

RESOLUTION NO. 47-2017

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT BY AND BETWEEN THE CITY OF MONROE AND PERFORMANCE FOOD GROUP.

WHEREAS, Monroe has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area; and

WHEREAS, Performance Food Group and the City are desirous of the expansion of an existing facility located at 201 Lawton Avenue for additional warehousing space; and

WHEREAS, Council desires to enter into a Community Reinvestment Area Agreement for the expansion.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: The City Manager is hereby authorized to enter into a Community Reinvestment Area Agreement by and between the City of Monroe and Performance Food Group pursuant to the terms and conditions he deems appropriate and necessary, but substantially similar to Exhibit "1" attached hereto and made a part hereof.

SECTION 2: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: October 24, 2017

ATTEST:



Clerk of Council

APPROVED:



Mayor

First Reading: August 8, 2017
Effective: November 23, 2017

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the Ohio Revised Code.


**Clerk of Council
City of Monroe, Ohio**

COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Agreement (this "Agreement") is made and entered into by and between the City of Monroe, Ohio an Ohio municipal corporation, with its main offices located at 233 South Main Street, Monroe, Ohio (hereinafter referred to as "City") and Performance Food Group, Inc., a Colorado corporation with its principal office located at 12500 West Creek Parkway, Richmond, Virginia 23238 (referred to in this document as "PFG" and "the Company"), under the following circumstances:

WHEREAS, the Council adopted Emergency Resolution No. 46-2007 on August 14, 2007, describing the boundaries of the Community Reinvestment Area and determined that such area contains the conditions described in Section 3735.65(B) of the Code and confirmed said area as a Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, PFG desires to construct a 34,725 square foot expansion on their existing 86,000 square foot facility to be used for office, warehousing and distribution operations of a food products supplier, as more particularly described on the site plan attached hereto as Exhibit A (the "Project"), which will be located on certain real property within the boundaries of the Community Reinvestment Area as more specifically described on Exhibit B hereto (the "Project Site"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, PFG will own the Project; and

WHEREAS, the City, having the appropriate authority, desires to provide PFG with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Code; and

WHEREAS, PFG has submitted a proposed application to the Housing Officer of City for this Agreement (which is attached hereto as Exhibit C, hereinafter referred to as the "Application"); and

WHEREAS, PFG has remitted to the City the required state application fee of \$750.00 made payable to the Ohio Development Services Agency which the City will forward to the Ohio Development Services Agency together with this Agreement; and

WHEREAS, the Housing Officer of the City has reviewed the proposed construction of the Project and the facts asserted in the Application and has determined that the proposed construction of the Project meets the requirements for an exemption under Section 3735.67 of the Code; and

WHEREAS, the Project Site is located in the Monroe Local School District (the "School District"). The School District and the Butler Technology and Career Center Joint Vocational School District (the "JVSD"), and the respective Boards of Education of the

School District and the JVSD have been notified in accordance with Section 5709.83 and been given a copy of this Agreement; and

WHEREAS, this expansion and any activities related to the expanded footprint of the building are not intended to result in the moving of employees, inventory, and/or equipment from any other location in Ohio; and

WHEREAS, pursuant to Section 3735.67(A) of the Code and in conformance with the format required under Section 3735.671(B) of the Code, the parties hereto desire to set forth their Agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. PFG's contractor shall construct the Project as described in recitals to this Agreement. The Project will be located on the Project Site. PFG will invest in the Project and the Project Site an amount estimated at approximately \$7,000,000 (seven million) for the costs of site development and construction of a 34,725 square foot expansion onto the existing 86,000 SF building at the Project Site. The \$7,000,000 investment is exclusive of any amounts for acquisition of machinery, equipment, furniture and inventory. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement. The parties recognize that costs do not necessarily equal otherwise taxable value.

2. The value for Ohio personal property tax purposes of the non-inventory personal property of PFG that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is \$0.00. The value for Ohio personal property tax purposes of the non-inventory personal property of PFG located at the Project Site prior to the execution of this Agreement is \$0.00. The average value for Ohio personal property tax purposes of the inventory of PFG held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is \$0.00.

3. Subject to receiving all appropriate permits, PFG intends to commence construction of the Project on or about October 15, 2017 and the scheduled estimated completion date for the Project is approximately April 30, 2018. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement, except as otherwise provided in Section 5.

4. PFG estimates that this Project will create, cumulatively, approximately 18 full-time permanent equivalent employee positions, 0 full time temporary equivalent employee positions, 0 part time permanent equivalent employee positions and 0 part time temporary employee positions, with an additional aggregate annual payroll of

approximately \$1,118,740 at the Project Site. Such full-time permanent equivalent employees will be employed by subsidiaries of PFG, including, but not limited to, Ohio Pizza products, Inc. and Performance Transportation LLC. PFG estimates that hiring will commence on or about July 1, 2018 and will continue incrementally during the following years as set forth in the following table

Date	Full Time Equivalent Employees	Full Time Payroll (\$)
12/31/2018	122	\$8,369,575
12/31/2019	126	\$8,636,370
12/31/2020	129	\$8,832,454
12/31/2021	134	\$9,133,636
12/31/2022	136	\$9,248,179

The subsidiaries of PFG currently have approximately one hundred and eighteen full-time equivalent employee positions in at the Project Site. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemption provided in this Agreement, except as provided in Section 11.

5. The City hereby grants PFG a tax exemption for real property improvements made to the Project Site pursuant to Section 3735.67 of the Code which shall be in the following amounts:

50% for 5 years.

The exemption commences the first year for which the real property improvements would first be taxable were that property not exempted from taxation. No exemption shall commence after the tax year ending December 31, 2019 nor extend beyond the tax year ending December 31, 2023 (SUBJECT TO CONFIRMATION OF PROJECT AND SCHOOL ARRANGEMENT). Company acknowledges that the tax exemption with respect to Project is subject to the filing of a project completion certification with the Housing Officer following the completion of construction of the Project. The City agrees that upon receipt of the project completion certification, the Housing Officer shall certify the tax exemption to the County Auditor.

6. PFG shall provide to the Tax Incentive Review Council of the City any information reasonably required by the council to evaluate the property owner's compliance with the Agreement, including returns filed pursuant to Section 5711.02 of the Code if requested by the Council. PFG and/or its subsidiaries shall also provide employment and tax-related information by February 15th of each reporting year for the purposes of the Ohio Development Services Agency annual reporting requirement.

7. Consistent with previous practice in the City, the City Council has waived the annual fee provided for in Section 3735.671 of the Code.

8. PFG shall pay such real property taxes as are not exempted under this Agreement and are charged against the Project and the Project Site and shall file all tax reports and returns as required by law. If PFG fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement will be rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter, and the City may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

9. The City shall perform such acts as are reasonably necessary to appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

10. If for any reason the City revokes the designation of the Community Reinvestment Area, all entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless PFG materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the exemptions from taxation granted under this Agreement.

11. If PFG materially fails to fulfill the payroll obligations (as determined based on the City of Monroe's audited annual wage reconciliation Form W-3 for such year for the Company at the Site) as outlined in Section 4 for any year, then the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under the Agreement. However, PFG shall be able to avoid termination or modification of the Agreement for the year in which the payroll estimate was not met by paying the City an amount equal to the value of the abated real property taxes for that year. This penalty payment is payable by June 1 following the calendar year in which the payroll hurdle was not met. This penalty payment provision shall not be used more than once during the term of the exemption. Upon the second year in which the payment estimate is not met, there is no option for a penalty payment and the City may terminate or modify the Agreement as noted above.

12. If PFG materially fails to fulfill its obligations under this Agreement, or if City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

13. PFG hereby certifies that at the time this Agreement is executed, that PFG does not owe any delinquent real or tangible personal property taxes to any taxing

authority of the State of Ohio, and do not owe delinquent taxes for which the company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, the company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against PFG. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

14. PFG and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of City as a condition for the Agreement to take effect. This Agreement takes effect upon the signatures of the City Manager and PFG, and after the statutorily-required 30 day referendum period following the second reading of the legislation, provided that there are no objections filed during the referendum period.

15. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that PFG, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Code prior to the time prescribed by that division or either of those sections.

16. PFG affirmatively covenants that it has not knowingly made any material false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area Incentives. If any representative of Developer or Operator has knowingly made a material false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, PFG shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.12(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

17. Except as provided below, this Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the City. The City Manager may, in his or her discretion, approve the transfer or assignment of this Agreement and the benefits and obligations hereof from Company to Transferee, subject to compliance with the procedure stated below in this Section. If Transferee is a Permitted Transferee, the City Manager hereby does approve, and Company shall not need further consent by the City with respect to, the transfer or assignment of this Agreement and the benefits and obligations hereof to Permitted Transferee.

“Transferee,” as used herein, is defined as each person or entity, except Company, which is a legal successor in interest to all or any part of the Project or the Project Site (the “Transferred Property”) whether by sale, grant, or other means of transfer of interest, including but not limited to the formation of subsidiaries, affiliates, joint ventures, successor entities or other arrangements used to carry out the terms of this Agreement (each a “Successor”).

“Permitted Transferee,” as used herein, is defined as (a) Performance Food Group, Inc. (b) any entity in which PFG directly or indirectly holds an ownership interest; (c) successor entities to PFG where PFG had ownership as described in (b) and where there remains at least one other party with an ownership interest; and (d) entities resulting from a consolidation, conversion, acquisition or merger of Company.

Provided, however, that as a condition to this right to receive tax exemption as set forth in this Agreement, each Transferee shall execute and deliver to the City an Assignment and Assumption Agreement in form and content reasonably satisfactory to the City, wherein such Transferee:

- (a) assumes all obligations of PFG under this Agreement with respect to the Transferred Property, whether the Transferee received the Transferred Property directly from Company or a Successor, and
- (b) certifies to the validity, as to the Transferee and the Transferred Property, of the representations, warranties and covenants contained herein and in the Assignment and Assumption Agreement

It is acknowledged and agreed by the City that the form of Assignment and Assumption Agreement attached hereto as Exhibit D shall be deemed satisfactory to, and approved by, the City.

Upon approval by the City of such Assignment and Assumption Agreement, as to the Transferred Property, the approved Transferee shall have all entitlements and rights to tax exemption, and obligations, as an “Owner” under this Agreement, in the same manner and with like effect as if the Transferee had been the original Company and a signatory to this Agreement. The City agrees to execute each such Assignment and Assumption Agreement and to deliver an original thereof to the Transferee (but execution of such agreement by the City will not be a condition to the effectiveness thereof, with respect to an assignment to a Permitted Assignee).

(Balance of Page Intentionally Omitted)

IN WITNESS WHEREOF, the City of Monroe, Ohio, pursuant to Ordinance ____ of the Council of City of Monroe, Ohio, and PERFORMANCE FOOD GROUP, INC. have caused this instrument to be executed on this ____ day of _____, 2017.

CITY OF MONROE, OHIO

PERFORMANCE FOOD GROUP,
INC.
A Colorado corporation

By _____
William J. Brock, P.E., CM
City Manager

By _____
Kent R. Berke, Sr. Vice President

STATE OF OHIO)
)SS:

Sworn to and subscribed in my presence by William J. Brock, City Manager of Monroe, this ____ day of _____, 2017. .

Notary Public

STATE OF COLORADO)
)SS:

Sworn and subscribed in my presence by Kent R. Berke, Senior Vice President of Performance Food Group, Inc., this ____ day of _____, 2017.

Notary Public

This Agreement was prepared by City of Monroe, 233 South Main Street Monroe OH 45050.

Approved as to form:

K. Philip Callahan, Law Director

Exhibit A – Site Plan

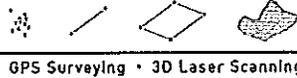
Exhibit B – Project Site

Exhibit C – Application

Exhibit D – Assignment and Assumption

Exhibit B – Project Site

Berding Surveying



GPS Surveying • 3D Laser Scanning

Description for: Performance Food Group, Inc.
Location: Lawton Avenue, 12.0635 Acres

Situated in the City of Monroe, Butler County, Ohio, being all of Lot 5961 of the City of Monroe and being more particularly described as follows:

BEGINNING at an existing $\frac{1}{4}$ " iron pin bent at the intersection of the north line of Hamilton Lebanon Road/State Route 63 and the west line of Lawton Avenue, referenced at 0.41 feet east. Said point being the southeast corner of Lot 1222 of the City of Monroe.

Thence with the north line of said Hamilton Lebanon Road/State Route 63, North $73^{\circ}52'45''$ West, 348.44 feet to an existing $\frac{1}{2}$ " iron pin in the east line of Lot 346 of the City of Monroe as conveyed to TAC Properties of Warren County, LLC in Official Record 7749, Page 846.

Thence with the east line of said Lot 346 and the east line of Lots 346 and 345 of the City of Monroe as conveyed to Cornerstone Monroe Farm, LLC in Official Record 8487, Page 1201, North $01^{\circ}49'30''$ East, 1065.04 feet to an existing 1" iron pin at the southwest corner of Lot 344 of the City of Monroe as conveyed to VECAT Properties, L.P. in Official Record 7878, Page 1577, passing an existing $\frac{1}{4}$ " IP bent at 302.22 feet, referenced at 0.14 south and 0.63 feet east, and an existing $\frac{1}{4}$ " IP bent at 302.31 feet, referenced at 0.95 feet east, passing an existing 1" iron bar at 342.27 feet, referenced at 0.39 feet east, passing an existing iron pin and cap stamped K & A at 369.72 feet and passing an existing iron bar at 602.15, referenced at 0.30 feet east;

Thence with the south line of said Lot 344, South $88^{\circ}05'45''$ East, 535.00 feet to a set iron pin in the west line of aforesaid Lawton Avenue;

Thence with the west line of said Lawton Avenue, the following three (3) courses:

1. South $01^{\circ}49'30''$ West, 217.24 feet;
2. Along a curve deflecting to the right, having a radius of 1402.40 feet, an arc length of 359.82 feet, chord of said arc bears South $09^{\circ}10'32''$ West, 358.84 feet to an existing iron bar, referenced at 0.16 feet east, passing an existing iron pin at 235.66 feet, referenced at 0.35 feet east;
3. South $16^{\circ}31'33''$ West, 596.75 feet to the **POINT OF BEGINNING**.

CONTAINING 12.0635 ACRES. Subject to legal highways and easements of record.

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Acres Consolidation.doc • By: Michele

G.J. Berding Surveying, Inc.

741 Main Street • Millford, OH 45150 • 513 831 5505 tel • 513 831 6761 fax • www.berdingsurveying.com



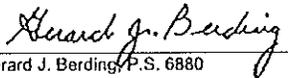
Description for: Performance Food Group, Inc.
Location: Lawton Avenue, 12.0635 Acres
Page 2

The above described tract being a consolidation of Butler County Auditor's Parcel's C1800-006-430-001, C1800-006-430-006, C1800-006-430-008 and C1800-006-430-010 being all of Lot 1222 of the City of Monroe as conveyed to Performance Food Group, Inc. in Official Record 9030, Page 1010.

All set iron pins are 5/8" x 30" in size with cap, stamped 'G J BERDING SURVEYING INC'.

The bearings are based on Official Record 6007, Page 1620.

Prepared by G.J. BERDING SURVEYING, INC. on September 25, 2017. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on September 25, 2017.


Gerard J. Berding, P.S. 6880



9-25-2017
Date

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Acres Consolidation.doc • GJM:che

G.J. Berding Surveying, Inc.

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Exhibit C – CRA Application

Pending

Exhibit D – Approved Form of Assignment and Assumption

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment"), made and entered into as of _____, by and between _____ (the "Assignor") and _____ (the "Assignee");

WITNESSETH THAT:

WHEREAS, the City of Monroe, Ohio, an Ohio municipal corporation (the "City"), and Park North 4, LLC, a Delaware limited liability company, have made and entered into a Community Reinvestment Area Agreement (the "CRA Agreement") dated _____ which was filed for record with the Butler County, Ohio, Recorder on _____ and recorded at Official Records Volume _____, Page _____ of the Butler County, Ohio Recorder (the "CRA Agreement"); and

WHEREAS, the Board of Education of the Monroe Local School District (the "School District") has approved the 15-year, 100% real property tax exemption for buildings constructed within the Community Reinvestment Area and approved the CRA Agreement by resolution adopted on August 30, 2007, as clarified by a resolution adopted on December 3, 2007; and

WHEREAS, Assignor has transferred the property described in Exhibit A attached hereto (the "Transferred Property"), to the Assignee; and

WHEREAS, Assignee is a Transferee, as defined in the CRA Agreement; and

WHEREAS, with respect to the Transferred Property, the Assignor desires to transfer and assign the benefits and obligations of the CRA Agreement to the Assignee for its benefit, and in consideration of and in reliance on that assignment and transfer, the Assignee is willing to assume the rights, benefits and obligations of the CRA Agreement; and

WHEREAS, the terms of the CRA Agreement require each Transferee to execute and deliver to the City an Assignment and Assumption Agreement in form hereof (or otherwise reasonably satisfactory to the City of Monroe); and

WHEREAS, the terms of the CRA Agreement require the City to execute each such approved Assignment and Assumption Agreement and to deliver an original thereof to the Transferee;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants contained in this Assignment and for other valuable consideration, the Assignor and the Assignee recite and agree as follows:

SECTION 1. Assignments and Assumption.

(a) With respect to the Transferred Property, the Assignor hereby absolutely, unconditionally, and irrevocably assigns, conveys, and transfers, without recourse, to the Assignee, for the benefit of the Assignee as a Transferee, the respective rights, benefits, and the performance of duties under the CRA Agreement to Assignee.

(b) Assignee absolutely and irrevocably accepts such assignment and transfer of the respective share of Assignor's rights and hereby assumes all of the obligations of the Assignor under the Agreements with respect to the Transferred Property, as defined in the CRA Agreement, and certifies as to the validity of the representations, warranties and covenants contained both in the CRA Agreement and in this Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment on the dates of their respective acknowledgements but as of the date first written hereinabove.

[ASSIGNOR CORPORATE NAME]
[Assignor Corporate Status]

By _____

Title _____

[ASSIGNEE CORPORATE NAME]
[Assignee Corporate Status]

By _____

Title _____

Approved:

CITY OF MONROE, OHIO

By _____

Title _____