

## FIRST AMENDMENT TO AGENCY PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENCY PROJECT AGREEMENT, dated as of August 1, 2019 (the "First Amendment to Project Agreement"), is by and between the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York, with offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency") and **ORGANIC NATURE LLC**, a limited liability company duly formed and validly existing under the laws of the State of New York, with an address of 330 East 14th Street, Elmira Heights, New York 14903 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Title I of Article 18-A of the General Municipal Law of the State of New York (the "State"), duly enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, and Chapter 535 of the Laws of 1971 of the State as amended and codified as Section 895-b of the General Municipal Law (collectively, the "Act"); and

WHEREAS, the Agency and the Company previously entered into that certain Agency Project Agreement, dated as of July 13, 2018 (the "Original Project Agreement"), with respect to the Project (as defined in the Original Project Agreement) located at 750 and 770 Cascadilla Street in the City of Ithaca, Tompkins County, New York (TMID Nos.: 43.-2-5.21 and -5.22) (collectively, the "Facility"); and

WHEREAS, as a result of the Company participating in the New York State Energy Research and Development Authority's Commercial New Construction Program, the Facility qualifies for the Agency's enhanced real property abatement incentive (the "Enhanced Energy Incentive"); and

WHEREAS, the Company has requested that the Agency amend the Original Project Agreement to account for the Enhanced Energy Incentive.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

The Original Project Agreement is hereby as amended as follows:

1. The following shall be added as Section 3(aa):
  - aa. The Company commits to the following Enhanced Energy Incentive requirements:
    - i. The Company will enter all building energy bills into an online database for the duration of the tax abatements, using EPA Portfolio Manager or approved equivalent, and provide the Agency with annual reports of Energy Utilization Index ("EUI"), as well as online access for the Agency to the EPA Portfolio Manager data;
    - ii. The Company will participate in the New York State Energy

Research and Development Authority ("NYSERDA") Commercial New Construction Program and achieve a design that implements the NYSERDA recommendations;

iii. The Company will establish a baseline target EUI according to Architecture 2030, using EPA Target Finder or approved equivalent. For mixed-used buildings, the target shall be weighted by the different building uses, by floor area. The target EUI will only be used for purposes of comparison to subsequent actual EUI from EPA Portfolio Manager for purposes of measuring success of the program;

iv. The Company will, within eighteen (18) months of the certificate of occupancy issuance, submit the NYSERDA third-party certification and results of on-site inspections; and

v. The Company will ensure that all major appliances, such as commercial cooking and refrigeration equipment, shall, to the extent possible, be ENERGY STAR rated.

2. Exhibit A to the Original Project Agreement is hereby deleted in its entirety and replaced with Exhibit A attached hereto as **Schedule A**.

3. Unless otherwise amended pursuant to the terms contained herein, the terms of the Original Project Agreement shall remain unchanged.


4. This First Amendment to Project Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

*[Remainder of Page Intentionally Left Blank]*

[Signature Page to First Amendment to Project Agreement]

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

**TOMPKINS COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Heather D. McDaniel  
Title: Administrative Director

**ORGANIC NATURE LLC,**

By: CITY HARBOR, LLC,  
as its sole member

By: \_\_\_\_\_  
Name: Jessica E. Hillman  
Title: Manager

[Signature Page to First Amendment to Project Agreement]

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Title: Administrative Director

**ORGANIC NATURE LLC,**

By: CITY HARBOR, LLC,  
as its sole member

By: \_\_\_\_\_

Name: Jessica E. Hillman

Title: Manager

**SCHEDULE A**

**EXHIBIT A**

**Payment-in-Lieu-of-Tax ("PILOT") Agreement Abatement Schedule**

As long as the Land and improvements thereon are leased to the Agency and, therefore, exempt from general real property taxation, the Company agrees to pay annually to such Taxing Jurisdictions, i.e., the City of Ithaca, the County of Tompkins, and the Ithaca City School District (or cause any mortgagee to release any escrow for payments hereunder annually to such Taxing Jurisdiction), as payment in lieu of general real property taxes respecting such premises:

(i) an amount equal to 100% of the real property taxes which would be due for said premises but for record ownership by the Agency (but without reference to, or utilization of, Section 485-b of the Real Property Tax Law of the State of New York), based on a current assessment of such improvements, commencing the first tax status date following the date of execution of the PILOT Agreement; and

(ii) with respect to the portion of the assessed value of said premises attributable to the construction of the Project thereon, the following percentages of the general real property taxes which would be due in respect of the improvements to the premises (i.e., the assessed value of the improvements to the premises) but for its record ownership of the Agency (but without any reference to, or utilization of, Section 485-b of the Real Property Tax Law of the State of New York), based on a then-current assessment of such improvements:

<u>YEAR OF EXEMPTION</u>	<u>TAXING JURISDICTIONS PAYMENT IN LIEU OF TAX FOR ASSESSED VALUE OF IMPROVEMENTS</u>
1	0%
2	0%
3	0%
4	10%
5	30%
6	50%
7	70%
8	100% (no abatement, full taxes paid)

(it being understood and agreed that from the date hereof until year 1 of exemption, the Company shall be obligated to pay or cause to be paid annually to the Taxing Jurisdictions normal real property taxes on the full assessed value of the total land portion and then-existing improvements on the conveyed premises).