

**COPY**

FIRST AMENDMENT TO AGENT AND FINANCIAL  
ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of June 14, 2018, is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **EMERSON HURON, 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 560 Delaware Avenue, Buffalo, New York 14202 (the "Company").

WITNESSETH:

**WHEREAS**, the Company submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) three (3) parcels of land located at 73, 77 and 79 Huron West, City of Buffalo, Erie County, New York (the "Land") improved with the vacant historic C.W. Miller Livery building (the "Existing Improvements"); (ii) the renovation, upgrading and equipping of the Existing Improvements and the construction and equipping of a 5,000+/- SF addition (the "Improvements") to consist of a new hospitality high school for a population of 500 students, a public restaurant as part of the first floor, and 1-2 self-contained residential units with separate access; and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment") and collectively with the Land, the Existing Improvements and the Improvements, (the "Facility"); and

**WHEREAS**, by resolution adopted on December 20, 2017 (the "Initial Resolution"), the Agency authorized financial assistance to the Company with respect to the Original Application in the form of (a) an exemption benefit 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 Facility or used in the renovation, upgrading or equipping of the Facility, and (b) a mortgage recording tax exemption benefit for the financing related to the Project, (collectively, the sales and use tax exemption benefit and the mortgage recording tax exemption benefit are hereinafter collectively referred to as the "Financial Assistance"); and

**WHEREAS**, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Initial Resolution, authorized and approved a mortgage recording tax exemption benefit for the financing related to the Project up to  $\frac{3}{4}$  of 1% of the final mortgage amount estimated at \$180,000; and

**WHEREAS**, on August 14, 2018, the Agency received an amended application (the "Amended Application") from the Company requesting additional Financial Assistance due to increased costs associated with the renovation of a 125+/- year old building and the inability to obtain certain amounts of equity capital as originally anticipated, specifically related to an increase in mortgage financing in an amount up to \$30,100,000 for the Project, which results in mortgage recording tax exemption benefit not to exceed up to  $\frac{3}{4}$  of 1% of the final mortgage amount estimated at \$225,750 (the "Amended Mortgage Tax Exemption Benefit"); and

**WHEREAS**, by resolution dated August 22, 2018 (the "Amended Resolution"), the Agency (i) confirmed the undertaking of the Project; (ii) authorized and approved the Amended Mortgage Tax Exemption Benefit, specifically authorized and approved the Company to receive a mortgage recording tax exemption benefit not to exceed up to  $\frac{3}{4}$  of 1% of the final mortgage amount estimated at \$225,750 as proposed in the Amended Application; and (iii) authorized the Investment Commitment material term to be increased to require that the total investment actually made with respect to the Project at the time of the Project completion equals or exceeds \$32,231,525, which represents the produce of 85% multiplied by \$37,919,442 (being the total amended Project cost as stated in the Company's Amended Application for Financial Assistance and hereinafter referred to as the "Investment Commitment"); and

**WHEREAS**, to reflect and confirm the foregoing, the Agency requires a First Amendment to Agent Agreement be executed.

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

The Agent Agreement is amended as follows:

1. Section 2(g)(5)(a) is replaced in its entirety to read as follows:

(a) Investment Commitment - the total investment actually made with respect to the Project at the Project's completion date equals or exceeds \$32,231,525 (which represents the product of 85% multiplied by \$37,919,442 being the total project cost as stated in the Company's amended application for financial assistance);

2. Section 2(g)(5)(h) is replaced in its entirety to read as follows:

(h) In accordance with the Original Application, the Initial Resolution, the Amended Application, the Amended Resolution, and the cost-benefit analysis, 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 shall be in an amount estimated up to \$20,000,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$1,750,000 and (ii) confirms that the mortgage recording tax exemption amount (estimated at \$225,750) shall not exceed up to  $\frac{3}{4}$  of 1% of the final mortgage amount.

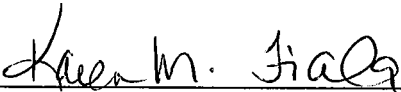
3. Unless otherwise amended pursuant to the terms contained herein, the terms of the Agent Agreement shall remain unchanged.

*[The Balance of this Page Intentionally Left Blank]*


[Signature page to First Amendment to Agent and Financial Assistance Project Agreement]

IN WITNESS WHEREOF, the Agency and the Company have caused this First Amendment to Agent and Financial Assistance Project Agreement to be executed in their respective names, all as of the date first above written.

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

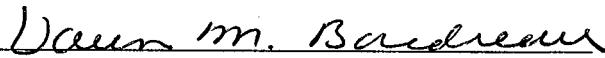
By:   
Name: Karen M. Fiala  
Title: Assistant Treasurer

**EMERSON HURON, LLC**

By:   
Name: James F. Dentinger  
Title: Member

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

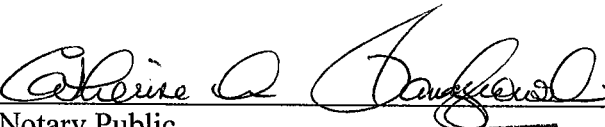
On the 12 day of October, 2018, before me, the undersigned, personally appeared **KAREN M. FIALA**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

DAWN M. BOUDREAU  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN ERIE COUNTY  
My Commission Expires May 27, 2019

STATE OF NEW YORK )  
COUNTY OF ERIE ) SS.:

On the 25 day of October, 2018, before me, the undersigned, personally appeared **JAMES F. DENTINGER**, 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.

  
Notary Public

CATHERINE A. PANCZYKOWSKI  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PA6302005  
Qualified in Erie County  
Commission Expires April 28, 2022