (20) days thereafter, and Landlord agrees to accept such performance on the part of a Permitted Mortgagee as though the same had been done or performed by Tenant.

(4) Mortgagee Cures Landlord will take no action to terminate this Lease by reason of any default by Tenant without first giving to the Permitted Mortgagee that has a first lien of record against Tenant's Leasehold interest (the "First Permitted Mortgagee") a reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and thereafter to cure such default if the default can be cured with the exercise of reasonable diligence by the First Permitted Mortgagee, or (ii) to institute foreclosure proceedings and to complete such foreclosure, or otherwise to acquire Tenant's interest under this Lease with diligence and without unreasonable delay in the case of a default which cannot be cured with the exercise of reasonable diligence by the First Permitted Mortgagee. In either such case, the default of which notice shall have been given shall be deemed cured. The First Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

(5) Conditions of Cure. The provisions of Section 18(C)(4) are conditioned on the following:

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(a) First Permitted Mortgagee notifying Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the First Permitted Mortgage or otherwise to extinguish Tenant's interest in this Lease; and

(b) First Permitted Mortgagee delivering to Landlord an instrument in writing duly executed and acknowledged wherein such First Permitted Mortgagee agrees that:

(i) During the period that such First Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued as provided in this Section, as the case may be, it will pay or cause to be promptly paid to Landlord all sums that are then due or that may, from time to time, become due hereunder for Net Rent or Additional Payments; and

(ii) If delivery of possession of the Premises shall be made to such First Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure, other proceedings or otherwise, such First Permitted Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements herein contained on Tenant's part to be performed (including but not limited to payment of Net Rent and Additional Payments) to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid.

19. **Default By Tenant.**

A. **Events of Default.** The happening of any one of the following events (herein called "**Events of Default**") shall be considered a material breach and default by Tenant under this Lease:

(1) **Monetary Default.** If default shall be made in the due and punctual payment of any Net Rent or Additional Payments within ninety (90) days after written notice thereof to Tenant; or

(2) **Non-Monetary Default.** If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of ninety (90) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such ninety (90) days period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required ninety (90) days, its time to do so shall be extended by the time reasonably necessary to cure the same as determined by Landlord); or

(3) **Bankruptcy, Voluntary.** If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall

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seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance, Lapse or Termination. Notwithstanding the provisions of Section 19(A)(2), above, the lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

B. Notice and Termination. Upon the occurrence of one or more of the events listed in Section 19(A) the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant specifying such Event(s) of Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ninety (90) days after the giving of such Second Notice, and upon the date specified in such Second Notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

C. Reletting. At any time after any expiration or termination of this Lease as provided in this Article or by summary proceedings, ejectment or otherwise, Landlord shall use its best efforts to relet the Premises or any part thereof, in the name of Landlord. It being understood that if other suitable parcels are available, Landlord is not required to relet the subject property first.

D. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination.

E. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

F. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though reentry, summary proceedings, and other remedies were not provided for in this Lease.

G. Specific Performance. If a default is not commenced to be cured within ninety (90) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

20. Default By Landlord.

A. Limitations of Landlord's Liability. The term "Landlord," as used herein, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title, and regardless of whether the grantee is financially responsible or solvent and notwithstanding that the grantor may be a stockholder, officer or director of a corporate grantee, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed, and such grantee shall be bound by all such covenants and agreements; it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns, only during and in respect of their successive periods of ownership.

B. Remedies. In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

21. Unenforceable Terms. If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

22. Notices.

Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

If to Landlord: City of Casa Grande
Attn: City Clerk
510 E. Florence Blvd.
Casa Grande, AZ 85122

With a copy to: City of Casa Grande
Attn: City Attorney
510 E. Florence Blvd.
Casa Grande, Arizona 85122

If to Tenant: Frito-Lay, Inc.
Legal Department
7701 Legacy Dr.
Plano, TX 75024
Attn: General Counsel

With a copy to: Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central, Suite 200
Phoenix, Arizona 85012
Attn: Gary L. Birnbaum, Esq.

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder five (5) business days (i) after it shall be mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, (ii) upon personal delivery, or (iii) one business day after deposit with any commercial air courier or express service.

23. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

24. **Estoppel Certificates.** Landlord or Tenant may request from the other, a certificate evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any;

A. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; and

D. Any other matters reasonably required or requested in connection with a transaction for which the estoppel certificate has been requested.

25. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if such party fails to notify the other party in writing within thirty (30) days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice of such party's refusal to consent or disapproval, it shall be concluded that such consent or approval has been given.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld or delayed such consent or approval, shall be an action for issuance of an injunction or declaratory judgment.

26. **Unavoidable Delay; Extension of Time of Performance.** In addition to specific provisions of this Lease, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either party is faultless) of any contractor, subcontractor or supplier; acts of the other party. A lack of funds or inability to obtain funds shall not be included in this definition of Unavoidable Delays. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the parties hereto.

27. **Option To Purchase Premises.**

A. **Option to Purchase.** Landlord hereby grants to Tenant the exclusive option to purchase the Premises ("Purchase Option") according to the terms and conditions set forth in this Section 31.

B. **Exercise of Option.** The Purchase Option shall become effective and Tenant shall have the right to exercise the Purchase Option at any time after the Commencement Date ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon

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Tenant not being in default under this Lease or under any other agreement between Landlord and Tenant regarding or relating to the Premises. The Purchase Option may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord.

C. Conveyance of Premises.

(1) Purchase Price. The purchase price for the Premises shall be Five Thousand and No/100 Dollars (\$5,000.00), which shall be payable to Landlord prior to conveyance of title.

(2) Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed promptly after delivery to Landlord of Tenant's notice of exercise or on the last day of the Rental Period, whichever first occurs, and compliance by Landlord with all requirements imposed upon Landlord by Applicable Law with respect to its disposition of real property. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit B. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

28. Compliance With Environmental Laws.

A. Definitions.

(1) "Environmental Law. Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49, Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Sections 651-678; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances":

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Sections 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Agreement.

(3) "Release": Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the term of this Lease or any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Article 32 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Article and

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that Landlord shall also have the rights set forth in this Article in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises results in any contamination of the demised Premises or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within ten (10) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises.

(4) Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (2) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Article.

(5) Tenant shall insert the provisions of this Article 28 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any

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underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Article 32 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Article shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Article 28 shall survive the expiration or earlier termination of this Lease.

29. General Provisions.

A. Limitation of Landlord's Liability. Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

B. City's Right of Cancellation. All parties hereto acknowledge that this agreement is subject to cancellation by the City of Casa Grande pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

C. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona.

D. Memorandum. Landlord and Tenant agree that at the request of either, each will execute, and deliver for recording in the official records of Pinal County, Arizona, a short form memorandum of this Lease in the form attached to this Lease as Exhibit C.

E. Entire Agreement. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or

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effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

F. Captions. The captions of Articles and Sections in this Lease and its Table of Contents are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

G. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

H. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

I. Multiple Parties. If at any time Landlord, Tenant, any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

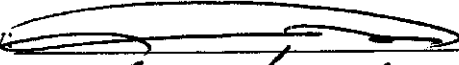
J. Exhibits and Incorporation. The exhibits to this Lease, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth.

K. Equal Employment Opportunity. Tenant shall comply with all requirements of the "equal employment opportunity" ordinances of the City of Casa Grande.

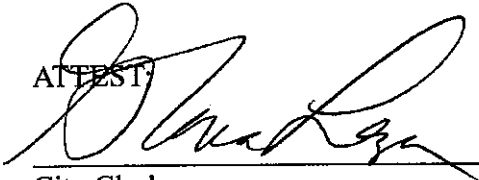
30. **Signatures.** The Parties have executed this Lease to be effective as of the Effective Date.

LANDLORD:

CITY OF CASA GRANDE, a municipal corporation

By: 
Its: CITY MANAGER

ATTEST:


City Clerk



APPROVED AS TO FORM:


City Attorney

TENANT:

FRITO-LAY, INC.
a Delaware corporation

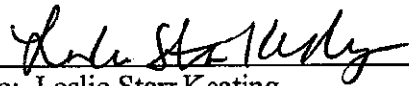
By: 
Name: Leslie Starr Keating
Title: Senior Vice President, Operations



EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT "A"
Legal Description
(WATER RECOVERY & REUSE FACILITIES PARCEL)

A portion of the northeast quarter (NE1/4) of Section 14, Township 6 South, Range 5 East of the Gila and Salt River Meridian, Pinal County, Arizona, more particularly described as follows:

Commencing at the east quarter corner of said Section 14, marked by a MAG nail in asphalt paving per "Monument Reference "J", as shown on the Results of Survey recorded in Pinal County Records Office, Book 22 of maps, page 001, from which for a bearing reference, the northeast corner of said Section 14, being marked by a MAG nail in asphalt paving per "Monument Reference "I", as shown on said Results of Survey recorded in Pinal County Records Office, Book 22 of maps, page 001, bears North 00° 05' 43" East, 2639.64 feet;

Thence along the east line of said Section 14, as per said Results of Survey, North 00° 05' 43" East, 792.00 feet;

Thence leaving said east line, North 89° 54' 17" West, 70.00 feet to the west line of the east 70.00 feet of said Section 14, and the POINT OF BEGINNING;

Thence leaving said west line, North 89° 24' 21" West, 693.68 feet;

Thence North 00° 02' 30" West, 187.28 feet;

Thence North 44° 58' 49" East, 91.89 feet;

Thence South 89° 59' 51" East, 431.84 feet;

Thence South 00° 00' 09" West, 12.00 feet;

Thence continuing, South 89° 59' 51" East, 197.40 feet back to the said west line of the east 70.00 feet of Section 14;

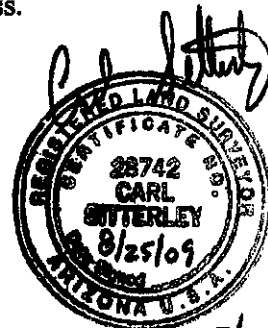
Thence along said west line, South 00° 05' 43" West, 247.44 to the POINT OF BEGINNING.

Above description contains 173,073 square feet or 3.973 acres, more or less.

(Above said Section 14 is depicted on said Results of Survey recorded in Pinal County Records Office, Book 22 of maps, page 001)

(An additional "Plat of Survey" depicting this said Section 14 is recorded in Pinal County Records Office, Book 21 of maps, page 223)

Exhibit "B" attached and made a part hereon, having bearings, distances, and monument references shown on and derived from the above stated "Results of Survey".

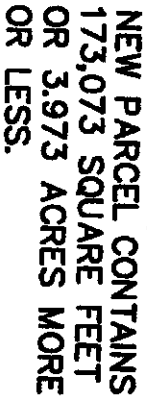


expires 3/31/10

NORTHEAST CORNER SECTION 14
MONUMENT PER DESCRIPTION "J"
ON RESULTS OF SURVEY



EXPIRES 03/31/2010



EAST QUARTER /
CORNER SECTION 14

CONSULTANT REGISTERED

SURVEYING

8732 E. PICCADILLY ROAD

SCOTTSDALE, ARIZONA

480--620-1382

EXHIBIT B
FORM OF SPECIAL WARRANTY DEED

When Recorded, Mail to:

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration received, The City of Casa Grande, an Arizona municipal corporation ("**Grantor**"), does hereby convey to _____ ("**Grantee**"), all of Grantor's right, title and interest in and to the following described real property (the "**Property**") situated in Pinal County, Arizona, together with all improvements thereon and all of Grantor's interest in any rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS
REFERENCE MADE A PART HEREOF

SUBJECT ONLY TO any and all conditions, easements, encroachments, rights-of-way, or restrictions which a physical inspection, or accurate ALTA survey, of the Property would reveal; any matters of record; and all applicable municipal, county, state or federal zoning and use regulations.

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed as of this ____ day of _____, 20____.

GRANTOR:

The City of Casa Grande, an Arizona municipal
corporation

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Pinal)

On this the ____ day of _____, 20__, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself/herself to be the _____ of The City of Casa Grande, an Arizona municipal corporation, and that, being authorized so to do, he/she executed the foregoing instrument for the purposes herein contained on behalf of the said municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

EXHIBIT C
FORM OF MEMORANDUM OF LEASE

WHEN RECORDED RETURN TO:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE constitutes constructive notice of record that there is in existence a Lease as described below. This Memorandum of Lease is executed by the Landlord and Tenant named in the Lease for recording purposes only as to the Lease hereinafter described, and it is not intended to, and shall not, modify, amend, supersede or otherwise effect the terms and provisions of said Lease.

1. Name of Document: LEASE (the "Lease")
2. Name of Landlord: CITY OF CASA GRANDE, ARIZONA, an Arizona municipal corporation
3. Name of Tenant: FRITO-LAY, INC., a Delaware corporation
4. Address of Landlord: 510 East Florence Boulevard
Casa Grande, Arizona 85122
5. Address of Tenant: 7701 Legacy Drive
Plano, Texas 75024
6. Date of Lease: _____, 2010 ("Commencement Date")
7. Initial Lease Term: The period commencing on the Commencement Date and expiring twenty-five (25) years from the first day of the month following the date of issuance of a certificate of occupancy for certain improvement to be constructed on the Premises by Tenant.
8. Premises: The real property more particularly described in **Exhibit "A"** attached hereto.
9. Purchase Option: The Lease grants an option to the Tenant to purchase the Premises at any time during the Term.

A copy of the Lease is on file with Landlord and Tenant Lessee at their respective addresses set forth above.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease this ____ day of _____, 2010.

TENANT:

FRITO-LAY, INC., a Delaware corporation

By: _____
Name: _____
Its: _____

LANDLORD:

CITY OF CASA GRANDE, ARIZONA, an
Arizona municipal corporation

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On _____, 2010, before me, a notary public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

STATE OF _____)
) ss.
County of _____)

On _____, 2010, before me, a notary public in and for said state, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____