

**FIRST AMENDMENT TO TAX ABATEMENT AGREEMENT BETWEEN
THE CITY OF BRYAN, TEXAS AND WOODBOLT INTERNATIONAL**

This First Amendment to the Tax Abatement Agreement (“**First Amendment**”) is made and entered into on this the 12th day of July, 2016, by and between the City of Bryan, Texas (“**CITY**”), and DCMP Real Estate I, LLC, and Woodbolt Distribution LLC, d/b/a Nutrabolt (“**Owner**”). This First Amendment incorporates all definitions, terms and provisions of the Original Agreement, as defined below, unless the Original Agreement is in express conflict with any provisions of this First Amendment, in which case, this First Amendment shall control. This Agreement shall be effective on July 14, 2016 (“**Effective Date**”) and shall apply to tax year 2016 and all subsequent tax years, unless further modified or amended by the parties.

RECITALS

WHEREAS, CITY and Owner entered into that certain Tax Abatement Agreement dated January 31, 2013 (“**Original Agreement**”); and

WHEREAS, Woodbolt Distribution LLC was doing business as Woodbolt International in 2013, but is now doing business as Nutrabolt; and

WHEREAS, notwithstanding that the Value of Improvements for 2014 were approximately \$4.7 million and thus Owner did not qualify for a tax abatement under terms of the Original Agreement, through a mutual mistake of the Parties, Owner received a tax abatement of \$29,988.34; and

WHEREAS, in 2015, Value of Improvements was \$7,989,960 which is an amount very near the Value performance benchmark, and further the value of Personal Property had a Value of \$1,819,870 and the number of employees and amount of wages greatly exceeded the respective performance benchmarks; and

WHEREAS, in City Council’s judgment, the degree of exceptional performance for number of employees and wages offsets any deficit in Value of Improvements for 2014 and 2015, and the intended benefit to the City of the Agreement was achieved; and

WHEREAS, in 2015, Owner did not receive any tax abatement and paid taxes in the amount of \$50,323.35 on the Value of Improvements for said year; and

WHEREAS, in 2016, the Value of Improvements is \$8,728,340, the Value of Personal Property is \$1,819,870, and Owner continues to significantly exceed employee and wage benchmarks; and

WHEREAS, CITY and Owner both desire to enter into this First Amendment to implement an amended schedule of tax abatement to recognize substantial achievement of the overall goal of the Agreement; and

WHEREAS, the Parties have determined that they are in substantial compliance with the original intent of the Agreement, and desire to modify the terms in order to ensure the agreement reflects that intent;

NOW THEREFORE the Parties agree as follows:

I. The schedule of tax abatements in Section 3(a) of the Original Agreement is amended as follows:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2014	100 %
2015	0 %
2016	100 %
2017	90 %
2018	80 %
2019	40 %
2020	30 %
2021	30 %
2022	20 %
2023	20 %

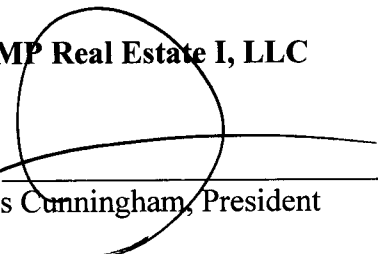
II. Section 3(c) of the Original Agreement is amended as follows: “The tax abatement granted does not apply in any year where the Value of the Improvements is less than \$8,700,000 on January 1 of that year.”

III. Any noncompliance by Owner with the provisions in 4(a)(1) and 4(a)(2) in 2014 and 2015 are waived by City.

IV. Owner acknowledges City is in compliance with all its obligations under the Agreement.

V. All other terms and conditions of the original agreement remain in full force and effect.

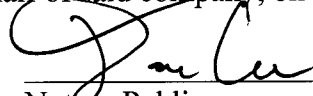
DCMP Real Estate I, LLC

By: 
Doss Cunningham, President

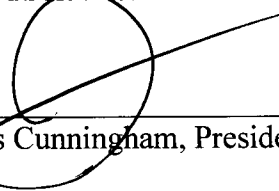
Date: June 13, 2016

STATE OF TEXAS §
COUNTY OF BRAZOS §

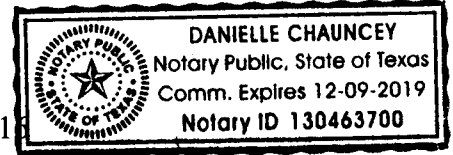
This instrument was executed before me, the undersigned notary, by Doss Cunningham, President of DCMP Real Estate I, LLC, on behalf of said company, on the date above written.


Notary Public

Woodbolt Distribution LLC

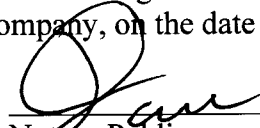
By: 
Doss Cunningham, President

Date: June 13, 2016

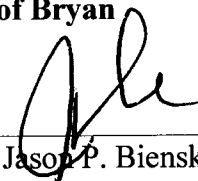


STATE OF TEXAS §
COUNTY OF BRAZOS §

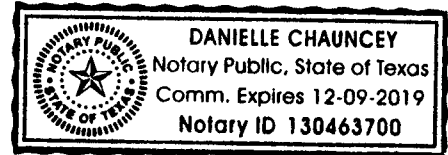
This instrument was executed before me, the undersigned notary, by Doss Cunningham, President of Woodbolt LLC, on behalf of said company, on the date above written.


Notary Public

City of Bryan

By: 
Jason P. Bienski, Mayor

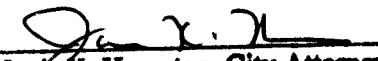
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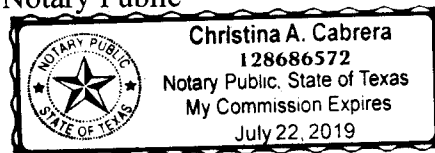
STATE OF TEXAS §
COUNTY OF BRAZOS §

This instrument was executed before me, the undersigned notary, by Jason P. Bienski, Mayor of the City of Bryan, on behalf of said local government, on the date above written.

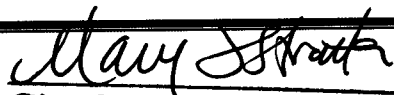
APPROVED AS TO FORM:


Janis K. Hampton, City Attorney


Notary Public



ATTEST:


City Secretary

**TAX ABATEMENT AGREEMENT BETWEEN THE
CITY OF BRYAN, TEXAS, AND WOODBOLT INTERNATIONAL**

This **TAX ABATEMENT AGREEMENT** (this "Agreement") is made between the **CITY OF BRYAN, TEXAS**, a home rule municipal corporation of the State of Texas, **DCMP REAL ESTATE I, LLC**, a Texas limited liability company and **WOODBOLT DISTRIBUTION LLC, D/B/A WOODBOLT INTERNATIONAL**, a Texas limited liability company.

1. Authorization and Findings. This Agreement complies with and is authorized by the Property Redevelopment and Tax Abatement Act, codified as Chapter 312 of the Texas Tax Code, as amended. The City's city council finds that:

- (a) The City has adopted Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones as required by law and the Owner's request for tax abatement conforms to those Guidelines and Criteria;
- (b) The City has created Reinvestment Zone No. 31, in which the property subject to tax abatement will be located;
- (c) The property for which abatement is granted in this Agreement is not owned or leased by a member of the City's city council or the planning and zoning commission; and
- (d) The City's city council approved this Agreement by an affirmative vote of a majority of its members at a regularly scheduled council meeting.

2. Definitions. In this Agreement, the following terms shall have the following meanings:

Bankruptcy or Insolvency means the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of a party's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against such party, and such proceeding is not dismissed within 90 days of the filing thereof.

City means the City of Bryan, Texas.

City manager means the City's city manager or any person designated or authorized to act for the city manager.

District means the Brazos County Appraisal District.

Employee means a person who:

- (1) Is an employee of the Owner; and

- (2) Regularly works at least 37 hours a week at the site of the Improvements, excluding time taken for holidays, vacations, sick leave, or other regular leave.

Health spa means a business that is regulated by the Health Spa Act and that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program.

Improvements means a building to be used as the corporate headquarters and nutraceutical testing facility for a manufacturer and distributor of health supplements, containing approximately 49,000 square feet of floor space, and any sidewalks, parking lots, outdoor lighting, landscaping and other improvements to serve the building, all as shown in **Exhibit A**, attached to and incorporated into this Agreement by reference.

Land means the real property as described in Ordinance No. 1983, which created Reinvestment Zone No. 31.

Owner means DCMP Real Estate I, LLC, and Woodbolt Distribution LLC, d/b/a Woodbolt International, the person or entity that owns the real property on the date taxes are abated under this Agreement or any other person or entity to which this Agreement is assigned in accordance with this Agreement.

Personal Property means any property classified as tangible personal property by the District, other than inventory or supplies, that is located within the building to be constructed as part of the Improvements.

Value means the appraised value shown on the records of the District.

Wages means the remuneration for personal services the Owner pays to an Employee that is included as the total (gross) wages in the "Reimbursing Employer's Quarterly Report" (or similar report) required to be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act (Tex. Labor Code, Chapter 201 et. seq.). If the Employer is no longer required to report Wages to the Texas Workforce Commission during the term of this Agreement, the City may use other information or a reporting source that defines Wages in the same or similar manner.

3. Tax Abatement.

(a) Abatement Years and Amount. In consideration of the Owner constructing the Improvements and complying with all other conditions of this Agreement, the City grants a property tax abatement on the Value of the Improvements, as follows:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2014	100%

2015	100%
2016	90%
2017	80%
2018	70%
2019	30%
2020	20%
2021	20%
2022	10%
2023	10%

(b) Abatement Exclusions. The tax abatement granted does not apply to the Value of the Land, increases in the Value of the Land, or to inventory or supplies.

(c) Minimum Value of Improvements. Tax abatement on the Improvements does not apply in any year where the Value of the Improvements is less than \$9,000,000.00 on January 1 of that year.

(d) District Values. The District's determination of Value of the property subject to this Agreement applies. If the Owner protests the District's Value placed on the Improvements, the Value placed on the Improvements after the protest is resolved under State law applies.

(e) Freeport Exemption. Article 8, Section 1-j of the Texas Constitution allows a city to exempt from taxation inventory (freeport goods), which is transported beyond the State within a specified time. As of the date of this Agreement, the City does not exempt freeport goods from taxation. Should the City exempt freeport goods from taxation during the term of this Agreement, the amount, if any, of personal property taxes abated under this Agreement will automatically decrease in an amount equal to the taxes that would have been paid on freeport goods, if any, without the exemption on freeport goods.

4. Responsibilities of Owner. In consideration of receiving the tax abatement granted herein, the Owner agrees that:

(a) Improvements: The Improvements will:

- (1) Be completed before April 1, 2014, subject to force majeure;
- (2) Have a Value of at least \$9,000,000 when completed;
- (3) Be constructed in substantial compliance with the plans shown in Exhibit A and in conformity with the City's ordinances.

(b) Employees Required and Wages. Beginning on January 1, 2016, and continuing through December 31, 2022, Owner will have at least 75 Employees. During that

time period, the Wages received by all Employees each calendar year, on average, will be at least \$3,000,000.00. If the Owner fails to comply with the requirements of this paragraph at least one time during any consecutive 90-day period during the time specified in this paragraph, the failure is an event of default for which the City may terminate this Agreement and to which the right of the Owner to cure the default, as provided for in paragraph 6 (c), does not apply.

- (c) Occupancy Required. For each year that taxes are abated under this Agreement, the Owner will fully occupy and use the Improvements for its corporate headquarters and nutraceutical testing facility; provided, however, that Owner may sublease or otherwise allow other parties to occupy up to 5% of the rentable area of the Improvements.
- (d) Separated Contracts. The Owner will provide in any contract for the construction of the Improvements that the contract be a separated contract (under section 151.056 (b) of the Texas Tax Code and Comptroller's Rule 3 TAC, section 291, or as the referenced law or regulation is amended, recodified, or redesignated), so that there is imposed and the contractor will be required to collect from the Owner the City's municipal sales tax on the sales price of the materials incorporated into the Improvements. The Owner will provide, if requested by the City, documentation that verifies to the satisfaction of the City that the Owner has complied with the provisions of this paragraph.
- (e) District Filing. **THE OWNER IS RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (f) Owner Certification and Reports. On or before May 1 of each year of this Agreement, the Owner will certify in writing to the City's city council that the Owner is in compliance with this Agreement and that the Owner will provide, upon the City's request, any information reasonably necessary for the City to determine if the Owner has complied with the Agreement. Beginning on January 1, 2016, and continuing through 2022, the Owner will, within 30 days of the end of each quarter of the calendar year, provide to the City copies of the "Reimbursing Employer's Quarterly Report" (or similar report by whatever name) required to be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act. (Tex. Labor Code, Chapter 201 et. seq.).
- (g) City Access. The Owner will allow the City's employees access to the Improvements during regular business hours and upon three (3) business days' prior written notice to determine if the terms of this Agreement are being met.

- (h) **Compliance.** The Property and Improvements constructed pursuant to this Agreement must at all times be used in a manner (i) that is consistent with the City's Zoning Ordinance, as amended, (ii) that is consistent with the BioCorridor Planned Development District, as amended; and (iii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Reinvestment Zone.

5. Term. This Agreement is effective on the latest date of the dates executed by the City and the Owner if on that date the Owner owns fee title to the real property subject to this Agreement. If the Owner does not have fee title to the real property on the date the Owner executes this Agreement, the Owner will give written notice to the City of the date the Owner acquires fee title to the real property. If the Owner fails to acquire fee title to the real property within 60 days following the date Owner executes this Agreement, the City may terminate this Agreement by giving written notice to the Owner and the Owner's right to cure does not apply.

6. Termination.

(a) This Agreement terminates on the completion of the abatement period, unless earlier terminated as provided in this Agreement.

(b) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Owner will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Owner is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and the city manager will send the Owner written notice that the Owner has violated this paragraph and that the Agreement terminates 30 days from the date of the notice.

(c) Subject to the last paragraph of this Section 6(c), the city manager may terminate this Agreement at any time during its term if the Owner:

- (1) Fails to comply with any term of this Agreement,
- (2) Allows ad valorem taxes on the Land or any property located thereon to become delinquent,
- (3) Has an event of Bankruptcy or Insolvency,
- (4) Fails to timely pay any undisputed debt owed to the City, or
- (5) Operates, or allows a sub lessee to operate a Health spa.

The City will notify the Owner of the default in writing specifying the default. If the Owner fails to cure the default within 30 days from the date of the notice to cure, the city

manager may terminate this Agreement by written notice to the Owner specifying the date of termination.

(d) If the city manager terminates this Agreement as provided in this Agreement, the Owner is liable for and will pay the City within 30 days following the date of termination of this Agreement:

- (1) The amount of all property taxes abated under this Agreement;
- (2) Interest on the abated amount at the rate provided for in the Tax Code for delinquent taxes;
- (3) Penalties on the amount abated in the year of default, at the rate provided for in the Tax Code for delinquent taxes.

(e) The Owner's obligation upon termination to pay to the City monies owed for taxes abated, interest and penalties thereon, survives termination and the City has a lien against the Owner's Land and Improvements for the monies owed until paid.

7. Notice. All notices will be in writing and may be delivered by mail, in person, or by facsimile. Mailed notice is deemed received three days after the date of deposit in the United States mail. Unless otherwise provided in this Agreement, all notices will be delivered to the following addresses:

To the Owner: Woodbolt International
Attn: Doss Cunningham
715 N. Main
Bryan, Texas 77803
(512) 983-1181
(979) 779-1469

To the City: City Manager
City of Bryan
P. O. Box 1000
Bryan, Texas 77805
(979) 209 - 5100
(979) 209 - 5003

Any party may designate a different address by giving the other party 10 days written notice in the manner prescribed above.

8. Force Majeure. If the Owner gives written notice to the City that Owner cannot perform one or more of the Owner's obligations because of force majeure within ten days of the force majeure, the city manager may, by written notice to the Owner, suspend one or more of the

Owner's obligations in whole or in part for the time and to the extent necessary to allow the Owner to overcome the force majeure and resume performance thereof. If there is an event of force majeure, then the city manager may also adjust the time period to which tax abatement benefits apply to this Agreement if necessary to provide the Owner the tax abatement benefits the Owner would have received in the absence of the force majeure, so long as the adjusted time period of exemption does not exceed ten years. For purposes of this provision, "force majeure" means lightning, earthquakes, hurricanes, storms, floods, or other natural occurrence; strikes, lockouts, riots, wars, or other civil disturbances; or explosions, fires, or similar accidents not reasonably within the control of the Owner or Owner's agents or contractors.

9. Severability. If any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

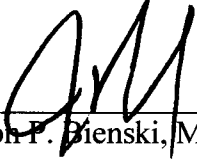
10. Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be in the State District Court of Brazos County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

12. Assignment. This Agreement may not be assigned by Owner without the prior written consent of the city manager which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Owner, may assign this Agreement without the city manager's consent to any entity that purchases all or substantially all of Owner's assets.

13. Entire Agreement. This Agreement and the Economic Development Agreement dated 1-31-13 contain the entire agreement between the parties and supersede all other negotiations and agreements, whether written or oral.

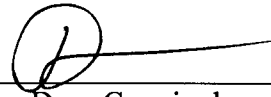
CITY OF BRYAN



Jason P. Bienski, Mayor

Date: 1-31-13


DCMP REAL ESTATE I, LLC

By: 

Doss Cunningham, President

Date: 1/12/13

WOODBOLT DISTRIBUTION LLC

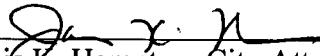
By: 
Doss Cunningham, President

Date: 1/18/13

ATTEST:


Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:


Janis K. Hampton, City Attorney

Attachments: Exhibit A - Drawing showing Improvements.

