

## AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT

*THIS AMENDED AND RESTATED PAYMENT IN LIEU OF TAX AGREEMENT* ("PILOT Agreement"), dated as of the 31<sup>st</sup> day of December, 2010, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at One Cablevision Center, Ferndale, New York 12734 ("Agency") and NONNI'S ACQUISITION CO., INC., a Delaware corporation, having its principal office located at One Westbrook Corporate Center, Suite 640, Westchester, Illinois 60154 ("Company" or "NAC").

### RECITALS

*WHEREAS*, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

*WHEREAS*, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

*WHEREAS*, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

*WHEREAS*, pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

*WHEREAS*, Kinnelon Properties, LLC ("Kinnelon") and Mamma Says NY, LLC ("Mamma-LLC.") presented an application ("Initial Application") to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the (i) construction, reconstruction, rehabilitation, renovation, installation and equipping of a building consisting of approximately 53,000± square feet ("Building") intended to house a food product manufacturing business located at 1243 Old Route 17, Ferndale, New York in the Town of Thompson, County of Sullivan, State of New York situate on one (1) parcel of real estate consisting of approximately 147.35± acres and identified on the Town of Thompson tax map as Section 1, Block 1, Lot 4 ("Land") and related facilities an

interest in which the Agency is to acquire; (ii) acquisition and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iii) acquisition, construction and equipping of improvements to the Building, the Land and the Equipment (collectively, the Building, the Land and the Equipment are referred to as either the "Facility" or the "Project"); and

*WHEREAS*, the Agency by its resolution duly adopted on October 12, 2004 ("2004 Resolution") appointed Mamma-LLC as its agent to acquire, construct, reconstruct, rehabilitate, renovate, install and equip the Project; and

*WHEREAS*, the Agency by the 2004 Resolution confirmed its appointment of Kinnelon as its agent to acquire, construct, reconstruct, rehabilitate, renovate, install and equip the Project; and

*WHEREAS*, in order to induce Kinnelon and Mamma-LLC to acquire, construct, reconstruct, rehabilitate, renovate, install, equip and operate the Facility, the Agency took title to the Facility and leased the Facility to Kinnelon and Mamma-LLC pursuant to the terms and conditions of a certain Lease Agreement, dated as of October 1, 2004 ("Lease"); and

*WHEREAS*, the Facility is located in a New York State Empire Zone as defined in Article 18-B of the General Municipal Law and the Company or its affiliates have indicated that it either has been certified or intends to apply for certification as a Qualified Empire Zone Enterprise ("QEZE"); and

*WHEREAS*, Nonni's Food Company, Inc. ("NFC") and Mamma Says Acquisition Co. ("MSAC") purchased all of the issued and outstanding membership interests of Kinnelon and Mamma-LLC ("Membership Interest Purchase"); and

*WHEREAS*, NFC and MSAC intend to consolidate MSAC, Kinnelon and Mamma-LLC with and into NAC, with NAC being the surviving entity by: (a) having NFC sell its membership interests in Kinnelon and Mamma-LLC to NAC; (b) merging MSAC with and into NAC, with NAC being the surviving company and with the result that NAC will own 100% of the membership interests of Kinnelon and Mamma-LLC; and (c) merging Kinnelon and Mamma-LLC with and into NAC, with NAC being the surviving company (collectively, the "Ferndale Restructuring"); and

*WHEREAS*, in conjunction with the Ferndale Restructuring, NAC has submitted an application to the Agency requesting that the Agency consider (i) consenting to a change in control under (a) Section 6.3(b) of that certain Lease Agreement, dated as of October 1, 2004 by and among Kinnelon, Mamma-LLC and the Agency, as amended by the Omnibus Amendment, dated October 20, 2005 ("Lease"); and (b) Section 21(b) of that certain Payment in Lieu of Tax Agreement, dated as of October 1, 2004 by and among Kinnelon, Mamma-LLC and the Agency, as amended by the Omnibus Amendment, dated October 20, 2005, and all related documents,

agreements, instruments and certificates (collectively, the "Project Documents") and (ii) consenting to restating the Project Documents by and between the Agency and NAC (including an Amended and Restated Lease and an Amended and Restated Payment in Lieu of Tax Agreement) to simplify the transaction structure; and

*WHEREAS*, the Agency and the Company deem it necessary and proper to execute and deliver this PILOT Agreement making provision for payments in lieu of taxes by the Company for the benefit of the County and certain municipalities and taxing jurisdictions located therein (collectively referred to as the "Taxing Jurisdictions"); and

*WHEREAS*, all agreements of the Agency and the Company relating to payments in lieu of taxes shall be governed by this PILOT Agreement.

*NOW THEREFORE*, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

1. Agreement to make payments in lieu of taxes. As long as the Facility is owned by the Agency, the Company agrees to pay to the Agency at One Cablevision Center, Ferndale, New York 12734, or at such other address as shall be designated from time to time by the Agency, a payment in lieu of tax ("PILOT Payment") on or before the dates indicated below computed in accordance with this PILOT Agreement.
2. Computation of PILOT Payments: Outside the Empire Zone. With respect to all real property and improvements included in the Project that are not located in the Empire Zone, the Company shall make a PILOT Payment to the Agency on or before December 15<sup>th</sup> during the term of this PILOT Agreement in an amount equal to the sum of One Hundred Fifty-Four Thousand Two Hundred and 00/100 (\$154,200.00) Dollars multiplied by the equalization rate as defined in ¶4 multiplied by the tax rates identified in ¶5.
3. Computation of PILOT Payments; Within the Empire Zone. With respect to all real property and improvements included in the Project that are located in the Empire Zone, the Company shall make a PILOT Payment to the Agency December 15<sup>th</sup> during the term of this PILOT Agreement as follows:
  - (a) With respect to each year during the Company's benefit period, as defined in Section 14(a)(1) of the New York Tax Law, for which the Company is entitled to claim the QEZE Credit for Real Property Taxes ("CRPT") the Company shall make PILOT Payments to the Agency in an amount equal to the tax payment the Company would pay to the Taxing Jurisdictions, if the Agency had no involvement with the Project.

- (b) Notwithstanding subparagraph (a) above, in the event that the legislation establishing the CRPT is amended, and as a result of such amendment the Company is no longer entitled to claim the CRPT as provided for under current law, the Company shall pay to the Agency on December 15<sup>th</sup> a PILOT Payment equal to the total value subject to PILOT for the applicable year listed below multiplied by the equalization rate defined in ¶4 multiplied by the tax rates defined in ¶5 less any amount paid under ¶2 above:

Payment Due Date	Present Value	Improvement Value	Exemption Percentage	Exemption Amount	Improvement Value Net of Exemption	Total Value Subject to PILOT
December 15, 2010	\$2,550,000	\$400,000	37.50%	\$150,000	\$250,000	\$2,800,000
December 15, 2011	\$2,550,000	\$400,000	35.00%	\$140,000	\$260,000	\$2,810,000
December 15, 2012	\$2,550,000	\$400,000	32.50%	\$130,000	\$270,000	\$2,820,000
December 15, 2013	\$2,550,000	\$400,000	30.00%	\$120,000	\$280,000	\$2,830,000
December 15, 2014	\$2,550,000	\$400,000	27.50%	\$110,000	\$290,000	\$2,840,000
December 15, 2015	\$2,550,000	\$400,000	25.00%	\$100,000	\$300,000	\$2,850,000
December 15, 2016	\$2,550,000	\$400,000	22.50%	\$90,000	\$310,000	\$2,860,000
December 15, 2017	\$2,550,000	\$400,000	20.00%	\$80,000	\$320,000	\$2,870,000
December 15, 2018	\$2,550,000	\$400,000	17.50%	\$70,000	\$330,000	\$2,880,000
December 15, 2019	\$2,550,000	\$400,000	15.00%	\$60,000	\$340,000	\$2,890,000
December 15, 2020	\$2,550,000	\$400,000	12.50%	\$50,000	\$350,000	\$2,990,000
December 15, 2021	\$2,550,000	\$400,000	10.00%	\$40,000	\$360,000	\$2,910,000
December 15, 2022	\$2,550,000	\$400,000	7.50%	\$30,000	\$370,000	\$2,920,000
December 15, 2023	\$2,550,000	\$400,000	5.00%	\$20,000	\$380,000	\$2,930,000
December 15, 2024	\$2,550,000	\$400,000	2.50%	\$10,000	\$390,000	\$2,940,000

4. Equalization Rate. For the purposes of determining the amount of the PILOT Payment, the equalization rate shall be the equalization rate for the Town used by the County to allocate and levy County taxes in connection with the January 1<sup>st</sup> tax roll immediately preceding the due date of the PILOT Payment. In the event that the equalization rate shall exceed one-hundred (100%) percent, the equalization rate used in determining the amount of the PILOT Payment shall be one-hundred (100%) percent.
5. Tax Rates. For the purposes of determining the amount of the PILOT Payment, the tax rates for each Taxing Jurisdiction shall mean the last rate used for levy of taxes by each such jurisdiction. For the Liberty Central School District (“School”) tax purposes, the tax

rates used to determine the PILOT Payment shall be the rate relating to the School tax year that began in the calendar year in which the PILOT Payment is due<sup>1</sup>. For County and Town purposes, the tax rates used to determine the PILOT Payment shall be the tax rates relating to the calendar year in which the PILOT Payment is due<sup>2</sup>. The chart that follows sets forth the remaining years of the overall twenty (20) year period governed by this and a previously executed PILOT Agreement; the date that a PILOT Payment is due; and the appropriate tax periods utilized in determining the tax rates for computing the PILOT Payment.

Year	Payment Date	School Fiscal Year Beginning	County/Town/School District
6	December 15, 2010	July 1, 2010	January 1, 2010
7	December 15, 2011	July 1, 2011	January 1, 2011
8	December 15, 2012	July 1, 2012	January 1, 2012
9	December 15, 2013	July 1, 2013	January 1, 2013
10	December 15, 2014	July 1, 2014	January 1, 2014
11	December 15, 2015	July 1, 2015	January 1, 2015
12	December 15, 2016	July 1, 2016	January 1, 2016
13	December 15, 2017	July 1, 2017	January 1, 2017

<sup>1</sup> For School tax purposes, the PILOT Payment is paid in arrears.

<sup>2</sup> For County and Town tax purposes, although the tax rate used to compute a PILOT Payment is the tax rate used to compute the prior calendar year's tax bill, the PILOT Payment paid in that year covers the succeeding tax year. For example, the portion of the PILOT Payment owed to the County and Town due on December 15, 2010 shall be computed using the 2010 tax rate, but the PILOT Payment shall cover the tax period for the calendar year 2011. In other words, for County and Town purposes, the PILOT Payment is paid in advance.

14	December 15, 2018	July 1, 2018	January 1, 2018
15	December 15, 2019	July 1, 2019	January 1, 2019
16	December 15, 2020	July 1, 2020	January 1, 2020
17	December 15, 2021	July 1, 2021	January 1, 2021
18	December 15, 2022	July 1, 2022	January 1, 2022
19	December 15, 2023	July 1, 2023	January 1, 2023
20	December 15, 2024	July 1, 2024	January 1, 2024

6. Other Agreements Relating to PILOT Payments.

- (a) The Company shall, pursuant to Section 15(e) of the State Tax Law, forward a copy of this PILOT Agreement within thirty (30) days from the date of execution to the Empire State Department and the New York State Office of Real Property Services, for PILOT certification in accordance with the instructions attached and marked as Exhibit 6(a). Section 15 of the State Tax Law permits PILOT Payments to be considered eligible real property taxes for the purposes of claiming the CRPT if the PILOT Agreement pursuant to which the PILOT Payments are to be made is approved by the Empire State Department and the Office of Real Property Services.
- (b) The Agency shall remit to the Taxing Jurisdictions any PILOT Payment (and other amounts received hereunder) within thirty (30) days of receipt and shall allocate that PILOT Payment among the Taxing Jurisdictions in the same proportion as normal taxes would have been allocated but for the Agency's involvement.

7. Additional Payments. In addition to the PILOT Payments, if any, to be made by the Company to the Agency pursuant to this PILOT Agreement, the Company shall pay to the Agency all special assessments, special ad valorem levies, and any other charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. Such payments shall be made within ten (10) days after the date upon which a bill shall be rendered by the Agency to the Company. Such charges shall be paid without adjustment, exemption or other deduction provided; in each case, however, to the Company's right to obtain exemption and credits, if any, which would be afforded a private owner of the Facility. The Company hereby authorizes the Agency to request that any Taxing Jurisdiction bill the Company directly for all special assessments, special ad valorem levies and any other charges for which the Agency shall be liable and for which it is not wholly exempt from taxation. In the event the Company is directly billed for such charges, the Company shall pay such charges within the time in which such statement or bill may be paid without interest or penalty.

8. Determination of Valuation of the Project. The Agency and the Company have agreed upon the Total Value Subject to PILOT of the Project. Such valuation was made without regard to the actual cost of construction of improvements to be made at the Facility. Such valuation shall not be increased or decreased if the Facility or any related work on or improvements are completed in substantial conformity with the plans and specifications. If there is a substantial change relating to the Facility or any related work or improvements during the construction phase, the Agency may redetermine the improvement value of the Facility. An increase (or decrease) in building size shall not be deemed to be a substantial change unless such increase (or decrease) is more than ten (10%) percent of the Building's square feet prior to the increase (or decrease).
  
9. Valuation of Additions to the Facility. If there shall be an addition constructed to the Building, or if there shall be any additional buildings or other structures constructed on the Land, the Company shall promptly notify the Agency of such addition ("Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans, specifications, and any other relevant information that the Agency may request. Upon the earlier of substantial completion of the Addition, or the issuance of a Certificate of Occupancy, there shall be an increase in the PILOT Payment. The increase in the Total Value Subject to PILOT caused by such Addition shall be computed at Sixty and 00/100 (\$60.00) Dollars per square foot. Absent an agreement to the contrary, the Total Value Subject to PILOT caused by any Addition shall be subject to calculation of PILOT Payments as contemplated by ¶s 2 and 3 hereof. If the Company shall disagree with the Agency's determination of the Total Value Subject to PILOT for any Addition, then and in that event the Total Value Subject to PILOT shall be the assessed value of the Addition as determined by the Town Assessor.
  
10. Employment Obligations.
  - (a) Employment Goals.
    - (i) Employment Goal Definitions: For the purpose of this PILOT Agreement, the following terms shall have the meaning set forth in each definition:
      - (1) "Employee" shall mean a person first employed by the Company at the Facility on or after October 1, 2004.
      - (2) "Full-Time Equivalent Employee" or "FT" shall mean an employee who works forty (40) hours in any seven (7) day period at the Facility.
      - (3) "Base Compensation" shall be determined in accordance with the provisions of the Fair Labor Standards Act.
      - (4) "At the Facility" shall mean that a FT is employed primarily at the Facility.

- (ii) FT Employment Goals: The Company agrees that a FT- employment goal of fifteen (15) jobs shall be maintained for any FT Employment Year (as defined below).

The Company shall file with the Agency not later than November 1, 2011 and on November 1<sup>st</sup> of each year thereafter a statement certified under oath setting forth the actual FT's employed at the Facility for the preceding October 1<sup>st</sup> to September 30<sup>th</sup> period (each a "FT Employment Year"). Such statement shall contain such additional information as the Agency may reasonably request. The Company shall make available to the Agency such information as it may request to verify the information provided to the Agency, including but not limited to State and federal employment tax forms and payroll records of the Company. "Actual average FT- employment" shall be determined by adding the actual FTEs employed in each month of the applicable FT Employment Year and dividing such sum by twelve (12).

- (iii) Computation of PILOT Payment In Accordance with ¶3(b), If FT Goals Not Attained: In the event the Company makes a PILOT Payment to the Agency in the manner contemplated by ¶3(b), and the FT-employment goal is not attained with respect to the FT Employment Year preceding the PILOT Payment due date, the amount due ("Adjusted PILOT Payment") shall be the amount calculated in ¶3(b) hereof, plus an amount equal to the tax calculated as if an exemption under RPTL §485-b were in effect, less the amount calculated in ¶3(b), times the percentage:

- (1) the numerator of which is equal to fifteen (15) minus the actual average FT employment for the prior calendar year, and
- (2) the denominator of which is fifteen (15).

By way of example, if (i) the actual average FT employment for the 2011 - 2012 FTE Employment Year is ten (10); (ii) the Town equalization rate used by the County to allocate 2011 taxes is 70% percent; (iii) the Town combined School, County and Town rate relating to the September 1, 2011 School tax and January 1, 2011 County and Town tax bills is \$50.00 per \$1,000.00 of assessed value (iv) the assessed value of the Facility on the 2011 Final Assessment Roll is \$4,000,000.00 Dollars full value; \$2,000,000.00 of improvement value would have been eligible for the §485-b exemption at a rate of 20% percent, then the Adjusted PILOT Payment due the Taxing Jurisdictions would be computed as follows:

#### PILOT Payment



$$\begin{aligned} \text{PILOT Payment} &= \text{PILOT Payment Formula} \\ \$98,350.00 &= \$2,810,000.00 \times 70\% \times \$50.00/\$1,000.00 \end{aligned}$$

Tax under §485-b

$$\begin{aligned} \text{Tax under §485-b} &= \text{Assessed Value} - \text{§485-b Exemption} \times \text{Tax Rates} \\ \$180,000.00 &= \$4,000,000.00 - (\$2,000,000.00 \times 20\%) \times \$50.00/\$1,000.00 \end{aligned}$$

Adjusted PILOT Payment

$$\begin{aligned} \text{Adjusted PILOT Payment} &= \text{PILOT Payment} + [(\text{tax under §485-b} - \text{PILOT Payment}) \times \\ &\quad \text{Percentage of Underemployment}] \\ \$152,783.33.00 &= \$98,350.00 + [(\$180,000.00 - \$98,350.00) \times 66.667\%] \end{aligned}$$

In no event shall the Adjusted PILOT Payment exceed the amount payable if the Facility were subject to taxation and a §485-b exemption had been granted to eligible portion of the Facility.

- (b) Job Posting and Hiring Requirements. The Company agrees that it shall comply with the provisions of General Municipal Law §858(b) which requires that unless otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of projects of the Agency shall be listed with the administrative entities of the service delivery area created by the Federal Job Training Partnership Act (P.L.No. 97-300) serving the County and the State Department of Labor Community Services Division. Except as otherwise provided by collective bargaining contracts or agreement, the Company will first consider for new employment opportunities persons eligible to participate in the Federal Job Training Partnership (P.L.No. 97-300) program who shall be referred by administrative entities of the service delivery area servicing the County or by the State Department of Labor Community Services Division.

The Company acknowledges that it is not now bound by the provisions of collective bargaining contracts or agreements which limit or restrict the Company from listing such employment opportunities or from giving first consideration to persons eligible to participate in job training partnership act programs. The Company agrees not to enter into any collective bargaining contracts or agreements that create such restriction or limitation, unless the union or employee organization with which the Company shall negotiate a collective bargaining contract or agreement has a bona fide program for apprenticeship in such union or has a comparable program for providing employment opportunities to persons eligible to participate in such Job Training Partnership Act Programs under apprenticeship programs conducted by such union or employee organization. The Company agrees that any agreement which creates or imposes or changes any such restriction or limitation shall be first submitted to the Agency for review prior to ratification of such Agreement. The Company shall provide the Agency

with copies of collective bargaining contracts or agreements hereinafter executed. The Company shall submit to the Agency a statement detailing the manner in which the Company has complied with the provisions of this section of this PILOT Agreement. Such statement (together with documentation of each such referral and plan of hiring) shall be made under oath and shall be submitted no later than November 1<sup>st</sup> (or such other date as the parties shall agree) of each year during the term of this PILOT Agreement. After an audit by the Agency and a determination that there has been a failure for a period of two (2) years to list such job opportunities as herein provided or to hire and retain persons eligible for Job Training Partnership Act Programs without a reason for the failure to do so shall give rise to a presumption of intentional non-compliance with the provision of this section.

- (c) Equal Opportunity Requirements. During the term of this PILOT Agreement, the Company shall be in compliance with the County "Equal Opportunity Policy Statement," providing equal employment opportunity without regard to age, race, religion, creed, color, and other non-merit factors in compliance with State and federal laws.
- (d) Defaults and Remedies Relating to Employment Obligations. The following remedies shall apply to Employment Obligation defaults:
  - (i) Employment Goal Filing: If the Company shall fail to file a certification of FTEs employed prior to the time such statement is required to be filed with the Agency, the Agency may make the calculation of the PILOT Payment based on no FTEs for the affected year and the amount so calculated shall be paid. If the Company thereafter files such a statement and the filing results in a determination that the Company has made an overpayment, the Agency shall refund to the Company an amount equal to ninety (90%) percent of the overpayment plus interest at the then prevailing rate, less the actual costs incurred by the Agency to enforce this provision of this PILOT Agreement. In the Agency's sole discretion, such refund may be applied as a credit against the next succeeding PILOT Payment.
  - (ii) Employment Eligibility Requirements: If the Company fails to provide information reasonably requested by the Agency necessary to determine the eligibility of one or more persons to be considered as a FTE, the Agency may, upon fifteen (15) days notice to the Company, compute the PILOT Payment as if the person(s) were not eligible employees. No calculation so made shall be subject to recomputation.
  - (iii) Compliance with Other Hiring Requirements: If the Company shall fail to comply with the Job Posting and Hiring Act requirements set forth in ¶10(b) or the Equal Opportunity requirements set forth in ¶10(c), the

Agency, upon fifteen (15) days notice to the Company, may disallow in the calculation of the PILOT Payment any FTEs hired in violation of the foregoing requirements.

- (iv) Intentional Non-Compliance: In the event of a finding by the Agency of intentional non-compliance with the Job Posting and Hiring requirements set forth on ¶10(b), or the Equal Opportunity requirements set forth in ¶10(c), the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL §485-b.
- (v) Continuous Underemployment: If the Company shall fail for a period of two (2) consecutive years to employ at least two (2) FTEs for each year, the Agency may compute the PILOT Payment by adjusting the exemption amount to the level of exemption the Project would have received if eligible for exemption under RPTL §485-b. Such an adjustment shall relate to the exemption level only, and not the valuation of the Project.
- (vi) Payment Required: Timely payment of all amounts due shall be made by the Company notwithstanding any dispute related to the calculation of the PILOT Payment.
- (vii) Condition Precedent to Suit: It shall be a condition precedent to the institution of any action or proceeding by the Company against the Agency with respect to the calculation of any amount claimed to be due the Agency that all amounts claimed to be due shall have been paid to the Agency by the Company prior to the institution of such action or proceeding.

11. Company Representations and Warranties.

- (a) The Company is duly authorized under all applicable provisions of law to enter into and perform this PILOT Agreement. The Company's entry into and performance of this PILOT Agreement will not violate any applicable provisions of law and, except as otherwise disclosed to the Agency and its counsel, will not result in a breach of or a default under any agreement of instrument to which the Company is a party and will not result in the creation of any lien, charge or encumbrance upon any of the assets of the Company under any such agreement or instrument.
- (b) The Company is not a party to any agreement or subject to any restriction (including without limitation any agreement among or between its shareholders with respect to Mamma Says or its members with respect to Kinnelon) that materially and adversely effects its business assets or financial condition.

- (c) When executed, this PILOT Agreement will be a valid and binding obligation of the Company.

12. The Company's Right to Challenge. Except as otherwise provided in this PILOT Agreement, the Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if and to the same extent as if the Agency was not involved with the Project.

Except as otherwise provided in this PILOT Agreement, the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency was not involved with the Project, with respect to the assessed value of the Facility by any of the Taxing Jurisdictions and shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment. In the event that a transfer occurs after a tax status date for real property tax, PILOT Payments for any tax, which is paid in arrears under the PILOT Agreement shall continue to be due and owing.

13. Involuntary Termination of Agreement. To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the Company's obligations hereunder shall, to such extent, be amended.

14. Event of Default. During the term of this PILOT Agreement, the following shall be an event of default:

- (a) The failure to make PILOT Payments within the time allowed for payment, time being of the essence;
- (b) The happening of an Event of Default under the Lease;
- (c) The adjudication of the Company as a bankrupt and the failure to vacate, set aside or terminate such adjudications within ninety (90) days thereafter;
- (d) The failure of the Company to pay the amounts required to be paid pursuant to Sections 2.6 or 3.3 or 3.7 of the Lease and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company;
- (e) The appointment by any court of a receiver or trustee to take possession of all, or substantially all, of the assets of the Company which said appointment shall not have been discharged within a period of ninety (90) days after the filing of same;

- (f) The making by the Company of an assignment for the benefit of creditors;
- (g) The abandonment of the Facility by the Company for a period of thirty (30) consecutive days or more, unless such abandonment is caused by fire or other catastrophe, war, terrorist act, act of God or governmental order or decree without fault of the Company contributing thereto; provided, however, that in the event of fire or other catastrophe, if the Company elects within ninety (90) days from the happening of such event to reconstruct the Facility the same will not constitute a default;
- (h) The attachment, execution or other seizure of all or substantially all of the assets of the Company, which such attachment, execution or other seizure is not discharged within a period of sixty (60) days after the date of levy; or
- (i) The failure, refusal or neglect of the Company to perform, keep or observe any of the terms, covenants and agreements herein contained on the part of the Company to be performed, kept or observed.

15. Remedies on Default in Payment; Termination. Upon the happening of any event of default as defined in ¶14(a) hereof, the Agency may immediately terminate this PILOT Agreement without notice to the Company and without prejudice or limitation as to all other rights or remedies herein and/or under law or in equity. Such termination may be accomplished by conveying title to the Land by quitclaim deed as well as title to the Equipment, all as determined by the Agency, from the Agency to the Company and the recording of said deed in the County Clerk's Office shall be deemed to be delivery thereof. The Company hereby appoints the Agency's Chief Executive Officer and Chairman as its attorney-in-fact for the limited purpose of signing any forms which must necessarily accompany said deed in order for the deed to be recorded. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

16. Remedies On Other Defaults; Termination. Upon the happening of any event of default as defined in ¶14 (b - g) hereof, after thirty (30) days written notice to the Company specifying the event of default, if the default shall not be remedied within such thirty (30)-day period or such other longer period specified in ¶'s 14(c), (e), (g) and (h), (or if, with reasonable diligence the default cannot be remedied within such thirty (30) day period or such longer period as specified in ¶'s 14(c), (e), (g) and (h), then within such extended period as may be reasonably required therefor) the Agency, at its option, may take any action hereinafter set forth and all such remedies shall be cumulative and not exclusive:

- (i) Recover damages for the breach of any covenant or condition hereof;
- (ii) Seek an injunction to bar any actual or threatened violation or breach of

this PILOT Agreement;

- (iii) Seek any other remedy authorized by law or in equity; and
- (iv) Terminate this PILOT Agreement, without prejudice or limitation as to all other rights or remedies herein and/or under law or in equity. Such termination may be accomplished by conveying title to the Land by quitclaim deed as well as title to the Equipment, all as determined by the Agency, from the Agency to the Company and the recording of said deed in the County Clerk's Office shall be deemed to be delivery thereof. The Company hereby appoints the Agency's Chief Executive Officer and Chairman as its attorney-in-fact for the limited purpose of signing any forms which must necessarily accompany said deed in order for the deed to be recorded. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

17. Legal Fees on Default. If the Agency shall be required to take any action to enforce this PILOT Agreement or to collect any amount due hereunder, the Company shall be liable to pay, in addition to any other costs and expenses incurred by the Agency, its reasonable legal fees and the reasonable fees of any experts, accountants, or other professionals retained by it, without regard to whether the Agency shall have instituted any lawsuit or action at law or in equity in any court or before any body, provided such expenses were actually and necessarily incurred.
18. Late charges. If any PILOT Payment is not made by the due date, or if any other payment required to be made hereunder is not made when due by the last day of any applicable cure period, the Company shall pay penalties and interest as provided herein. With respect to PILOT Payments, if said payment is not received by the due date, the Company shall pay, in addition to the PILOT Payment, a late charge equal to five percent (5%) of the amount due plus interest on said payment equal to one percent (1%) per month or fraction thereof until the PILOT Payment, penalty and interest is paid in full. With respect to all other payments due hereunder, if said payment is not received when due or by the last day of any applicable cure period, the Company shall pay, in addition to said payment, the greater of (a) a late charge equal to five (5%) percent of the amount due plus interest on said payment equal to one (1%) percent per month or fraction thereof until said payment, penalty and interest is paid in full; or (b) penalties and interest which would have been incurred had payments made hereunder been made to the Taxing Jurisdictions.
19. Indemnification. The Company shall indemnify, defend and hold the Agency (and its chief executive officer, executive director, directors, officers, members, agents, employees, servants and their successors, representatives and assigns) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including expenses incurred by the Agency (and its chief executive officer, executive

out per e-mail from

Red dated 3/8/12

Attn: Agency Counsel

To the Company:

Nonni's Acquisition Co., Inc.  
One Westbrook Corporate Center, Suite 640  
Westchester, Illinois 60154

Attn: Rodney Liddle, Chief Financial Officer  
with a copy to:

Reed Smith LLP  
10 South Wacker Drive, 40<sup>th</sup> Floor  
Chicago, Illinois 60606-7507  
Attn: Matthew J. Petersen, Esq.

c/o  
Nonni's Foods LLC  
1901 S. Meyers Rd.  
Suite 190  
Oakbrook Terrace, IL

60181

Attn: Rodney  
Liddle  
EVP-CFO

- (b) Assignment. This PILOT Agreement may not be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits hereunder without the prior written consent of the Agency, which consent may be withheld by the Agency in its sole and absolute discretion.
- (c) Binding Effect. This PILOT Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- (d) Waiver. No waiver of any of the provisions of this PILOT Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- (e) Severability. If any provision of this PILOT Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this PILOT Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this PILOT Agreement.
- (f) Governing Law, Venue. This PILOT Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties hereby designate a court of proper jurisdiction located in Sullivan County, New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this PILOT Agreement.
- (g) Survival of Obligations. The obligations of the Company to make the PILOT Payments, which are due only prior to expiration of this PILOT Agreement and all of the Company's indemnification obligations shall survive any termination or expiration of this PILOT Agreement.

- (h) Section Headings Not Controlling. The headings of the several sections in this PILOT Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this PILOT Agreement.
- (i) Entire Agreement. This PILOT Agreement together with the Lease sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This PILOT Agreement may not be amended in any respect, except by a written amendment expressly referring to this PILOT Agreement and executed by the parties to be bound thereby.

[REST OF PAGE INTENTIONALLY LEFT BLANK]



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

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY



By: Allan C. Scott, Chief Executive Officer

STATE OF NEW YORK    )  
                                  )ss:  
COUNTY OF SULLIVAN    )

On the 23<sup>rd</sup> day of December in the year 2010 before me, the undersigned, a Notary Public in and for said proved personally appeared Allan C. Scott, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



WALTER F. GARIOGLIANO  
Notary Public, State of New York  
Sullivan County Clerk #4  
Commission Expires June 30, 2014

