

**DRAFT DATED
October 23, 2008**

THIRD SUPPLEMENTAL LEASE AGREEMENT

between

CITY OF JONESBORO, ARKANSAS

and

FRITO-LAY, INC.

Dated as of December ____, 2008

THE INTEREST OF THE CITY OF JONESBORO, ARKANSAS IN THIS THIRD SUPPLEMENTAL LEASE AGREEMENT HAS BEEN ASSIGNED TO REGIONS BANK, AS TRUSTEE UNDER THE TRUST INDENTURE DATED AS OF DECEMBER ____, 2008, FROM THE CITY OF JONESBORO, ARKANSAS, WHICH TRUST INDENTURE AUTHORIZES THE ISSUANCE OF AND SECURES ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS (FRITO-LAY, INC. PROJECT), SERIES 2008.

SECOND SUPPLEMENTAL LEASE AGREEMENT

THIS THIRD SUPPLEMENTAL LEASE AGREEMENT made and entered into as of _____, 2008 (this “2008 Supplemental Lease”) by and between **CITY OF JONESBORO, ARKANSAS** (herein called the “Issuer”), a public body corporate and politic and a city of the first class duly organized and existing under the Constitution and laws of the State of Arkansas, as Lessor and **FRITO-LAY, INC.** (herein called the “Lessee”), a corporation duly organized and existing under the laws of the State of Delaware and duly qualified to do business in the State of Arkansas as a foreign corporation, as Lessee.

WITNESSETH:

WHEREAS, the Issuer is a city of the first class and a political subdivision of the State of Arkansas; and

WHEREAS, the Issuer is authorized under the provisions of Act No. Nine of the Special Session of the General Assembly of the State of Arkansas for the year 1960, as amended, and the Economic and Industrial Development Revenue Bond Law of 1985 (collectively, the “Acts”), to issue bonds to assist in the securing and developing of industry; and

WHEREAS, the Issuer has previously acquired, constructed, equipped and installed the Project (as hereinafter defined) within the Issuer’s city limits on the land described in **Exhibit C** and leased the same to the Lessee in a manner consistent with the stated purpose of the Acts; and

WHEREAS, in order to induce the Lessee to locate its business in the City and to assist the Issuer in acquiring the Project and leasing the Project, the Issuer has taken title to the Project and leased the Project to the Lessee to permit the Lessee to make payments based on the Payment in Lieu of Tax Agreement, attached hereto as **Exhibit A**; and

WHEREAS, the Project is leased to the Lessee pursuant to a Lease Agreement dated as of December 1, 1997 (the “1997 Lease”), a Supplemental Lease dated as of June 1, 1999, (the “1999 Lease”), and a Second Supplemental Lease dated as of April 21, 2006 (the “2006 Lease”), and the parties now wish to enter into this 2008 Supplemental Lease under which expansion projects more particularly described on **Exhibit B** (“Expansion Projects”) will be leased to the Lessee pursuant to this 2008 Supplemental Lease;

WHEREAS, the Issuer and Lessee entered into the 1997 Lease, the 1999 Lease, the 2006 Lease and this 2008 Supplemental Lease for the additional purpose of providing a means of financing the Project by the issuance of the Issuer’s Taxable Industrial Development Revenue Bonds (Frito-Lay, Inc. Project) Series 1997, 1999, 2006 and 2008 (the “Bonds”); therefore, the 1997 Lease, the 1999 Lease, the 2006 Lease and this 2008 Supplemental Lease constitute a financing lease in the form of a sale and leaseback transaction;

WHEREAS, the Issuer’s interest in the 1997 Lease, the 1999 Lease, the 2006 Supplemental Lease and this 2008 Supplemental Lease has been assigned to Regions Bank, as Trustee for the Bonds;

In consideration of the respective representations and agreements herein contained, the parties hereto agree as follows (provided, that any obligation of the Issuer to pay money created or arising out of this 2008 Supplemental Lease shall be payable solely out of the proceeds derived from this 2008 Supplemental Lease, the sale of the bonds referred to in Section 1.5 hereof, the insurance and condemnation awards as herein provided and any other revenues arising out of or in connection with its ownerships, leasing or sale of the Project as hereinafter defined):

ARTICLE I SUPPLEMENTAL PROVISIONS

The 1997 Lease, between the Issuer as Lessor and Lessee, is hereby amended and supplemented to add the following provisions:

Section 1.1. Representations. The Issuer and the Lessee reaffirm the representations of each of them contained in Sections 2.1 and 2.2 of the 1997 Lease as if they were made on the effective date of this 2008 Supplemental Lease.

Section 1.2 Demise of the Project. The Issuer hereby demises and leases to the Lessee, and the Lessee hereby leases from the Issuer, the Expansion Projects as set forth in **Exhibit B** at the rental set forth in Section 1.8 hereof and in accordance with the provisions of the 1997 Lease, subject to Permitted Encumbrances.

Section 1.3. Quiet Enjoyment. The Issuer covenants and agrees that it will warrant and defend the Lessee in the quiet enjoyment and peaceable possession of the Expansion Projects free from all claims of all persons whomsoever, throughout the Lease Term, so long as the Lessee shall perform the covenants, conditions, and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not have expired.

Section 1.4 Agreement to Acquire the Expansion Projects. The Issuer agrees that it will cause the Expansion Projects to be acquired, at the direction of the Lessee. It is anticipated that the Expansion Projects will be acquired over a period of ten years.

Section 1.5 Agreement to Issue Bonds. In order to provide funds for the purchase of the Expansion Projects, the Issuer agrees that it will sell, issue and cause to be delivered, pursuant to the Trust Indenture (the "Indenture"), the Series 2008 Bonds, bearing interest, maturing and having the other terms and provision set forth in the Indenture ("Series 2008 Bonds"). Upon receipt of the proceeds derived from the sales of the Series 2008 Bonds, the Issuer will cause said proceeds to be deposited in the Construction Fund, if directed to do so by the purchaser of the Series 2008 Bonds.

Section 1.6. Disbursements from the Construction Fund. In the Indenture, the Issuer has authorized and directed the Trustee that moneys in the Construction Fund shall be used to pay the Project Development Costs, or to reimburse the Issuer or the Lessee for any Project Development Costs paid or incurred by the Issuer or the Lessee before or after execution of this 2008 Supplemental Lease and delivery of the Series 2008 Bonds. Such payments shall be made by the Trustee upon receipt of a requisition meeting the requirements of Section 4.3 of the 1997 Lease.

Section 1.7. Effective Date of this 2008 Supplemental Lease. The Term and the agreements contained in this 2008 Supplemental Lease shall become effective as of the dated date hereof. Unless sooner terminated or extended in accordance with the provisions of the 1997 Lease, the 1999 Lease, the 2006 Lease, this 2008 Supplemental Lease and the Lease Term shall expire on December 1, 2027.

Section 1.8. Rents Payable. The Lessee shall make rental payments directly to the Purchaser pursuant to the Home Office Agreement for the account of the Issuer at the times and in the amounts set forth in **Schedule A** to this 2008 Supplemental Lease. Each rental payment shall be sufficient to pay the total amount of the principal and interest payable on the Bonds on the interest payment date.

ARTICLE II DEFINED TERMS

Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the 1997 Lease.

“Equipment” means those items of machinery, equipment and other tangible personal property required or permitted herein to be acquired and installed, or which have previously been acquired and installed as part of the Project with the proceeds from the sale of the Bonds and any item of machinery, equipment and other tangible personal property acquired and installed in substitution thereof, *less* such machinery, equipment and other tangible personal property as may be released from this 2008 Supplemental Lease pursuant to Section 6.2 or damaged or destroyed and not restored as provided in Section 7.1 or taken by the exercise of the power of eminent domain as provided in Section 7.2 hereof.

“Expansion Projects” means the Improvements and the Equipment acquired or to be acquired, constructed or installed and financed with the proceeds of the Series 2008 Bonds as generally described in **Exhibit B** hereto.

“Project” means the facilities, including the land, the Improvements and the Equipment, acquired or to be acquired, constructed and installed pursuant to plans and specifications, as generally described in **Exhibit D** to the 1997 Lease, in **Exhibit B** to the 1999 Lease as Additions to the Project, in **Exhibit B** to the 2006 Lease as Expansion Projects, and in **Exhibit B** to this 2008 Lease and financed with the proceeds of the Lessor’s Taxable Industrial Development Revenue Bonds (Frito-Lay, Inc. Project), Series 1997, Series 1999, Series 2006 and Series 2008.

“Project Development Costs” shall include:

- (a) all obligations of the Issuer or the Lessee incurred or expected to be incurred for the purchase or supply of equipment, machinery, labor and materials in connection with the acquisition, construction, installation and equipping the Project;
- (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project;

(c) all costs of architectural and engineering services, including the cost of the Issuer or the Lessee for test borings, surveys, estimates, preliminary studies, all costs connected with developing the Plans and Specifications, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper construction and equipping of the Project;

(d) all other costs and expenses which the Issuer or the Lessee may properly pay or accrue for the acquisition, construction, installation or equipping of the Project or the Leasing thereof to the Lessee; and

(e) any sums required to reimburse the Issuer or the Lessee for advances made by either of them for any of the above items, or for any other costs incurred and for work done by either of them, which are properly chargeable to the Project, whether incurred before or after the date of this Lease.

All other capitalized terms used herein shall have the meaning set forth in the 1997 Lease.

END OF ARTICLE II.

ARTICLE III
2008 SUPPLEMENTAL LEASE AMENDATORY;
LEASE AFFIRMED

Section 4.1. 2008 Supplemental Lease Amendatory. This 2008 Supplemental Lease is executed to subject the Expansion Projects to the provisions of the 1997 Lease, the 1999 Lease, and the 2006 Lease and to provide for Lease Payments to pay debt service on the Series 2008 Bonds. Except as provided in Article I and Article III, this 2008 Supplemental Lease does not repeal or modify any of the provisions of the Lease as they apply to the Project.

Section 4.2. Lease Affirmed. The provisions of the 1997 Lease, the 1999 Lease, and the 2006 Lease are hereby affirmed except to the extent that they are supplemented, repealed or modified by this 2008 Supplemental Lease.

END OF ARTICLE III.

IN WITNESS WHEREOF, the Issuer and the Lessee have caused this 2008 Supplemental Lease to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF JONESBORO, ARKANSAS

By: _____
Doug Formon, Mayor

ATTEST:

By: _____
Donna K. Jackson, City Clerk

FRITO-LAY, INC.

By: _____

Name: _____

Title: _____

STATE OF ARKANSAS)
) ss.
COUNTY OF CRAIGHEAD)

ACKNOWLEDGMENT

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named **Doug Formon** and **Donna K. Jackson**, to me personally well known, who stated that they were the Mayor and City Clerk of the **City of Jonesboro, Arkansas**, a public body corporate and politic duly organized and existing under the Constitution and laws of the State of Arkansas and were duly authorized in their respective capacities to execute the foregoing instruments for and in the name and behalf of said City, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this ____ day of December, 2008.

Notary Public

My commission expires:

(S E A L)

STATE OF _____)
) ss.
COUNTY OF _____)

ACKNOWLEDGMENT

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____, to me personally well known, who stated that he was the _____ of **Frito-Lay, Inc.**, a corporation duly organized and existing under the laws of the State of Delaware and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this ____ day of December, 2008.

Notary Public

My commission expires:

(S E A L)

EXHIBIT A

Payment in Lieu of Taxes Letter dated August 17, 1996

EXHIBIT B

EXPANSION PROJECTS

Equipment located at the Jonesboro Plant at any one moment in time, which may or may not include equipment related to any of the following:

In addition to the equipment described above, the Expansion Projects include all other Equipment and improvements acquired or to be acquired with the proceeds of the City of Jonesboro Industrial Development Revenue Bonds (Frito-Lay, Inc. Project) Series 2008, which is located at the Jonesboro Plant at any one moment in time.

EXHIBIT C

LEGAL DESCRIPTION:

A part of Section 28, Township 14 North, Range 5 East, Craighead County, Arkansas, being more particularly described as follows: Begin at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 28, Township 14 North, Range 5 East, Craighead County, Arkansas; thence South 87 degrees 24' 07" West along the forty acre line 656.69 feet to the centerline of Quality Way; thence North 01 degrees 33' 58" West along the centerline of Quality Way 2963.06 feet; thence North 87 degrees 15' 42" East 1967.64 feet to a forty acre line; thence with the meanderings of said forty acre line as follows: South 01 degrees 36' 58" East 353.31 feet; South 01 degrees 36' 57" East 1307.13 feet; South 01 degrees 36' 56" East 1307.12 feet to a forty acre line; thence South 87 degrees 24' 07" West along the said forty acre line 1313.41 feet to the point of beginning, and subject to all rights of way and easements of record, and being a part of Craighead Technology Park, Jonesboro, Craighead County, Arkansas, as shown on Plat recorded in Plat Cabinet "B" Page 71 at Jonesboro, Arkansas, LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT OF LAND: A part of the East Half of the Northeast Quarter of the Southwest Quarter and a Part of the Northwest Quarter of the Southeast Quarter of Section 28, Township 14 North, Range 5 East, Craighead Technology Park, being more particularly described as follows: Begin at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 28, Township 14 North, Range 5 East; thence South 87 degrees 24' 07" West along the 40 acre line 656.69 feet to the centerline of Quality Way; thence North 01 degrees 33' 58" West along the centerline of Quality Way 120.02 feet to the point of beginning proper; thence North 01 degrees 33' 58" West along said centerline 100.02 feet; thence North 87 degrees 24' 07" East 1969.91 feet to the 40 acre line; thence South 01 degrees 36' 56" East along the 40 acre line 100.02 feet; thence South 87 degrees 24' 07" West 1970.00 feet to the point of beginning proper, subject to all rights of way and easements of record.

SCHEDULE A

LEASE PAYMENT

DUE DATE

\$ _____

December 1, 2009 and each December 1 thereafter with a final payment of all principal and accrued interest due on December 1, 2027