

**COPY**

FIRST AMENDMENT TO AGENT AND FINANCIAL  
ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of May 31, 2019, 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 **COLUMN DEVELOPMENT, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 1243 Military Road, Kenmore, New York 14217 (the "Company").

WITNESSETH:

WHEREAS, by Resolution dated July 25, 2018 (the "Resolution"), the Agency authorized the Company to undertake the Project and act as its Agent for the purposes of acquiring, constructing and equipping the Facility and subject to the Company entering into an Agent Agreement; and

WHEREAS, the Agency and the Company entered into that certain Agent and Financial Assistance Project Agreement, dated as of September 7, 2018, as may be amended from time to time, (collectively, the "Agent Agreement"), whereby the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and/or equipping the Facility; and

WHEREAS, the Company has notified the Agency that the project has not been completed and has requested an extension of the New York State and local sales and use tax exemption benefit time period provided by the Agency, which the Agency has agreed to provide to the Company; and

WHEREAS, the Agency requires a First Amendment to Agent Agreement be executed, and the Company and the Agency have agreed to execute the First Amendment to Agent Agreement to reflect the extension of the New York State and local sales and use tax exemption benefit time period provided by the Agency and any additional amendments thereto.

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. Any references to the sales tax exemption expiration in the Agent Agreement shall be changed from May 31, 2019 to September 30, 2019.
2. Paragraph 4 of the Agent Agreement shall be amended and replaced by the following paragraph:

During the term of an Agent Agreement and/or a Lease Agreement entered into with the Erie County Industrial Agency an **ACORD 25-Certificate of Liability Insurance** and **ACORD 855 NY-New York Construction Certificate of Liability Addendum** shall be provided

evidencing the following insurance is currently maintained and in force with an insurance carrier approved to do business in the State of New York and maintaining an A.M. Best Rating of A- or better showing Erie County Industrial Development Agency as Certificate Holder. It is our suggestion that you share these requirements with your current insurance agent, broker or insurance company.

Acceptable Certificates of Insurance shall indicate the following minimal coverage, limits of insurance, policy numbers and policy effective and expiration dates.

**Commercial General Liability:** Agent and subcontractors shall provide such coverage on an occurrence basis for the named insured's premises & operations and products-completed operations. Blanket Contractual Liability provided within the "insured contract" definition may not be excluded or restricted in any way. Property damage to work performed by subcontractors may not be excluded or restricted nor shall the Additional Insured's coverage for claims involving injury to employees of the Named Insured or their subcontractors be excluded or restricted. The "insured contract" exception to the Employers Liability exclusion also may not be removed or restricted in any way.

These coverages are to be properly evidenced by checking the appropriate box(es) on the **ACORD 855-NY Construction Certificate of Liability Addendum's** Information Section, Items G, H, I and L. Policy shall have attached **Designated Location(s) General Aggregate Limit CG 25 04** endorsement.

**Limits expressed shall be no less than:**

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Per Occurrence	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Fire Damage Liability	\$ 100,000
Medical Payments (per person)	\$ 5,000

Erie County Industrial Development Agency shall be named as Additional Insured per **ISO Form CG 20 26-Additional Insured Designated Person or Organization** to provide coverage for the Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis. All insurance required of the Company shall waive any right of subrogation of the insurer against any person insured under such policy, and waive any right of the insurer to any off-set or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy.

**ACORD 855 NY-New York Construction Certificate of Liability Insurance:** It is not uncommon for insurers to modify the standard ISO policy language with endorsements that result in modifications to language preferred by the insurer. This addendum is required to supplement the **ACORD 25-Certificate of Liability Insurance** with additional information that provides a more detailed expression of the types of coverage required. Specifically required coverages may be excluded or limited by the attachment of exclusionary or limitation endorsements. This addendum provides the insurer the ability to certify coverage provided by the absence of such exclusionary or limiting modifications.

Blanket Additional Insured endorsement to include – Owner, Lessees or Contractors - Automatic Status For Other Parties When Required in Written Construction Agreement – Wording should include any other person or organization you are required to add as an additional insured under the contract or agreement (**Paragraph 2 of CG 20 38 04 13 or equivalent**).

Any scheduled person or organization section of the additional insured endorsement containing wording other than designated names shall not be accepted.

**Umbrella/Excess Liability:** Commercial Umbrella or excess liability for a limit of at least \$5,000,000 per occurrence with a \$5,000,000 Aggregate. Coverage should respond on a follow-form basis and excess over the aforementioned underlying policy limits. Erie County Industrial Development Agency shall be named as Additional Insured. Coverage shall apply on a Primary & Non-Contributory basis.

**Workers Compensation/Disability Insurance:**

i) The Company and/or Project Owner shall provide evidence of insurance and maintain Workers Compensation/Disability insurance as required by statute. Erie County Industrial Development Agency shall be named as the Certificate Holder.

ii) **Accepted Forms:**

<b>Workers Compensation Forms</b>		<b>DBL (Disability Benefits Law) Forms</b>	
<b>CE-200</b>	<b>Exemption</b>	<b>CE-200</b>	<b>Exemption</b>
<b>C-105.2</b>	<b>Commercial Insurer</b>	<b>DB-120.1</b>	<b>Insurers</b>
<b>SI-12</b>	<b>Self-Insurer</b>	<b>DB-155</b>	<b>Self-Insured</b>
<b>GSI-105.2</b>	<b>Group Self-Insured</b>		
<b>U-26.3</b>	<b>New York State Insurance Fund</b>		

If the Company and/or Project owner have no employees, the Company and/or Project owner shall provide a completed and signed Form CE-200 or later revision, which is found on the New York State Workers Compensation Board website: [www.wcb.ny.gov/](http://www.wcb.ny.gov/). This form is to be completed on-line, printed, and signed.

**ECIDA Address:** All evidence of insurance shall be sent to:  
 Erie County Industrial Development Agency  
 95 Perry St, Suite 403  
 Buffalo, NY 14203

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/Acknowledgment 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: Karen M. Fiala  
Name: Karen M. Fiala  
Title: Assistant Treasurer

**COLUMN DEVELOPMENT, INC.**

By: Roger Pasquarella  
Name: Roger Pasquarella  
Title: Vice President

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

On the 24<sup>th</sup> day of June, 2019, 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.

Lori A. SzeWCzyk  
Notary Public  
LORI A. SZEWCZYK  
Notary Public, State of New York  
No. 01S25030580  
Qualified in Erie County  
Commission Expires 07/18/2022

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

On the 11 day of <sup>July</sup> June, 2019, before me, the undersigned, personally appeared **ROGER PASQUARELLA**, 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.

Cheryl L. Tobin  
Notary Public

**CHERYL L. TOBIN**  
Notary Public, State of New York  
Qualified in the County of Erie  
My Commission Expires Feb. 28, 2023