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April 19, 2018

Ms. Lisa MG Mulligan  
Chief Executive Officer  
Town of Brookhaven Industrial Development Agency  
1 Independence Hill  
Farmingville, New York 11738

Re: Town of Brookhaven Industrial Development Agency  
with Tate's Wholesale, LLC

Dear Lisa:

Enclosed herewith please find an original counterpart of the Agency's Resolution authorizing the financing amendment countersigned by Tate's Wholesale, LLC.

I previously forwarded to you by email a copy of the executed amendment to the mortgage pertaining to this financing.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Howard R. Gross

HRG:cb  
enclosure

RECEIVED  
APR 20 2018  
TOWN OF BROOKHAVEN  
ECONOMIC DEVELOPMENT

RESOLUTION OF THE TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING A MORTGAGE MODIFICATION AND THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH FOR TATE'S WHOLESAL, LLC.

WHEREAS, the Town of Brookhaven Industrial Development Agency (the "**Agency**") was created by Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 675 of the Laws of 1975 of the State of New York (collectively, the "**Act**"), with the authority and power to, among other things, acquire, construct and equip a project, provide financial assistance, and mortgage, lease, grant options with respect to and dispose of property; and

WHEREAS, the Agency has previously entered into a transaction with Cookie Commissary LLC (the "**Original Company**"), a limited liability company organized and existing under the laws of the State of New York, in which the Agency (i) acquired approximately 4.8 acres of land located at 62 Pine Street, East Moriches, in the Town of Brookhaven, Suffolk County, New York (further identified as Suffolk County Tax Map Number District 0200 Section 794.00 Block 03.00 Lot 008.008) (the "**Land**"), (ii) acquired, renovated and equipped thereon existing 23,500 square foot and 3,200 square foot buildings (the "**Existing Buildings**"), and (iii) acquired, constructed and equipped an approximately 14,000 square foot addition to the existing 23,500 square foot building (the "**Addition**"; together with the Buildings, the "**Improvements and Equipment**"; the Land and Improvements and Equipment collectively the "**Facility**"), as leased by the Agency to the Original Company and subleased by Original Company to, and used by, Tate's Wholesale, LLC (the "**Company**") for the manufacture and distribution of baked goods; and

WHEREAS, the Agency leased the Facility to the Original Company pursuant to a Lease Agreement, dated as of November 1, 2012 (the "**Lease Agreement**"), by and between the Agency, as lessor, and the Original Company, as lessee; and

WHEREAS, the Original Company subleased the Facility to the Company pursuant to the Sublease Agreement, dated November 14, 2006 (the "**Sublease Agreement**"), by and between the Original Company, as sublessor, and the Company, as sublessee; and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Original Company and the Company, entered into a certain Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2012 (the "**PILOT Agreement**"), whereby the Original Company and the Company agreed to make certain payments-in-lieu-of-taxes on the Facility to the Agency or the Taxing Authorities (as defined therein); and

WHEREAS, the Original Company and the Company entered into a Recapture Agreement, dated as of November 1, 2012 (the "**Recapture Agreement**"), from the Original Company and the Company to the Agency in order to reflect the repayment of certain

obligations of the Original Company and the Company upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, in connection with the leasing of the Facility, the Agency, the Company, the Kathleen King Revocable Trust, and Kathleen King entered into a certain Agency Compliance and Guaranty Agreement, dated as of November 1, 2012 (the "**Original Agency Compliance and Guaranty Agreement**"), whereby, among other commitments, the Company, the Kathleen King Revocable Trust, and Kathleen King guaranteed to the Agency obligations of the Original Company to the Agency under the Lease Agreement, the PILOT Agreement and the Recapture Agreement; and

WHEREAS, the Original Company and the Agency mortgaged their respective interests in the Facility to Bridgehampton National Bank (the "**Original Lender**") pursuant to a Mortgage, dated November 30, 2012 (the "**Original Mortgage**"), from the Original Company and the Agency to the Original Lender, securing an aggregate principal amount of \$2,350,000.00; and

WHEREAS, the Agency previously consented to (i) the assignment of the Lease Agreement by the Original Company to Tate's Holding Company, a corporation organized and existing under the laws of the State of Delaware, authorized to conduct business in the State of New York (the "**Assignee**"), a majority of whose equity interests are owned by, and which is controlled by, Riverside Micro-Cap Fund III, L.P., pursuant to a certain Assignment and Assumption of Lease Agreement and Consent, dated as of August 28, 2014 (the "**First Assignment and Assumption of Lease Agreement and Consent**"), by and among the Agency, the Original Company, and the Assignee; (ii) the assignment of the Lease Agreement by the Assignee to the Company, pursuant to a certain Assignment and Assumption of Lease Agreement and Consent, dated as of August 28, 2014 (the "**Second Assignment and Assumption of Lease Agreement and Consent**"), by and among the Agency, the Assignee and the Company; (iii) the assignment of the PILOT Agreement by the Original Company to the Assignee, pursuant to a certain Assignment and Assumption of PILOT Agreement and Consent, dated as of August 28, 2014 (the "**First Assignment and Assumption of PILOT Agreement and Consent**"), by and among the Agency, the Original Company, and the Assignee; (iv) the assignment of the PILOT Agreement by the Assignee to the Company, pursuant to a certain Assignment and Assumption of PILOT Agreement and Consent, dated as of August 28, 2014 (the "**Second Assignment and Assumption of PILOT Agreement and Consent**"), by and among the Agency, the Assignee and the Company; (v) the assignment of the Recapture Agreement by the Original Company to the Assignee, pursuant to a certain Assignment and Assumption of Recapture Agreement and Consent, dated as of August 28, 2014 (the "**First Assignment and Assumption of Recapture Agreement and Consent**"), by and among the Agency, the Original Company, and the Assignee; (vi) the assignment of the Recapture Agreement by the Assignee to the Company, pursuant to a certain Assignment and Assumption of Recapture Agreement and Consent, dated as of August 28, 2014 (the "**Second Assignment and Assumption of Recapture Agreement and Consent**"), by and among the Agency, the Assignee and the Company; (vii) the acquisition by the Assignee's wholly owned subsidiary, Tate's Bake Shop, Inc., a corporation organized and existing under the laws of the State of New York, of all of the equity interests in the Company; and (viii) the release of the Kathleen King Revocable Trust, and Kathleen King from certain of their respective obligations under the Agency Compliance and Guaranty Agreement, pursuant to a certain Partial Release

From Agency Compliance and Guaranty Agreement, dated August 28, 2014 (the "**Partial Release**"), by and among the Agency, the Kathleen King Revocable Trust, and Kathleen King; and

WHEREAS, simultaneous with the above referenced assignments pertaining to the Facility, the Lease Agreement was amended by letter agreement dated August 28, 2014 (the "**Letter Amendment**"), from the Assignee and the Company to the Agency, and by a certain Amendment of Lease Agreement, effective August 28, 2014 (together with the Letter Amendment, the "**Lease Amendment**"), by and between the Agency and the Company; and

WHEREAS, in connection with the above referenced assignments pertaining to the Facility, the Agency, the Assignee and Tate's Bake Shop, Inc. entered into a certain Agency Compliance and Guaranty Agreement, dated August 27, 2014 (the "**2014 Agency Compliance and Guaranty Agreement**"), whereby, among other commitments, the Assignee, and Tate's Bake Shop, Inc. guaranteed to the Agency obligations of the Company to the Agency under the Lease Agreement, the PILOT Agreement and the Recapture Agreement; and

WHEREAS, the Company and the Agency mortgaged their respective interests in the Facility to GCI Capital Markets LLC n/k/a Golub Capital Markets LLC as agent for certain lenders (collectively, the "**Bank**"), pursuant to a certain Real Property Mortgage, Leasehold Mortgage, Assignment of Rents and Fixture Filing, dated as of September 23, 2014 (the "**2014 Mortgage**"), from the Agency and the Company to the Bank, securing the principal amount of \$4,235,000 under a certain Credit Agreement, dated August 28, 2014 (the "**Credit Agreement**"), by and among the Assignee, the Company, Tate's Bake Shop, Inc., and the Bank; and the Original Company caused the Original Mortgage to be satisfied of record; and

WHEREAS, the Company has requested that, in order to provide record notice of certain amendments to the Credit Agreement, which amendments do not increase, refinance or relend the principal secured by the 2014 Mortgage, the Agency join with the Company in executing and delivering a First Amendment to Real Property Mortgage, Leasehold Mortgage, Assignment Of Rents And Fixture Filing and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the Bank (the "**2018 Mortgage Amendment**"); and

WHEREAS, the Agency contemplates that it will not provide financial assistance to the Company in the form of exemptions from mortgage recording taxes; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York;

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transactions contemplated by the 2018 Mortgage Amendment and the continued leasing of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Town of Brookhaven Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The Agency hereby finds and determines:

a. By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

b. The Facility continues to constitute a "project", as such term as defined in the Act; and

c. The 2018 Mortgage Amendment will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Brookhaven and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

d. The 2018 Mortgage Amendment as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Company in its industry.

e. Based upon representations of the Company and counsel to the Company, the Facility continues to conform with the local zoning laws and planning regulations of the Town of Brookhaven and all regional and local land use plans for the area in which the Facility is located.

f. It is desirable and in the public interest for the Agency to assist in the amendment to the 2018 Mortgage Amendment.

g. The 2018 Mortgage Amendment will be an effective instrument whereby the Bank, the Agency and the Company agree to amend the 2014 Mortgage.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) execute and deliver the 2018 Mortgage Amendment, in such form and containing such terms, conditions and provisions as the person executing same on behalf of the Agency shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof, provided, however, that the Agency shall not grant a mortgage recording tax exemption thereon, and (ii) execute, deliver and perform such other related documents to which the Agency is a party, as may be necessary or appropriate in furtherance thereof.

Section 3. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2018 Mortgage Amendment and such other related documents as may be necessary or appropriate in furtherance thereof, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed.

Section 4. Subject to the provisions of this resolution and the Lease Agreement:

a. the Chairman, Chief Executive Officer, and all other members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2018 Mortgage Amendment, together with such other related documents as may be, in the judgment of the Chairman, the Chief Executive Officer, or any of the other members of the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Agency Documents"). The execution thereof by the Chairman, Chief Executive Officer, or any member of the Agency shall constitute conclusive evidence of such approval; and

b. the Chairman, Chief Executive Officer, and any member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives of the Agency.

Section 5. Subject to the provisions of this resolution and the Lease Agreement, the Agency's Chairman, Chief Executive Officer, members, officers, employees and agents are each hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the person acting on behalf of the Agency, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. Any and all acts, instruments, and other writings heretofore or hereafter performed and/or executed and delivered by any one or more of the Agency's Chairman, Chief Executive Officer, members, officers, employees or agents, pursuant to the several foregoing resolutions, for and on behalf of and in the name of the Agency, in connection with the transactions contemplated thereby, be and the same hereby are, in all respects ratified, confirmed and approved.

Section 7. The Chairman, Chief Executive Officer, Counsel to the Agency or any member of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution

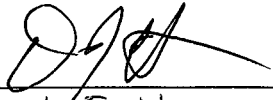
Section 8. Any expenses incurred by the Agency with respect to the financing or refinancing of the Facility shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the financing or refinancing of the Facility.

Section 9. This resolution shall take effect immediately.

ADOPTED: January 10, 2018

ACCEPTED: January 10, 2018

**TATE'S WHOLESALE, LLC**

By:   
Name: Daniel J. Haynes  
Title: Vice President and Treasurer