

**Instrument was prepared by,
and after recording, return to:**

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**RECOGNITION OF PRIOR INTERESTS, NONDISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS RECOGNITION OF PRIOR INTERESTS, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this “Agreement”) is effective as of this _____ day of _____, 20__, among **NICHIREI GLOBAL FOODS, LLC**, a Delaware limited liability company (“Nichirei”), **CITY OF JONESBORO, ARKANSAS**, a city of the first class organized under the laws of the State of Arkansas (the “State”) located in Craighead County, Arkansas (the “City”), **[TBD]**, an _____ state banking corporation authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts hereby created (“Trustee”), **[Affiliate of Nichirei Global Foods, LLC]**, a Delaware limited liability company (“Bondholder”), and _____ (“Lender”).

RECITALS

A. The City has issued industrial revenue bonds (the “Bonds”) for the purpose of financing the costs of acquiring, constructing, and equipping certain industrial facilities located near the corporate boundaries of the City of Jonesboro, Arkansas and more specifically defined as the acquisition of real estate, construction of warehouse and manufacturing facilities, infrastructure and improvements and the acquisition and installation of equipment for the preparation, processing, packaging, handling and storage of food products and other manufacturing, development, research, office, storage, business operations, and warehousing activities that are supportive of or ancillary to such operations to be located on approximately 60 acres of property located in the Craighead Technology Park with an address of 2905 Quality Way, Jonesboro,

Arkansas related to the operations of Nichirei, a wholly-owned subsidiary of InnovAsian Cuisine Enterprises, Inc., or their affiliate (the “Project”).

B. In connection with the issuance of the Bonds and in order for the City to incentivize Nichirei to accomplish the Project through ad valorem tax abatement, Nichirei has transferred or will transfer to the City title to certain real property, leasehold improvements, personal property and fixtures, including all machinery and equipment acquired or constructed in furtherance of the Project described on **Exhibit A**, attached hereto and incorporated by reference (with such real property, leasehold improvements, personal property and fixtures, collectively called the “Leased Premises” herein), and the City has entered into a Lease Agreement with Nichirei dated as of _____, 20__ (the “PILOT Lease”) pursuant to which City demised to Nichirei an interest in the Leased Premises subject to Pre-Transfer Lien. Certain interests of Nichirei under the PILOT Lease will be assigned to the Trustee.

C. Nichirei has obtained a loan from the Lender (the “Loan”) secured by liens on, security interests in, or assignments of Nichirei’s right, title, and interest in and to the Leased Premises pursuant to the following instrument:

[Insert name of document conveying security interest] referred to as “Pre-Transfer Lien” or, as appropriate, the “Security Document.”

D. By this Agreement, the parties desire to establish and acknowledge certain rights, obligations, protections and priorities with regard to their respective interests in the Leased Premises.

AGREEMENT

In consideration of the premises and other good and valuable consideration, receipt of which is hereby acknowledged, and the mutual benefits to accrue to the parties hereto, the parties hereto agree as follows:

1. Recognition of Prior Liens and Interests. Nichirei, City, Trustee, and Bondholder hereby acknowledge and consent to all liens and encumbrances on, security interests in and rights to, the title to the Leased Premises, and acknowledge that Nichirei’s and City’s interest in the title to the Leased Premises has been, or will be, transferred to Nichirei and City and any rights Trustee or Bondholder may have under the Indenture or the Bonds, as applicable, subject to the Pre-Transfer Lien and subordinate to the Lender’s interest under the Pre-Transfer Lien.

The City hereby acknowledges Nichirei’s execution and delivery of the Security Document and consents to the performance of the respective parties’ rights and obligations thereunder, including, without limitation, the rights of Lender to access the Leased Premises in accordance with the Security Document and the rights of Lender as attorney-in-fact on behalf of Nichirei to cause the exercise of the Purchase Option (as defined in the Lease Agreement and evidenced by the Option Agreement) during the existence of an Event of Default (as defined in the Security Document), and agrees that the execution, delivery and recording of, and performance under, the Security Document does not and will not constitute a default under the Lease Agreement.

In the event that Lender attempts to obtain title to the Leased Premises by foreclosure, replevin, sale, transaction or other action or proceeding for the enforcement of the Pre-Transfer Lien, Nichirei and City shall, upon receipt of written notice thereof, cooperate with Lender in executing a deed, deed in lieu of foreclosure, bill of sale and/or such other conveyance instrument or consent to such foreclosure, replevin, sale, transaction or other action or proceeding as Lender may reasonably request and that will assist or effectuate the transfer of title to the Leased Premises to Lender.

2. Notice and Opportunity to Cure; Nondisturbance. If any default or breach under the PILOT Lease occurs (a “Nichirei Default”), then the City shall promptly provide Lender a notice describing in reasonable details such Nichirei Default and the potential remedies to be pursued in connection therewith (a “Default Notice”). The City shall accept Lender’s cure of any Nichirei Default at any time until the later of (i) 30 days after provision of the Default Notice (or if Lender reasonably cannot cure the Nichirei Default within such 30-day period, then the period to cure shall be extended to the period reasonably required to effect the cure), or (ii) the expiration of any applicable cure period provided under the PILOT Lease. At any time after the occurrence of a Nichirei Default and before expiration of the applicable cure period set forth herein or in the PILOT Lease, (a) the City shall not terminate the PILOT Lease, accelerate rent, or otherwise interfere with Nichirei’s or the Lender’s possession or quiet enjoyment as long as the Lender otherwise complies with its obligations under this Agreement and (b) the Lender may enter or use the Leased Premises to seek to cure a Nichirei Default. Notwithstanding the foregoing, Lender has no obligation to cure a Nichirei Default.

3. Recognition, Non-Disturbance and Attornment. If any transfer of the Leased Premises by foreclosure, replevin, sale, transaction or other action or proceeding for the enforcement of a Security Document or deed or assignment in lieu thereof (a “Transfer”) occurs, upon receipt of written notice setting forth in reasonable detail the terms of the Transfer, Nichirei and City shall recognize the transferee(s), including Lender (“Successor”), as the tenant or lessee under the Lease Agreement upon the same terms, provisions and conditions as are set forth in the Lease Agreement. If the City shall have received written notice from Successor that Successor has succeeded to the interest of Nichirei under the Lease Agreement or otherwise has the right to use or occupy the Leased Premises or to require Nichirei or City to perform its obligations under the Lease Agreement, the City shall perform all of the obligations of lessor pursuant to the Lease Agreement for the benefit of Successor and shall not disturb the possession of Successor so long as no Nichirei Default exists beyond any applicable notice and cure period. Successor shall attorn to the City and recognize all of the rights of the City under the Lease Agreement, and the Lease Agreement shall continue in full force as a direct lease between City and Successor, and the respective executory rights and obligations of City and Successor, to the extent of the then-remaining balance of the term of the Lease Agreement, shall be and are the same as set forth therein. This recognition, non-disturbance and attornment shall be effective and self-operative, without the execution of any further instrument on the part of any of the parties hereto, immediately upon Successor succeeding to Nichirei rights under the Lease Agreement.

4. Amendments to Lease Agreement. Without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed, neither Nichirei nor City shall (a) enter into any agreement amending, modifying or terminating the Lease Agreement or (b)

request a waiver by Nichirei of City's rights or remedies or by City of Nichirei's rights and remedies under the Lease Agreement.

5. Limitation on Lender's Performance and Liability. Nichirei and City acknowledge that (a) Lender shall not have any duty, liability or obligation whatsoever under the Lease Agreement unless and until Lender, as Successor, succeeds to Nichirei's rights under the Lease Agreement or obtains possession of the Leased Premises under the terms of the Security Document and (b) Successor shall have no duty, liability or obligation whatsoever under the Lease Agreement unless such duty, liability or obligation accrues during the period after Successor succeeds to Nichirei's rights under the Lease Agreement or obtains possession of the Leased Premises under the terms of the Security Document.

6. City Bankruptcy. Upon the filing by or against the City of a petition pursuant to applicable provisions of the United States Code relating to bankruptcy as now constituted or hereafter amended or under any other applicable Federal or State Bankruptcy law or other similar law (hereinafter referred to as the Bankruptcy Code), and the subsequent rejection of the Lease Agreement by City, Nichirei shall not, without the prior written consent of the Lender (i) elect to treat the Lease Agreement as terminated pursuant to Section 365(h)(i) of the Bankruptcy Code, or (ii) pursuant to Section 365(h)(2) of the Bankruptcy Code, offset against the rents reserved under the Lease Agreement the amount of any damages caused by the City's rejection of the Lease Agreement. Nichirei shall promptly, and so as to be received prior to all hearing dates, return dates or other deadlines, send to Lender copies of all notices, summonses, pleadings, applications and other documents received by Nichirei in connection with such petition or proceeding by the City.

7. Notices under Lease Agreement. Pursuant to the terms hereof, Nichirei and City, as applicable, shall give Lender, concurrently with giving any material notice to Nichirei and City, as applicable, a copy of any such notice given to Nichirei and City, in the manner set forth below. No such notice given to Nichirei by City or to City by Nichirei which is not concurrently given to the Lender shall be valid or effective for any purpose with respect to the Lender to which Nichirei or City, as applicable, fails to give such notice.

8. Miscellaneous.

(a) **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or e-mail (with .pdf copy attached and confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on **Exhibit B**, or such other address for a party as specified in a notice given in accordance with this Section.

(b) **Interpretation.** This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits referred to herein shall be construed with,

and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(c) **Entire Agreement.** This Agreement and the PILOT Lease contain all of the terms and conditions of the parties' agreement regarding the subject matter set forth herein. If there is any conflict between the provisions of this Agreement and those of the PILOT Lease, the provisions of this Agreement shall prevail.

(d) **Amendments and Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

(e) **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(f) **Governing Law.** This Agreement shall be governed by the law of the State of Arkansas, without regard to the choice of law rules of that State.

(g) **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(h) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(i) **Counterparts and Original Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other form of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to Nichirei promptly after execution.

9. Subordination in Bankruptcy. If the PILOT Lease is at any time determined to be a secured financing by a court of competent jurisdiction, then Nichirei and City, as applicable, agree: (a) any and all liens determined to exist or be created or arise in favor of the City securing the obligations of Nichirei under the PILOT Lease, regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise are expressly junior in priority, operation and effect to any and all liens on the Leased Premises existing or hereafter created or arising in favor

of the Lender under the Security Document (i) anything to the contrary contained in any agreement or filing to which Nichirei may now or hereafter be a party, and regardless of the time, order or method of grant, attachment, recording or perfection of any financing statements or other security interests, assignments, pledges, deeds, mortgages and other liens, or any defect or deficiency or alleged defect or deficiency in any of the foregoing, (ii) any provision of the Uniform Commercial Code or any applicable law or any financing document or security document between Nichirei and Lender or any other circumstance whatsoever and (iii) the fact that any such liens in favor of the Lender is otherwise subordinated, voided, avoided, invalidated or lapsed. Notwithstanding any failure by Lender to perfect its security interests in the Leased Premises or any avoidance, invalidation or subordination by any third party or court of competent jurisdiction of the security interests in the Project or the Leased Premises granted to the Lender, the priority and rights as between the Lender and the City with respect to the Leased Premises shall be as set forth herein.

10. Validity of Lenders' Liens. To the extent permitted by law, the City shall not object to or contest, or support any other person in contesting or objecting to, in any proceeding (including any bankruptcy proceeding), the validity, extent, perfection, priority or enforceability of any security interest in the Leased Premises granted to Lender.

[Signature Pages Follow]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed on its behalf on the date and year first above written and appropriate seals to be hereunto affixed pursuant to the proper authorities which have been duly delegated to them.

CITY OF JONESBORO, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

(S E A L)

STATE OF ARKANSAS)
) ss:
COUNTY OF _____)

ACKNOWLEDGMENT

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ and _____ to me personally well known, who stated that they are the Mayor and City Clerk, respectively, of **CITY OF JONESBORO, ARKANSAS**, and were duly authorized in those capacities to execute the foregoing instrument for and in the name and behalf of said City, and further stated and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this ___ day of _____, 20__.

Notary Public

My commission expires:

(S E A L)

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed on its behalf on the date and year first above written and appropriate seals to be hereunto affixed pursuant to the proper authorities which have been duly delegated to them.

LENDER:

By: _____

Name: _____

STATE OF _____)
) ss:
COUNTY OF _____)

ACKNOWLEDGMENT

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named _____ to me well known, who stated that s/he is the _____ of _____, a _____, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and behalf of said Company, and further stated and acknowledged that she/he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this ___ day of _____, 20__.

Notary Public

My commission expires:

(S E A L)

EXHIBIT A

Description of Leased Premises

The Leased Premises is located in Craighead County, Arkansas and described as the following real and personal property:

Fee interests in real estate, machinery, equipment, furnishings, fittings, appliances, other personal property, and fixtures financed with proceeds of the \$180,000,000 City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (InnovAsian Project), Series 20__ (the "Bonds"), located on the Real Property (described as follows), now or hereafter located at, affixed or attached to, or installed on the Real Property, including, but not limited to the following:

All fixtures, machinery, apparatus, equipment, fittings and appliances of every kind and nature whatsoever, now or hereafter affixed or attached to or installed in the above described property, including infrastructure, improvements, and equipment, related to the preparation, processing, packaging, handling and storage of food products and other manufacturing, development, research, office, storage, business operations, and warehousing activities that are supportive of or ancillary to such operations and for any activities and purposes incidental thereto or in furtherance thereof and all related or ancillary improvements and equipment.

Description of Real Property:

[To be Inserted]

EXHIBIT B

Notices

1. If to Nichirei: Nichirei Global Foods, LLC
2905 Quality Way
Jonesboro, Arkansas 72401
Attention: Chief Manufacturing Officer

- With a copy to: InnovAsian Cuisine Enterprises, Inc.
116 Andover Park E., Suite 200
Tukwila, WA 98188
Attention: Joe Kent, President & CEO

- InnovAsian Cuisine Enterprises, Inc.
116 Andover Park E., Suite 200
Tukwila, WA 98188
Attention: Glenn Scott, Chief Manufacturing Officer

- InnovAsian Cuisine Enterprises, Inc.
116 Andover Park E., Suite 200
Tukwila, WA 98188
Attention: Dan Peach, COO/CFO

2. If to Lender: [To be inserted]

3. If to City: City of Jonesboro, Arkansas
300 South Church Street
Jonesboro, Arkansas 72401
Attention: Mayor

4. If to Trustee: [TBD]

Attn: Corporate Trust Department

5. If to Bondholder: [Affiliate of Nichirei Global Foods, LLC]
116 Andover Park E., Suite 200
Tukwila, WA 98188
Attn: _____