

UNIFORM PROJECT AGREEMENT (ASTEP PROGRAM)

This **UNIFORM PROJECT AGREEMENT**, dated as of April 1, 2019 (this "**Agreement**"), is by and between **NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at 110 William Street, New York, New York 10038 (the "**Agency**"), party of the first part, and Italian Food Philosophy LLC, a domestic limited liability company organized and existing under the laws of the State of New York having its principal office in New York City at 11 Broadway, Suite 368, New York, NY 10004 (the "**Lessee**"), party of the second part (capitalized terms used herein but not defined shall have the respective meanings assigned to such terms in the Agency Lease (as defined below)).

WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by the Agency Act for the benefit of the City and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a "project" within the meaning of the Act within the territorial boundaries of the City and located on the Land; and

WHEREAS, the Project will further the purposes of the Act and promote job opportunities for the benefit of the City and the inhabitants thereof; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into an Accelerated Sales Tax Exemption Program ("**ASTEP**") transaction pursuant to which the Agency will lease the Facility Personalty and Eligible Items to the Lessee pursuant to the Agency Lease; and

WHEREAS, the provision by the Agency of Financial Assistance to the Lessee through an ASSTEP Program Transaction has been determined to be necessary to induce the Lessee to proceed with the Project; and if the Agency does not provide such Financial Assistance, the Lessee could not feasibly proceed with the Project;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

I.

DEFINITIONS AND CONSTRUCTION

Definitions. The following capitalized terms shall have the respective meanings specified for purposes of this Agreement.

Act shall mean, collectively, the Enabling Act and the Agency Act.

Agency Act shall mean Chapter 1082 of the 1974 Laws of New York, as amended.

Agency Lease shall mean the Agency and Lease Agreement, dated as of even date herewith, between the Agency and the Lessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms thereof.

Agent shall mean a contractor, subcontractor or other party appointed by the Lessee to act as the Agency's agent for the purpose of effecting purchases that are eligible for the Sales Tax Exemption.

Agreement shall mean this Uniform Project Agreement, dated as of the date set forth in the first paragraph hereof, between the Agency and the Lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Authorized Representative shall mean, (i) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Agency who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Lessee, any officer or employee of the Lessee who is authorized to perform specific duties hereunder or under any other Project Document and of whom another Authorized Representative of the Lessee has given written notice to the Agency; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

City shall mean The City of New York, New York.

Commencement Date shall mean the date of this Agreement first set forth above, on which date this Agreement was executed and delivered.

Eligible Items shall have the meaning set forth in the Agency Lease.

Enabling Act shall mean the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended.

Entity shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental

Facility shall mean, collectively, the Facility Personalty and the Facility Realty.

Facility Personalty shall have the meaning set forth in the Agency Lease.

Facility Realty shall shall have the meaning set forth in the Agency Lease.

Financial Assistance shall have the meaning assigned to that term in the Enabling Act.

General Municipal Law shall mean Chapter 24 of the Consolidated Laws of New York, as amended.

Ineligible Items shall have the meaning set forth in the Agency Lease.

Land shall have the meaning set forth in the Agency Lease.

Maximum Sales Tax Savings Amount shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Lessee and all Agents acting on behalf the Lessee are permitted to receive under the Agency Lease, which shall equal **\$18,815**

Person shall mean an individual or any Entity.

Project shall have the meaning set forth in the Agency Lease.

Project Application shall mean the eligibility application and questionnaire submitted to the Agency by or on behalf of the Lessee, for approval by the Agency of the Project and the providing of Financial Assistance by the Agency therefor, together with all other letters, documentation, reports and financial information submitted in connection therewith.

Sales and Use Taxes shall mean City and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

Sales Tax Agent Authorization Letter shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit D to the Agency.

Sales Tax Exemption shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Project.

Sales Tax Savings shall mean all Sales Tax Exemption savings realized by or for the benefit of the Lessee, including any savings realized by any Agent, pursuant to the Agency Lease and each Sales Tax Agent Authorization Letter issued in connection with the Project.

State shall mean the State of New York.

(a) **Construction.** In this Agreement, unless the context otherwise requires: The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after the Commencement Date.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless the context indicates otherwise, references to designated "Appendices," "Sections" and other subdivisions are to the designated Appendices, Sections and other subdivisions of or to this Agreement.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Any definition of or reference to any agreement, instrument or other document herein shall be construed to refer to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth therein or herein).

(i) Any reference to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be.

II.

II.1. Acknowledgments of the Lessee. The Lessee acknowledges that:

(a) In connection with the Project, the Lessee expects to receive the following type of Financial Assistance: Exemption from Sales and Use Taxes on the purchase of Eligible Items in an amount equal to the Maximum Sales Tax Savings Amount;

(b) The Financial Assistance described herein is subject to suspension, modification, discontinuance and/or recapture, as more particularly set forth in Section 8(b) of the Agency Lease attached hereto as Appendix A, and as set forth in Section 5(g) of the Agency Lease.

(c) The description of the Project (as defined in Section 1.1 hereof) is true, correct and complete.

(d) Undertaking the Project is anticipated to serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

Covenants and Certifications of the Lessee.

(e) The Lessee shall provide annually to the Agency on August 1 of each year commencing August 1, 2019, a certified statement and supporting documentation:

(i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance described in Section 2.1(a) above, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Facility; and

(ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the Project Application are still accurate and, if not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and an

explanation for why the averages or ranges provided in the Project Application are not still accurate.

(f) The Lessee hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

III.

Except for the Agency Lease, this Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior negotiations and agreements are merged in this Agreement. This Agreement shall only be changed, modified or discharged in whole or in part by a written instrument executed by the Lessee and the Agency.

IV.

All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified United States mail, return receipt requested and postage prepaid, (ii) by a nationally recognized overnight delivery service for overnight delivery, charges prepaid or (iii) by hand delivery, addressed, as provided in Section 9(c) of the Agency Lease.

V.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without regard or giving effect to the principles of conflicts of laws thereof.

The terms of this Agreement are and shall be binding upon and inure to the benefit of the Agency and the Lessee and their respective successors and assigns.

If any one or more of the provisions of this Agreement shall be ruled illegal or invalid by any court of competent jurisdiction, the illegality or invalidity of such provision(s) shall not affect any of the remaining provisions hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Facility, other than the Agency Lease, or any other Project Document.

VI.

This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

VII.

All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not subject the Agency to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee under the Agency Lease.

All covenants, stipulations, promises, agreements and obligations of the Lessee contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Lessee and not of any director, officer, manager, partner, employee or agent of the Lessee in his individual capacity, and no recourse shall be had for the payment of any amounts hereunder against any director, officer, manager, partner, employee or agent of the Lessee.


VIII.

Each party acknowledges that this Agreement is a legally binding contract and that it was represented by legal counsel in connection with the drafting, negotiation and preparation of this Agreement. Each party acknowledges that it and its legal counsel has cooperated in the drafting, negotiation and preparation of this Agreement and agrees that this Agreement and any provision hereof shall be construed, interpreted and enforced without regard to any presumptions against the drafting party. Each party hereby agrees to waive any rule, doctrine or canon of law, including without limitation, the contra proferentem doctrine, that would require interpretation of any ambiguities in this Agreement against the party that has drafted it.

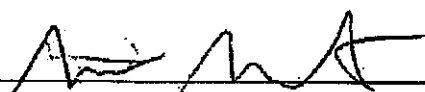
[Signature Page Follows]

IN WITNESS WHEREOF the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Deputy Executive Director or General Counsel, and the Lessee has caused its name to be subscribed hereto by its Authorized Representative all being done as of the year and day first above written.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Krishna Omolade
Deputy Executive Director

Italian Food Philosophy LLC

By: 
Michele Maturo
Founder and CEO