

MEGA TAX CREDIT AGREEMENT

Keebler Company

This Agreement is made between the Michigan Economic Growth Authority ("MEGA"), whose address is 300 North Washington Square, Lansing, Michigan 48913 and Keebler Company (the "Company"), a Delaware corporation, whose address is One Kellogg Square, Battle Creek, Michigan, 49016, and whose Employer Identification Number is [REDACTED]

RECITALS

WHEREAS, the MEGA has been created by the Michigan Economic Growth Authority Act, Act No. 24 of Public Acts of 1995, as amended (the "Act"), with the power to provide tax credits to businesses involved in manufacturing, mining, research, development, wholesale, trade and/or office operations, and enterprise.

WHEREAS, the Legislature has determined that it is in the public interest to promote economic growth and to encourage private investment, job creation and job upgrading for the residents of the State of Michigan.

WHEREAS, the MEGA has determined that providing tax credits to the Company for job expansion will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act.

WHEREAS, the MEGA and the Company desire to set forth the terms and conditions of the MEGA Tax Credit that the MEGA has authorized to the Company.

NOW, THEREFORE, the parties agree as follows:

(j) "Certificate Application" or "Application for a MEGA Tax Credit Certificate" means the written information submitted each year in support of the Company's request for a Tax Credit Certificate.

(k) "Company" means Keebler Company, which is an authorized business as defined in the Act, upon execution of this Agreement.

(l) "Full-time Job" means a job performed by an individual who is employed for consideration for 35 hours or more each week and for which the employer withholds income and social security taxes.

(m) "MEGA Employment Credit" or "Employment Credit" means a credit against the Single Business Tax authorized by Section 37c of Public Act 23 of 1995.

(n) "MEGA Tax Credit" or "Tax Credit" means a MEGA Employment Credit.

(o) "Person" means an individual or a Business.

(p) "Project" means the facilities at which the Company will create Qualified New Jobs as described under Project Description.

(q) "Qualified New Job" means a Full-time Job at the Project held by a Michigan resident employed by the Company, that is:

(1) created by the Company on or after the date of execution of this Agreement.

(2) in excess of the Base Employment Level.

(r) "Salaries and Wages" means wages, tips and other compensation reported in Box 1 of the employees' W-2 forms.

(s) "Statement of Eligibility" or "Statement" means the certified statement required by Section 4.2 of this Agreement.

connection with the authorization of a MEGA Tax Credit, contain any untrue statement of a material fact or omit a material fact.

(d) Eligibility. The Company will create Qualified New Jobs in this state generally classified under SIC Code 2052.

(e) Project Description. The Company will renovate and equip facilities at 3300 and 3750 Roger B. Chaffee Drive in Wyoming, Kent County to manufacture food products (the "Project"). The Project will result in the creation of the statutory minimum of 75 Qualified New Jobs no later than the Anniversary Date. The Qualified New Jobs created will pay an Average Weekly Wage of at least \$657 and at no time will the average wage paid for these Qualified New Jobs be less than 150 percent of the federal minimum wage which shall, from time to time, be in effect.

The Company believes that the Project is economically sound and affirms that the investment capital and/or financing needed to complete the Project is now committed or will soon be available to the Company. As of October 18, 2005 the Project had not begun.

(f) Need for MEGA Tax Credits. The Tax Credits authorized by this Agreement address the competitive disadvantages of locating in Michigan instead of a site outside this State. The Project will not occur in Michigan without the tax credits offered by this Agreement.

(g) Site Reuse. The Company has considered the reuse or redevelopment of property previously used for an industrial or commercial purpose and the Company has determined the use of such property is feasible in locating the Project.

(b) The Average Weekly Wage paid to all employees performing Qualified New Jobs is at least \$657.

(c) The minimum Base Employment Level as required by Schedule A has been maintained.

The Company may not count as a Qualified New Job for a Tax Credit, any job that is transferred to the Project from: (i) a Michigan location of a Business that is listed in the Company's Application, or (ii) a Michigan location of a Business that, on or after the date of the Company's Application, acquires or otherwise gains control of the Company, is acquired or controlled by the Company, or comes under common control with the Company.

4.2 Statement of Eligibility. Any time after 75 Qualified New Jobs have been created at the Project, but in no case later than 30 days after the Anniversary Date, and in all cases prior to or concurrent with the first application for a Tax Credit Certificate, the Company shall file a Certified Statement of Eligibility in a form as specified by the Authority from time to time. The Statement shall contain the following information:

(a) The aggregate number of Full-time Jobs at all Michigan locations of the Company, excluding Qualified New Jobs at the Project.

(b) The number of Qualified New Jobs.

(c) The Average Weekly Wage paid to employees performing Qualified New Jobs.

(d) A certification by an authorized officer of the Company that the information provided in the Statement of Eligibility is true.

(d) Maintain its Base Employment Level as required by Schedule A. In computing the Base Employment Level in any tax year, the Company shall determine the aggregate number of Full-time Jobs at all Michigan locations of the Company, excluding the Qualified New Jobs at the Project for which it is seeking a Tax Credit, as of the last day of each of the four quarters in that tax year. The sum of the results for the four quarters, divided by four, is the Base Employment Level for that year. If the last day of the quarter is not representative of jobs for that quarter, the Company and the MEGA shall agree on another date that provides data that is representative of the number of Full-time Jobs at the Project during each quarter.

(e) Make an Application to the MEGA for a Tax Credit Certificate as provided in Section 5.0 of this Agreement.

(f) Provided that the Company has initially satisfied the requirements of Section 4.1, failure of the Company to satisfy the requirements of Section 4.3 in any given year does not preclude the Company from qualifying for and obtaining a Tax Credit in any other year authorized by Section 3.1 of this Agreement.

4.4 Audit and Verification. The information provided in the Application, the Application for a MEGA Tax Credit Certificate, and the Statement of Eligibility are subject to audit and verification by the Authority or its designee. Upon reasonable advance notice to the Company by the Authority, the Company shall permit the Authority or its designee, during normal business hours, to inspect the files of the Company solely for the purpose of verifying eligibility for the Tax Credits authorized under, and compliance with, this Agreement. The files subject

(b) The number of Qualified New Jobs at the Project as of the end of each of the four quarters, as described in Section 4.3, in the applicable tax year.

(c) The number of Full-time Jobs, in Michigan, in the Company other than Qualified New Jobs at the Project for which the Company is seeking a Tax Credit, as of the end of each of the four quarters, as described in Section 4.3, in the applicable tax year.

(d) The total Salaries and Wages, before deducting any personal or dependency exemptions, paid to employees who performed Qualified New Jobs at the Project during the applicable tax year.

(e) Any other information which is reasonably related to determining the applicable Tax Credit.

(f) A certification by an Authorized Officer of the Company that the information provided in a Certificate Application is true.

5.4 The information in a Certificate Application is subject to audit and verification by the Authority or its designee in accordance with the provisions of Section 4.4 of this Agreement.

5.5 Within 45 days of receiving a complete Certificate Application, the MEGA will review that application to determine whether the requirements of this Agreement have been satisfied and, if so, will calculate the credit authorized under this Agreement and issue a Tax Credit Certificate to the Company.

6.0 ADJUSTMENT, REDUCTION, OR TERMINATION OF CREDITS

6.1 If the Company does not comply with the conditions required in Section 4.1, this Agreement is null and void, the Company is no longer an authorized business, and no Tax Credits are, or will be, authorized under this Agreement.

8.0 MISCELLANEOUS

8.1 Assignment of Credits. The Tax Credits authorized by this Agreement shall not be transferred or assigned to any other Person provided, however, that in the event a Person acquires all or substantially all of the assets of the Company in Michigan, after the date of this Agreement, the Authority shall authorize the transfer of the Company's rights under this Agreement to that Person if:

- (a) The Person agrees in writing to assume all of the duties and responsibilities of the Company under this Agreement.
- (b) The Authority determines that such a transfer would be consistent with and serve the purposes of the Act and this Agreement.

This section shall not prohibit the Company from using the credit in any combined Michigan SBT return where the Company is one of the combined filers.

8.2 Severability. If any clause, provision, or section of this Agreement is held illegal or invalid by any court, the invalidity of that clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision, or section had not been contained in this Agreement.

8.3 Notices. All notices, certificates, requests or other communications shall be sufficiently given when delivered, if delivered by registered or certified mail, postage prepaid, return receipt requested, or by messenger or professional courier service, addressed as follows:

If to the MEGA by mail, messenger, or professional courier service:

Michigan Economic Growth Authority
Michigan Economic Development Corp.
300 N. Washington Square

Keebler Company

Schedule A: Minimum Employment and Wage Levels

to Qualify for the MEGA Tax Credits

<u>Year of Credit</u>	<u>Tax Year Ending Nearest Dec. 31st</u>	<u>Minimum # of Qualified New Jobs</u>	<u>Minimum Average Weekly Wage</u>	<u>*Minimum Base Employment Level</u>
1	2006	75	\$657	2,586
2	2007	75	\$657	2,586
3	2008	75	\$657	2,586
4	2009	75	\$657	2,586
5	2010	75	\$657	2,586
6	2011	75	\$657	2,586
7	2012	75	\$657	2,586
8	2013	75	\$657	2,586
9	2014	75	\$657	2,586
10	2015	75	\$657	2,586

* As determined from the information provided in the Company's Application dated September 29, 2005.

Certificate Number

00 – 305 - 05

Initial Tax Credit Certificate

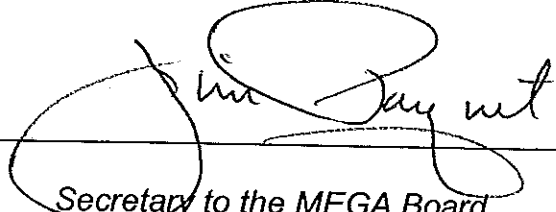
Issued this 18th day of October, 2005, by the

Michigan Economic Growth Authority

to Keebler Company, Employer Identification Number, 36-1894790, which is an Authorized Business pursuant to Public Act 24 of 1995, as amended.

The MEGA authorizes an Employment Credit of 100 percent for ten consecutive tax years, beginning with the Company's tax year ending nearest December 31, 2006, under Section 37c of Public Act 23 of 1995.

The Michigan Legislature encourages recipients of MEGA Tax Credits to make a good faith effort to use Michigan-based suppliers and vendors when purchasing goods and services.

By 
Secretary to the MEGA Board

