

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on December 12, 2022 at 11:00 a.m. local time at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Chairperson Suzanne Loughlin, and, upon the roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Carol Roig	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Sean Brooks	[]	[]
Philip Vallone	[]	[]

The following persons were also present:

- Jennifer M. Flad, Executive Director
- John W. Kiefer, Chief Executive Officer
- Julio Garaicoechea, Project Manager
- Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by _____, and seconded by _____, to wit:

Resolution No. __ - 22

RESOLUTION AUTHORIZING AN OMNIBUS AMENDMENT TO PROJECT DOCUMENTS RELATING TO THE FRITO-LAY, INC. PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York ("State"), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, on or about February 4, 2002, Ideal Snacks, Inc. (“Ideal Inc.”) applied to the Agency requesting the Agency assist in constructing and equipping an approximately 26,600± square foot expansion to its existing manufacturing facility situate on one (1) parcel of real property consisting of approximately 2.59± acres located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the Town of Liberty tax map as Section 113, Block 3, Lot 1.1 and related facilities leased to the Agency and leased back to Ideal Inc. (“2002 Expansion”); and

WHEREAS, on or about February 19, 2002 the Agency adopted a Resolution appointing Ideal Inc. as Agent of the Agency for the purpose of constructing and equipping the 2002 Expansion; and

WHEREAS, on or about February 19, 2002 the Agency and Ideal Inc. entered into an Agent Agreement (“2002 Agent Agreement”), which 2002 Agent Agreement was amended on or about October 1, 2002, authorizing Ideal Inc. to act as the Agent of the Agency to construct and equip the 2002 Expansion; and

WHEREAS, on or about November 12, 2002, the Agency adopted a Resolution authorizing an increase in the floor area of the 2002 Expansion from 26,600± square feet to 29,400± square feet and authorizing the Agency to execute a Lease to Agency, Leaseback to Company Agreement, Payment in Lieu of Tax Agreement and related documents with respect to construction and equipping of the 2002 Expansion; and

WHEREAS, on or about August 1, 2003 Ideal Inc. and the Agency entered into a lease/leaseback transaction pursuant to which Ideal Inc. constructed and equipped the 2002 Expansion; and

WHEREAS, on or about December 1, 2003 Ideal Inc. and the Agency entered into a lease/leaseback transaction pursuant to which Ideal Inc. constructed and equipped a two (2) story manufacturing warehouse building to consist of approximately 104,600± square feet situate on three (3) parcels of real property consisting of approximately 3.96± acres located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the Town of Liberty tax map as Section 113, Block 3, Lots 1.1, 2 and a portion of 5.1 and related facilities leased to the Agency and leased back to Ideal Inc. (“2003 Expansion”); and

WHEREAS, on or about December 1, 2004 Ideal Inc. and the Agency amended the 2002 Expansion and the 2003 Expansion to (i) include certain additional parcels of real property used in connection with the 2002 Expansion and the 2003 Expansion namely those parcels identified on the Town of Liberty tax map as Section 113, Block 2, Lot 2; Section 113, Block 2, Lot 3; Section 113, Block 1, Lot 10; and Section 23, Block 1, Lot 86; and (ii) update consistent with the Town of Liberty Assessor’s records parcels previously identified on the Town of Liberty tax map as a portion of Section 113, Block 3, Lot 5.1 and Section 113, Block 3, Lot 2 to Section 113, Block 3, Lot 5.3 (“2004 Expansion”); and

WHEREAS, on or about June 10, 2005 the Agency, Ideal Snacks Corporation (“Ideal Corp.”) and AmSouth Bank (“AmSouth”) entered into a certain Omnibus Amendment to Project Documents (“2005 Omnibus Amendment”) whereby the Agency (i) consented to a financing credit facility in an aggregate amount not to exceed \$24,000,000.00 to Ideal Corp. and AmSouth Bank (“AmSouth Loan”); (ii) granted a mortgage tax abatement relating to a mortgage in an amount not to exceed \$8,000,000.00; (iii) amended the 2002 Expansion, the 2003 Expansion and the 2004 Expansion; and (iii) authorized a consent to a change in ownership and control of 2002 Expansion, 2003 Expansion and 2004 Expansion from Ideal Inc. to Ideal Corp. (“2005 Expansion”); and

WHEREAS, on or about March 2, 2006, Ideal Corp. presented an application (“Application”) to the Agency whereby the Agency undertook a project consisting of the (i) construction and equipping of an approximately 1,700± square foot corridor connecting the 2002 Expansion and the 2003 Expansion intended to house an enrobing manufacturing line on one (1) parcel of real property located at 89 Mill Street in the Village and Town of Liberty, County of Sullivan, State of New York and identified on the Town of Liberty tax map as Section 113, Block 3, Lot 5.3 (“2006 Expansion” and together with the 2002 Expansion, the 2003 Expansion, the 2004 Expansion and the 2005 Expansion, the “Project”); and

WHEREAS, on or about March 22, 2006, the Agency and Ideal Corp. entered into a Second Omnibus Amendment to Project Documents (“2006 Omnibus Amendment”) to provide for the appointment of Ideal Corp. as agent of the Agency to construct and equip the 2006 Expansion and amend the 2002-2006 Project Documents (hereinafter defined) to (i) include the 2006 Expansion where appropriate; and (ii) increase to the Total Value Subject to PILOT (as defined in the PILOT Agreement) in the PILOT Agreement; and

WHEREAS, the Agency and Ideal Inc. or Ideal Corp. entered into certain agreements authorizing and facilitating the 2002 Expansion, 2003 Expansion, the 2004 Expansion, the 2005 Expansion and 2006 Expansion, which agreements include, but are not limited to the following:

Agent Agreement, dated as of February 19, 2002 by and between the Agency and Ideal Inc., as amended by that certain Amended Agent Agreement, dated October 1, 2002 and effective as of February 19, 2002 by and between the Agency and Ideal Inc. and as further, amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment;

Bill of Sale to Agency, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment (“2002 Expansion Agency Bill of Sale”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Agency Bill of Sale”);

Bill of Sale to Company, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment (“2002 Expansion Company Bill of Sale”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Company Bill of Sale”);

Lease to Agency, dated as of August 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on August 3, 2003 in Liber 2616 at Page 433, as amended by the 2005 Omnibus Amendment (“2002 Expansion Lease to Agency”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Lease to Agency”);

Leaseback to Company, dated as of August 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on August 3, 2003 in Liber 2616 at Page 438, as amended by the 2005 Omnibus Amendment (“2002 Expansion Leaseback to Company”) and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Leaseback to Company”);

Payment in Lieu of Tax Agreement, dated as of August 1, 2003 by and between the Agency and Ideal Inc., as amended and restated by that certain Amended and Restated Payment in Lieu of Tax Agreement, effective as of March 1, 2004 by and between the Agency and Ideal Inc., as further amended and restated by that certain Second Amended and Restated Payment in Lieu of Tax Agreement, dated as of December 1, 2004 by and between the Agency and Ideal Inc., as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (collectively, the “PILOT Agreement”);

Agent Agreement, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended and restated by that certain First Amended and Restated Agent Agreement, dated as of December 1, 2004, as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (collectively, the “Agent Agreement”);

Bill of Sale to Agency, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Agency Bill of Sale”);

Bill of Sale to Company, dated as of December 1, 2003 by and between the Agency and Ideal Inc., as amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Company Bill of Sale”);

Lease to Agency, dated as of December 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on January 20, 2004 in Liber 2705 at Page 92, as amended and restated by that certain First Amended and Restated Lease to Agency, dated as of December 1, 2004 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County December 30, 2004 in Liber 2895 at Page 15, as further amended by the 2005

Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Lease to Agency”);

Leaseback to Company, dated as of December 1, 2003 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on January 20, 2004 in Liber 2705 at Page 116, as amended and restated by that certain First Amended and Restated Leaseback to Company, dated as of December 1, 2004 by and between the Agency and Ideal Inc. and memorandum thereof of even date therewith recorded with the Office of the Clerk of Sullivan County on December 30, 2004 in Liber 2895 at Page 36, as further amended by the 2005 Omnibus Amendment and as further amended by the 2006 Omnibus Amendment (“2006 Expansion Leaseback to Company”). Each of the foregoing documents are collectively referred to herein as the “2002-2006 Project Documents”.

WHEREAS, on September 13, 2011, the Agency adopted a resolution authorizing Ideal Corp. to obtain a loan from Sovereign Bank (“Sovereign”) in an amount not to exceed \$22,000,000 Dollars secured in part by a mortgage on the Project in the amount of \$8,000,000 Dollars; and

WHEREAS, on or about September 21, 2011, the AmSouth Loan was paid off making the 2005 Omnibus Amendment no longer relevant; and

WHEREAS, on or about September 21, 2011, the Agency and Ideal Corp. entered into a Third Omnibus Amendment to Project Documents (“2011 Omnibus Amendment”) to amend the 2002- 2006 Project Documents to provide that the Agency will endeavor to provide a copy of any notice which the Agency delivers to Ideal Corp. (as defined in the 2002-2006 Project Documents) under the Project Document to Sovereign; and

WHEREAS, on or about March 7, 2012 (and supplemented on October 22, 2012) Ideal Corp. presented applications to the Agency, copies of which are on file at the office of the Agency (collectively, “2012 Application”) requesting the Agency undertake an additional expansion project consisting of (i) the construction, installation and equipping of an approximately 41,000± square foot expansion (“2012 Expansion”); and (ii) lease to Agency of an additional parcel of real estate acquired for use in connection with the Pre-2012 Project, namely that parcel identified on the Town tax map as Section 113, Block 3, Lot 5.1 (“Bowling Alley Parcel”); and

WHEREAS, by resolutions duly adopted on March 27, 2012 and November 26, 2012 (“2012 Resolutions”), the Agency approved the project contemplated by the 2012 Application (“2012 Expansion”); and

WHEREAS, Ideal Corp. has (i) constructed, installed and equipped a two (2) story manufacturing warehouse building to consist of 41,000± square feet expansion (“2012 Building”) and together with the First Expansion Building and the Second Expansion Building collectively, the “Building”) situate on one (1) parcel of real estate consisting of approximately 6.9± acres to

be located at 89 Mill Street in the Village, Town, County, State and identified on the tax map as Town Section 113, Block 3, Lot 5.1 ("2012 Land" and together with the Pre-2012 Land collectively, the "Land") and related facilities a leasehold interest in which the Agency is to acquire; (ii) acquired and installed thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("2012 Equipment" and together with the Second Expansion Equipment collectively, the "Equipment"); (iii) constructed improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as the "2012 Project" and together with the Pre-2012 Project collectively, the "Project"); (iv) leased the 2012 Project to the Agency; and (v) the 2012 Project leased back from the Agency; and

WHEREAS, on or about February 1, 2013, Ideal Corp. and the Agency amended the 2002-2006 Project Documents to make provision for the 2012 Addition, by execution of the following documents:

Second Amended and Restated Agent Agreement;
Second Amended and Restated Lease to Agency;
Second Amended and Restated Leaseback to Company;
Bill of Sale to Agency;
Bill of Sale to Ideal Corp.; and

Third Amended and Restated Payment in Lieu of Tax Agreement (the "2012 Project Documents" and together with the 2002-2006 Project Documents and the 2011 Omnibus Amendment, the "Ideal Project Documents"); and

WHEREAS, on or about June 9, 2015, Permira, an international private equity firm, announced that a company backed by Permira (the "Permira Backed Company") entered into a definitive agreement to acquire Ideal Corp. and Medora Snacks, LLC ("Medora"); and

WHEREAS, on or about July 1, 2015, Ideal Corp. and Medora were acquired by the Permira Backed Company with Medora and Ideal Corp. combined under a single holding company called BFY Holdings I, LLC ("BFY Holding"); and

WHEREAS, on or about February 28, 2020, Frito-Lay acquired indirect beneficial ownership of BFY Holding via a merger with BFY Brands, Inc.; and

WHEREAS, Ideal Corp. merged into Ideal Snacks Holding Corporation at 9:06 a.m. on December 18, 2020; and

WHEREAS, Ideal Snacks Holding Corporation merged into BFY Acquisition Sub, Inc. at 9:07 a.m. on December 18, 2020; and

WHEREAS, BFY Acquisition Sub Inc. converted to a Delaware LLC called BFY Acquisition Sub, LLC on December 21, 2020; and

WHEREAS, BFY Acquisition Sub, LLC merged into Frito-Lay on December 23, 2020 and following this merger, Frito-Lay became the successor to Ideal Corp. as a counterparty to the Agency; and

WHEREAS, the Agency and Frito-Lay entered into the following documents, effective as of December 23, 2020:

- a) Lease to Agency (“Lease”)
- b) Leaseback to Company (“Leaseback”); and
- c) PILOT Agreement (“2020 PILOT”); and

WHEREAS, Frito-Lay has undertaken and substantially completed the construction of exterior improvements to the Project, including parking lots, access roads, fences and gates and drainage structures (collectively, the “Exterior Improvements”); and

WHEREAS, Frito-Lay is presently constructing an approximately ten thousand (10,000) square foot building to enhance working conditions for persons employed at the Project (the “Associates Support Facility”), which will not be completed until after March 1, 2023; and

WHEREAS, Frito-Lay and the Agency wish to amend the description of the Project to include the Exterior Improvements and the Associates Support Facility; and

WHEREAS, the 2020 PILOT and prior PILOT Agreements for the Project include a reference to the Empire Zone and the Project is no longer receiving any Empire Zone benefits; and

WHEREAS, Frito-Lay and the Agency wish to amend the 2020 PILOT to eliminate the separate calculation of the PILOT Payment inside and outside of an Empire Zone and to provide for the 2022 PILOT Payment due date to be February 1, 2023; and

WHEREAS, Frito-Lay and the Agency wish to amend the 2020 PILOT to increase the Total Value Subject to PILOT (“TVSP”) to include the agreed value of the Exterior Improvements for the PILOT Payment due February 1, 2023; and

WHEREAS, Frito-Lay has notified the Agency that it wishes to terminate the Project on February 15, 2023.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Chairperson or Executive Director, either acting individually, is hereby authorized on behalf of the Agency, to execute and deliver an Omnibus Amendment to Project Documents (“Omnibus Amendment”) to include the Exterior Improvements in the Project description.

Section 2. The Omnibus Amendment shall amend Section 2 and 3 of the 2020 PILOT to change the due date of the 2023 PILOT Payment to February 1, 2023 and to increase the TVSP to include the agreed value of the Exterior Improvements for the PILOT Payment due February 1, 2023.

Section 3. The Chairperson or Executive Director, either acting individually, is hereby authorized on behalf of the Agency, to execute and deliver a Project Termination Agreement effective February 15, 2023.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. It is hereby found and determined that all formal actions of the Agency concerning and relating to the adoption of this resolution were adopted in an open meeting of the Agency; and that all deliberations of the Agency and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 6. The Executive Director or Counsel to the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 7. This resolution shall take effect immediately.

The question of adoption of the foregoing resolutions were duly put to a vote on roll call, which resulted as follows:

Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Philip Vallone	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolution was thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“Agency”) with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on December 12, 2022 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Carol Roig	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Sean Brooks	[]	[]
Philip Vallone	[]	[]

3. The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Sean Brooks	[] Yes	[] No	[] Absent	[] Abstain
Philip Vallone	[] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 12th day of December, 2022.

Carol Roig, Secretary