

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(SUFFOLK COUNTY, NEW YORK)

and

TATE'S WHOLESALE, LLC

AMENDMENT OF LEASE AGREEMENT

Effective August 28, 2014

Town of Brookhaven Industrial Development Agency
(Tate's Wholesale, LLC Facility)

AMENDMENT OF LEASE AGREEMENT ("Amendment"), effective August 28, 2014, by and between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "Agency"), and TATE'S WHOLESALE, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 62 Pine Street, East Moriches, New York 11940 (the "Company" or "Tate's Wholesale").

WITNESSETH

WHEREAS, the Agency was created by Chapter 358 of the Laws of 1970 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended (collectively, the "Act"); and

WHEREAS, pursuant to the Agency's Resolutions adopted on August 20, 2012, Cookie Commissary LLC ("Cookie") and the Agency entered into a straight lease transaction in which the Agency acquired, constructed, renovated, and equipped an industrial development facility, including the acquisition, renovation, and equipping of an existing approximately 23,500 square foot industrial building (the "Existing Building"), acquired an existing approximately 3,200 square foot commercial building (the "Rental Building"), acquired, constructed and equipped an approximately 14,000 square foot addition to the Existing Building (the "Addition"), and acquired approximately 4.8 acres of land on which the foregoing improvements are located as shown on the Suffolk County Tax Map as District 0200 Section 794.00 Block 03.00 Lot 008.008 and known as 62 Pine Street, East Moriches, in the Town of Brookhaven, Suffolk County, New York (the "Facility"); leased the Facility to Cookie with an obligation of Cookie to purchase same under a certain lease agreement, dated as of November 1, 2012 (the "Lease Agreement") which Facility Cookie subleased to Tate's Wholesale; granted mortgage liens on, and security interests in, the Facility; provided financial assistance within the meaning of the Act, and in connection therewith, entered into a certain Payment In Lieu of Tax Agreement, dated as of November 1, 2012 (the "PILOT Agreement"), by and among the Agency, Cookie, and Tate's Wholesale, and a certain Recapture Agreement, dated as of November 1, 2012 (the "Recapture Agreement"), by and among the Agency, Cookie, and Tate's Wholesale; and

WHEREAS, Cookie, Tate's Wholesale, Kathleen King, The Kathleen King Revocable Trust dated as of June 18, 2007 (the "Trust") and Riverside Partners, LLC d/b/a The Riverside Company ("Riverside") by letter to the Agency, dated August 14, 2014 (the "Letter"), applied to the Agency (1) for the Agency's consent to, and cooperation with, Riverside's or The Riverside Micro-Cap Fund III, L.P.'s, or an entity's or entities' controlled by one or both of them, acquisition of Cookie's leasehold interest under the Lease Agreement (including Cookie's rights and obligations thereunder or in connection therewith), and of a controlling interest in Tate's Wholesale (the "Transaction"), (2) for the Agency's grant of a mortgage lien or mortgage liens on, and security interest or security interests in, the Facility securing the principal sum of not more than \$5,500,000 (the "Refinance"), and provision of certain financial assistance in furtherance thereof, (3) for the release of Cookie, Kathleen King and the Trust from liability to the Agency accruing after the consummation of the Transaction, and (4) for other ancillary assistance in furtherance of the Transaction; and

WHEREAS, the Agency has approved the request of Cookie, Tate's Wholesale, Kathleen King, the Trust, and Riverside and the representations by Cookie, Tate's Wholesale, Kathleen King, the Trust, and Riverside that the proposed Transaction and Refinance are either an inducement to Tate's Wholesale to maintain or expand the Facility in the Town of Brookhaven or are necessary to maintain the competitive position of Tate's Wholesale in its industry;

WHEREAS, the Agency contemplates that it will provide financial assistance in connection with the Refinance, consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes in an aggregate amount presently estimated to be \$45,000 but not to exceed \$57,750, and in connection with any subsequent refinancing of the Facility or permanent financing of the Facility.

WHEREAS, (a) Cookie, Tate's Holding Company (the "Holding Company") and the Agency entered into (i) a certain assignment and assumption of lease agreement and consent ("First Assignment"), providing, inter alia, for the assignment by Cookie to the Holding Company of Cookie's interest in and to the Lease Agreement, and the assumption by the Holding Company of Cookie's obligations under the Lease Agreement, (ii) a certain assignment and assumption of PILOT Agreement (the "First PILOT Assignment"), providing inter alia, for the assignment by Cookie to the Holding Company of Cookie's interest in and to the PILOT Agreement, and the assumption by the Holding Company of Cookie's obligations under the PILOT Agreement, and (iii) a certain assignment and assumption of Recapture Agreement (the "First Recapture Assignment"), providing inter alia, for the assignment by Cookie to the Holding Company of Cookie's interest in and to the Recapture Agreement, and the assumption by the Holding Company of Cookie's obligations under the Recapture Agreement; (b) the Holding Company, Tate's Wholesale and the Agency entered into (i) a certain assignment and assumption of lease agreement and consent ("Second Assignment"), providing, inter alia, for the assignment by the Holding Company to Tate's Wholesale of Holding Company's interest in and to the Lease Agreement, and the assumption by Tate's Wholesale of the Holding Company's obligations under the Lease Agreement, (ii) a certain assignment and assumption of PILOT Agreement (the "Second PILOT Assignment"), providing inter alia, for the assignment by the Holding Company to Tate's Wholesale of the Holding Company interest in and to the PILOT Agreement, and the assumption by Tate's Wholesale of the Holding Company's obligations under the PILOT Agreement, and (iii) a certain assignment and assumption of Recapture Agreement (the "Second Recapture Assignment"), providing inter alia, for the assignment by Holding Company to Tate's Wholesale of the Holding Company interest in and to the Recapture Agreement, and the assumption by Tate's Wholesale of the Holding Company's obligations under the Recapture Agreement; and (c) the Holding Company and Tate's Bake Shop, LLC ("Bake Shop") entered into a certain Agency Compliance and Guaranty Agreement (the "Guaranty").

WHEREAS, the Holding Company and the Company entered into a letter agreement modifying Section 9.3(b) of the Lease Agreement.

WHEREAS, the Agency and the Company have agreed, in connection with the foregoing assignments and modification of the Lease Agreement, to enter into, execute, deliver and perform this Amendment in order to amend further the Lease Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE 1
AMENDMENT OF LEASE

Section 1.1 Incorporation of Recitals. The introductory paragraphs to this Amendment are true, accurate and complete in all respects.

Section 1.2 Definitions. All other terms used in this Amendment and not otherwise defined herein shall have the meanings assigned thereto in the Lease Agreement.

Section 1.3 Amendments to Definitions.

(a) The definition of “Agency Compliance and Guaranty Agreement” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Agency Compliance and Guaranty Agreement” means that certain Agency Compliance and Guaranty Agreement, dated as of August 28, 2014, between the Agency and the Guarantors, as may be amended, restated supplemented or replaced.

(b) The definition of “Assignment of Rents and Leases” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Assignment of Rents and Leases” means the Assignment of Leases and Rents dated as of September 23, 2014, executed and delivered by the Company to the Bank, assigning, conveying and transferring to the Bank rights in and to certain leases and rents thereunder as security for the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute assignments of rents and leases thereafter executed and delivered by the Company, creating, modifying, extending or supplementing any assignment of rents or leases on or with respect to the Facility or any portion thereof.

(c) The definition of “Bank” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Bank” shall mean, collectively and severally, (i) GCI Capital Markets LLC, as administrative agent, (ii) any of the successors or assigns of the foregoing, or (iii) any surviving, resulting, transferee or replacement banking association or other entity authorized to do business in the State; however, each of the foregoing shall be a “Bank” only during such period that the Person shall hold a mortgage lien on, or a security interest in, the Facility or any portion thereof as security for the Indebtedness of the Company.

(d) The definition of “Company” in Article I of the Lease Agreement is amended and restated in its entirety as follows

“Company” means Tate’s Wholesale, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York.

(e) The definition of “Company Member” in Article I of the Lease Agreement is amended and restated in its entirety as follows

“Company Member” means Tate’s Bake Shop, Inc., a corporation duly organized and validly existing under the laws of the State of New York.

(f) The definition of “Guarantor” or “Guarantors” in Article I of the Lease Agreement is amended and restated in its entirety as follows

“Guarantor” or “Guarantors” means collectively or individually the Company Member and the Holding Company.

(g) The following new definition is added to Article I of the Lease Agreement:

“Holding Company” means Tate’s Holding Company, a corporation duly organized and validly existing under the laws of the State of Delaware.

(h) The definition of “Indebtedness” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Indebtedness” means, collectively, any and all credits, loans, advances, debts and other obligations (including guaranty obligations on account of any of the foregoing) owing by the Company to the Bank.

(i) The definition of “Mortgage” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Mortgage” means the Real Property Mortgage, Leasehold Mortgage, Assignment of Rents and Fixture Filing, dated as of September 23, 2014, executed and delivered by the Agency and the Company to the Bank, creating a first Lien on the Facility, subject only to Permitted Encumbrances, as security for payment of the Note and other Indebtedness due the Bank, and such additional, supplemental and substitute mortgages and security agreements thereafter executed and delivered by the Agency, at the request of the Company, and/or the Company, creating, modifying, extending or supplementing any Lien or Liens on or with respect to the Facility or any portion thereof.

(j) The definition of “Note” in Article I of the Lease Agreement is amended and restated in its entirety as follows:

“Note” means, individually or collectively, any and all promissory notes evidencing the Indebtedness, and if no such notes exist, the credit agreement, loan agreement or other agreement pursuant to which the Indebtedness has been incurred, in each case to the extent secured by the Mortgage and as may be amended, restated, supplemented or replaced from time to time.”

(k) The definitions of “Sublease” and “Subtenant” in Article I of the Lease Agreement are deleted in their entirety, and references thereto in the Lease Agreement are of no further force or effect.

(l) The definition of “Third Party Sub-subleases” in Article I of the Lease Agreement is deleted in its entirety and replaced with the following new definition:

“Third Party Subleases” means those certain sublease agreements by and between the Company and Third Party Sublessees by which the Company subleases a portion of the Facility to such persons.

All references in the Lease to “Third Party Sub-subleases” shall be deemed to refer to Third Party Subleases as such term is defined above.

(m) The definition of “Third Party Sub-sublessees” in Article I of the Lease Agreement is deleted in its entirety and replaced with the following new definition:

“Third Party Sublessees” means such sublessees of the Company expressly approved by the Agency in its sole discretion using or occupying a portion of the Facility upon such terms and conditions as expressly approved by the Agency in its sole discretion pursuant to Third Party Sublease Agreements approved by the Agency.

All references in the Lease to “Third Party Sub-sublessees” shall be deemed to refer to Third Party Sublessees as such term is defined above.

(n) The definition of “Trust” in Article I of the Lease Agreement is deleted in its entirety, and references thereto in the Lease Agreement are of no further force or effect.

Section 1.4 Other Amendments.

(a) Section 2.2(e) of the Lease Agreement is amended and restated in its entirety as follows:

“The sole member of the Company is the Company Member; the sole stockholder of the Company Member is the Holding Company.”

(b) Section 2.2(l) of the Lease Agreement is amended and restated in its entirety as follows:

“The Company, as tenant, and Third Party Sublessees, will be the sole occupants and users of all portions of the Facility.

(c) Section 2.2(m) of the Lease Agreement is deleted in its entirety.

(d) Section 2.2(n) of the Lease Agreement is amended and restated in its entirety as follows:

“No persons other than the Company shall use or occupy the Facility except Third Party Sublessees pursuant to Third Party Subleases, provided such

Third Party Sublessees, Third Party Subleases, and the use of the portion of the Facility to be occupied by each Third Party Sublessee, is approved by the Agency in its sole discretion.”

(e) Section 8.13 of the Lease Agreement is amended and restated in its entirety as follows:

“The Company shall achieve within two (2) years after the date hereof, and thereafter maintain, employment levels at and attributable to the Facility of at least eighty seven (87) full time equivalent (“FTE”) employees whose compensation shall be consistent with the Application, unless and to the extent the Company shall fail to achieve and maintain such employment levels due to the Company’s business cycles, loss of major sales, revenue or distribution channels, or other materially adverse business developments, or local, national and international economic conditions; in addition, the Company shall not change, modify or amend its method of operations so as to effect a “Substantial Change.” As used herein, (a) the calculation of FTE shall be based upon 37.5 hours per week, and (b) “Substantial Change” shall mean (i) the sale or closure of all or substantially all of the Facility (other than the closure of the Rental Building) or departure of the Company from the Town of Brookhaven, or (ii) any significant deviations from the information and data provided to the Agency in the Company’s Application which would constitute a significant diminution of activities in or commitment to the Town of Brookhaven.”

(f) Section 9.3(b) of the Lease Agreement is amended and restated in its entirety as follows:

“If the Company or the Company Member is a corporation, the transfer of a majority of the issued and outstanding capital stock of the Company or the Company Member or the issuance of additional shares of the Company or the Company Member such that if the additional shares had first been issued to the existing shareholders of the Company or the Company Member and then transferred to the acquiring shareholders, such event would have constituted a transfer of a majority of the issued and outstanding capital stock of the Company or the Company Member within the meaning of this Section, or, if the Company or the Company Member is a partnership or a limited liability company, the transfer of a majority of the total interest in the Company or the Company Member, however any of such corporate stock transfers or issuances or partnership or limited liability company interest transfers are accomplished, whether in a single transaction or in a series of related or unrelated transactions, such transactions shall be deemed an assignment of this Lease Agreement, and in addition, the transfer of a beneficial interest in, or control of, the Holding Company, shall constitute an assignment of this Lease Agreement; provided that the Agency shall consent to such transfers so long as, in addition to complying with the provisions of paragraph (a) of this Section 9.3, (1) the Company shall provide to the Agency at least ten (10) days prior notice of the proposed transfer and the details thereof, and such additional information as the Agency may reasonably request, (2) Riverside Partners, LLC, or an affiliate or subsidiary

thereof, shall control directly or indirectly, the Company, the Company Member and the Holding Company, (3) the beneficial owner of the Company, the Company Member and the Holding Company shall be, directly or indirectly, Riverside Partners, LLC, or an affiliate or subsidiary thereof, and (4) such persons directly or indirectly controlling the Company, including all intermediary controlling persons, shall execute and deliver to the Agency upon reasonable request of the Agency an Agency Compliance and Guaranty Agreement in form and substance satisfactory to the Agency. As used herein, "control" (including, with its correlative meanings, "controlled by" and "control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), providing that, in any event any person which owns directly or indirectly 51% or more of the stock, partnership, membership or other ownership interests of any other person will be deemed to control such corporation or other person. The transfer of outstanding capital stock of the Company, the Company Member or the Holding Company, for purposes of this Section, shall not include sale of such stock by persons other than those deemed "insiders" within the meaning of the 1934 Act, or the initial sale by the Company, the Company Member or the Holding Company of stock to persons other than those deemed "insiders" within the meaning of the 1934 Act, provided in each such instance the sale is effected through the "Over the Counter Market" or through any recognized stock exchange."

(g) Section 13.2 of the Lease Agreement is amended by deleting therefrom the notice addresses listed for the Company and the Bank and replacing them with the following notice addresses:

To the Company:

Tate's Wholesale, LLC
62 Pine Street
East Moriches, New York 11940
Attention: Michael Naimy

with a copy to:

Tate's Wholesale, LLC
c/o The Riverside Company
Terminal Tower, 50 Public Square, 29th Floor
Cleveland, Ohio 44113
Attention: Alan Peyrat

To the Bank:

GCI Capital Markets LLC
c/o Golub Capital Incorporated
666 Madison Avenue, 18th Floor
New York, New York 10103

Attention: Portfolio Manager - Tate's Bake Shop

with a copy to:

Golub Capital Incorporated
150 South Wacker, Suite 800
Chicago, Illinois 60606
Attention: Portfolio Manager - Tate's Bake Shop

ARTICLE 2 MISCELLANEOUS

Section 2.1 Binding Effect. This Amendment shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

Section 2.2 Entire Understanding; Counterparts. This Amendment constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 2.3 Amendments. No amendment, change, modification, alteration or termination of this Amendment shall be made except in writing upon the written consent of the parties hereto.

Section 2.4 Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Amendment or the application thereof shall not affect the validity or enforceability of the remaining portions of this Amendment or any part thereof.

Section 2.5 Costs. The Company shall be responsible for and pay all reasonable legal fees, brokerage fees, closing costs and collection fees arising out of this Amendment and the transactions contemplated hereby.

Section 2.6 Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Amendment shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk, and the Company consents to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Amendment. The Company waives trial by jury in any action or proceeding on any matters whatsoever arising out of, under, or by virtue of the terms of this Amendment or any other document or instrument contemplated hereby.

Section 2.7 Section Headings. The headings of the several Sections in this Amendment have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Amendment.

Section 2.8 Execution of Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Agency and the Company have caused this Amendment of Lease Agreement to be executed in their respective names by their duly authorized officers, on the dates of the acknowledgments below, intending it to be effective as of August 28, 2014.

[SIGNATURE PAGES FOLLOW]

TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY

By: *Lisa MG Mulligan*
Name: Lisa MG Mulligan
Title: Chief Executive Officer

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

On the 3rd day of February in the year 2015, before me, the undersigned, personally appeared LISA MG MULLIGAN, 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.

Debbie L. Masterson
NOTARY PUBLIC

DEBBIE L. MASTERSON
NOTARY PUBLIC, State of New York
No. 01MA4694984, Suffolk County
Term Expires February 28, 2017

TATE'S WHOLESALE, LLC

By: Alan Peyrat
Name: Alan Peyrat
Title: Vice President and Secretary

STATE OF Ohio)
COUNTY OF Cuyahoga) ss:

On the 16th day of January in the year 2015, before me, the undersigned, personally appeared ALAN PEYRAT, 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, and that such individual made such appearance before the undersigned in Cleveland, Ohio [insert city or political subdivision and state or county or other place acknowledgment taken].

Paula M. Kober
NOTARY PUBLIC