

PROJECT ASSISTANCE AGREEMENT

THIS PROJECT ASSISTANCE AGREEMENT (hereinafter, the "Agreement"), made as of February __, 2020, by and between the **COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 121 North Main Street, Albion, New York 14411 (the "Agency"), and **BENTS OPERA HOSUE LLC**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 444 Main Street, Medina, New York 14103 (the "Company").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities including industrial pollution control facilities and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York 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 Chapter 918 of the 1971 Laws of New York, as amended (which, together with the Enabling Act, is referred to herein as the "Act"), for the benefit of the County of Orleans and inhabitants thereof; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: The acquisition by the Agency without the proceeds of a bond issue of equipment and furnishings for a high-end farm-to-table restaurant, 10 boutique hotel rooms, and banquet facilities for up to 180 people, and conveyance of the Project pursuant to an installment sale contract or the lease of the Project to the Company, such Project to be located at Bents Opera House, 444 Main Street, Medina, New York; and

WHEREAS, by a Resolution adopted on February 14, 2020, a copy of which is attached hereto as Schedule A (the "Resolution"), the Agency has agreed to provide to the Company in connection with the Project certain financial assistance consisting of an exemption from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the acquisition, construction or equipping of the Project (hereinafter referred to as the "Financial Assistance"); and

WHEREAS, the Company has estimated in the Application the value of the Financial Assistance sought by the Company in connection with the Project, and the Agency has authorized in the Resolution an exemption from New York State and local sales and use taxes

for purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$1,551,000.00; and

WHEREAS, the Resolution authorizes the Agency to acquire an interest in the Project and to enter into the Project Documents (as defined in the Resolution) which will provide for the completion of the Project by the Company and the provision of the Financial Assistance by the Agency, all in accordance with Act and the Resolution; and

WHEREAS, pursuant to the Act, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement, which sets forth certain terms and conditions under which the Financial Assistance will be provided to the Company.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of Project. It is understood and agreed by the parties hereto that the Agency has agreed to provide the Financial Assistance in connection with the Project and to enter into the Project Documents in order to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project to advance the job opportunities, health, general prosperity and economic welfare of the people of Orleans County and to otherwise accomplish the public purpose of the Act.

2. [Reserved].

3. Limitation on Sales Tax Exemption. In accordance with the Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$1,551,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$124,080.00.

4. Termination, Modification and/or Recapture of Agency Financial Assistance. In the event, because of the involvement of the Agency, the Company claims an exemption from New York State sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized in the Resolution, or which exemption is in excess of the amounts authorized thereunder, or is otherwise not permitted under the Resolution or this Agreement, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in the Resolution or in this Agreement or in any document authorized in the Resolution, then the Company shall be required to remit to the Agency an amount equal to the amount of New York State sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the New York State Commissioner of Taxation and Finance of New York State sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Company ceases to operate the Project (including a material alteration in the use of the Project, closure of the Project or reduction in the operations at the Project such that, in the Agency's judgment, the economic benefit to be derived from the Project is substantially impaired) or if there occurs a

material non-compliance with or breach of the terms of this Agreement or the Project Documents, the Agency may, in its sole discretion, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under the Resolution. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s), unless otherwise agreed to by any affected tax jurisdiction.

5. Annual Reporting. As a condition to receiving the Financial Assistance, the Company agrees to deliver to the Agency on an annual basis a certified statement enumerating (i) the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. In addition, the Company shall report, on an annual basis, the value of Financial Assistance received and the amount of Project costs incurred and paid by the Company. The form of certification is attached as Schedule B.

6. Compliance with Laws. By entering into this Agreement the Company certifies, under penalty of perjury, that the Company and any other owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

7. Termination of Agreement. As set forth in the Resolution, in the event the Project Documents have not been executed by Company by the expiration date (as such date may be extended) or termination of the Resolution, the Company shall be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and machinery and equipment which constitute the Project. This Agreement and any Financial Assistance shall terminate upon the termination or expiration of the Resolution (as the same may be extended), provided, however, that the obligation of the Company to provide reports for the time period for which any Financial Assistance was received in accordance with the Resolution and this Agreement shall survive such termination.

8. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

9. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, and shall be addressed to the Agency and the Company at the addresses set forth at the beginning of this Agreement or to such other address as any party may specify in writing to the other.

10. Amendments. No amendment, change, modification or alteration of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

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

12. Governing Law. This Agreement 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.

13. Section Headings. The headings of the several Sections in this Agreement 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 Agreement.

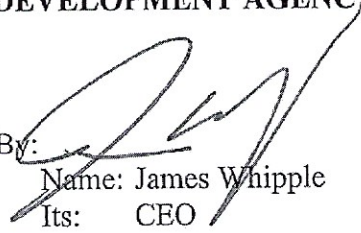
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[Signature Page to Project Assistance Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

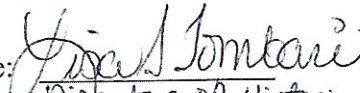
**COUNTY OF ORLEANS INDUSTRIAL
DEVELOPMENT AGENCY**

Dated: 02/26/20

By: 
Name: James Whipple
Its: CEO

BENTS OPERA HOUSE LLC

Dated: 2-26-2020

By: 
Name: Jisela Tombari
Title: Director of Historic Properties & Operations

SCHEDULE A

Resolution

SCHEDULE B

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

_____, 20__

Re: County of Orleans Industrial Development Agency
Annual Reporting Requirements

Dear _____:

The County of Orleans Industrial Development Agency (the "Agency") is currently providing assistance in connection with the _____ Project.

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is very important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the County of Orleans IDA by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience or you may email it to _____.

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please correct any information above)

Bond Financing Information

Who must complete: all companies that have received Bond Financing on your Project during the reporting year.

This does not apply to my Project-Continue to next section.

- Original principal balance of bond \$ _____
- Principal paid during 20__ \$ _____
- Outstanding principal balance of bond as of December 31, 20__ \$ _____
- Interest rate on bond as of December 31, 20__ _____ %
- Final maturity date of bond _____
- Is the company a not-for-profit? _____ Yes _____ No

Sales Tax Abatement Information

Who must complete: all companies that have received Sales Tax Abatement on your Project during the reporting year.

This does not apply to my Project-Continue to next section.

Provide the amount of sales tax savings received \$ _____

Attach a copy of the ST-340 sales tax report that was submitted to New York State for the reporting period.

Mortgage Recording Tax Information

Who must complete: all companies that have received Mortgage Tax Abatement on your Project during the reporting year.

This does not apply to my Project-Continue to next section.

The amount of the mortgage recording tax that was abated during 20__ \$ _____

Job Information

Who must complete: all companies that have continuing PILOT agreements, as well as other financial assistance.

This does not apply to my Project-Continue to next section.

For the fiscal year end 20__ the number of full time equivalent employees ("FTE"), defined as employees that work 35 or more hours per week. Part-time permanent jobs of less than 35 hours per week will be converted to full-time equivalent jobs by dividing the number of part-time hours by 35. This also includes independent contractors or employees of independent contractors that work at the Project location at your facility by job category and average hourly wage and fringe benefits for each.

<u>Category</u>	New Hire FTEs FY 20__	Retained FTEs FY 20__	Total FTEs FY 20__	Average Hourly Wage FY 20__	Average Fringe Benefit % or \$
Management	_____	+ _____	= _____	\$ _____	_____
Professional	_____	+ _____	= _____	\$ _____	_____
Administrative	_____	+ _____	= _____	\$ _____	_____
Production	_____	+ _____	= _____	\$ _____	_____
Other	_____	+ _____	= _____	\$ _____	_____
Total Annual Company Payroll for FY 20__				\$ _____	
FTE construction jobs during 20__			= _____		

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Project Costs

Who must complete: all companies that have continuing PILOT agreements, as well as other financial assistance.

This does not apply to my Project-Sign and date completed form.

Project costs incurred and paid in 20__

Real Estate	\$ _____
Construction	\$ _____
Machinery and Equipment	\$ _____
Other Taxable Expenses	\$ _____
Other Non-Taxable Expenses	\$ _____
Total	\$ _____

The undersigned is an authorized officer of the Company or Corporation and hereby represents and warrants that to the best of his/her knowledge the information contained herein is true, accurate and complete.

Signed: _____ Title: _____