

AGENT AGREEMENT

THIS AGENT AGREEMENT (hereinafter, the "Agreement"), made as of the 11th day of March, 2013, is made by and between **TROY INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 433 River Street, 5th Floor, Troy, New York 12180 (the "Authority") and **FIRST COLUMBIA 433 RIVER STREET, LLC**, a New York limited liability company having offices at 22 Century Hill Drive, Latham, New York 12110 (the "Company").

WITNESSETH:

WHEREAS, by Title 11 of Article 8 of the Public Authorities Law of the State of New York (the "State"), as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the "Act"), the Authority was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Authority previously undertook a certain project (the "Project") for the benefit of Hedley Park Place of Troy, Ltd ("Hedley") consisting of the issuance of its \$1,650,000 aggregate principal amount taxable Industrial Development Revenue Bonds (The Hedley Park Place of Troy, Ltd. Project) (the "Bonds") and (A) the acquisition by the Authority of an approximately 3.7 acre parcel of land located at 433 River Street in the City of Troy, New York (the "Land") and the improvements located thereon consisting of five (5) existing buildings containing on the aggregate approximately 335,000 square feet and a surface parking lot with a capacity for approximately 300 vehicles, (collectively said Land, buildings and parking lot being hereinafter referred to as the "Facility"), and the removal of asbestos and/or other materials or toxic substances from the Facility; and

WHEREAS, in furtherance of the Project, the Authority previously issued the Bonds and acquired title to the Facility from Hedley and entered into a certain Sale Agreement, dated as of April 1, 1990 (the "Sale Agreement") wherein Hedley was appointed agent of the Authority to undertake the Project and is obligated to operate, improve, maintain and acquire the Facility from the Authority pursuant to the terms thereof (including certain other obligations of Hedley as contained therein); and

WHEREAS, commensurate with the execution and delivery of the Sale Agreement, the Authority and Hedley entered into a certain Payment in Lieu of Tax Agreement, also dated as of April 1, 1990 (the "PILOT Agreement, as amended), such PILOT Agreement having been amended as of February 7, 1996 pursuant to a certain First Amendment to Payment in Lieu of Tax Agreement and April 18, 2006 pursuant to a certain Second Amendment to Payment in Lieu of Tax Agreement; and

WHEREAS, by resolution adopted the Authority on April 19, 2006, the Authority authorized the assignment and assumption of the Sale Agreement, PILOT Agreement and related

documents (collectively, the "Facility Documents") to the Company, and the Company has undertaken the operation, maintenance and improvement of the Facility and Project in accordance with the Facility Documents, including Sale Agreement, as amended on June 23, 2006; and

WHEREAS, the Company has submitted an Application for Financial Assistance (the "Application") to the Authority requesting certain financial assistance (the "Financial Assistance", as defined herein) in connection with the Company's proposed further remodeling, rehabilitation and refurbishment of the Facility to accommodate new and proposed tenancies, including but not limited to tenant improvements and rehabilitation of 66,000 square feet of building space within the Facility and proposed upgrades and/or replacements to various mechanical equipment and other tangible personal property (the "Equipment") and common space elements of the Facility (collectively, the "Project Improvements"); and

WHEREAS, by Resolution dated March 11, 2013 (the "Resolution"), the Authority authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Project Improvements subject to the Company entering into this Agent Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Authority hereby confirms that the Sale Agreement, as amended, remains in full force and effect as of the date hereof and ratifies the prior appointment of the Company (as assignee) as agent to undertake the Project. The Authority hereby further confirms the appointment of the Company as agent of the Authority to undertake and complete the Project Improvements, as set forth within the Resolution. The Company hereby agrees to limit its activities as agent for the Authority under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Project Improvements. The right of the Company to act as agent of the Authority shall expire on December 31, 2014 unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Authority shall not exceed the amounts described in the Application of the Company in this matter. The aggregate amount of financial assistance to be realized by the Company pursuant to the within appointment is and shall be capped at \$100,000 until such time as the Authority schedules and conducts a public hearing regarding the Project Improvements. All contracts entered into by the Company as agent for the Authority shall include the following language:

"This contract is being entered into by First Columbia 433 River Street, LLC (the "Agent"), as agent for and on behalf of the Troy Industrial Development Authority (the "Authority"), in connection with a certain project of the Authority for the Agent consisting in part of acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 433 River Street, Troy, New York 12180 (the "Premises"). The machinery, equipment and building materials to be

incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Authority; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax exemption letter. This contract is non-recourse to the Authority, and the Authority shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, nor shall the Authority be liable for payment upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Authority to proceed with the Facility:

(a) The Company is a limited liability company duly formed and validly existing under the laws of the State of New York (the “State”), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or, by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Authority harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company’s ability to fulfill its obligations under this Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and

regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this subsection (d) shall immediately notify the Authority in writing with full details regarding the same. The Company hereby releases the Authority from liability with respect to, and agree to defend, indemnify, and hold harmless the Authority, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this subsection (d). In the event the Authority in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Authority upon demand, and to the extent that the Authority has acquired a leasehold or other interest in the Facility, the Company agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

4. Hold Harmless Provision. The Company hereby releases the Authority from, agrees that the Authority shall not be liable for, and agrees to indemnify, defend and hold the Authority and its executive director, directors, officers, members employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Authority's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Authority, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Authority or any other person or entity to be indemnified.

5. Insurance Required. The Company shall continue to maintain all insurance policies and obligations as contained within the Sale Agreement, as amended.

7. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Authority: Troy Industrial Development Authority
433 River Street, 5th Floor
Troy, New York 12180
Attn: Chief Executive Officer

With a copy to: Harris Beach PLLC
677 Broadway, Suite 1101
Albany, New York 12207
Attn: Justin S. Miller, Esq.

To the Company: First Columbia 433 River Street, LLC
22 Century Hill Drive
Latham, New York 12110
Attn: Mr. Kevin Bette

With a copy to: Sneeringer Monahan Provost Redgrave Title Agency, Inc.
50 Chapel Street
Albany, NY 12207
Attn: Eugene M. Sneeringer, Jr., Esq.

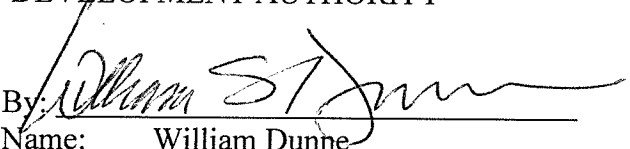
or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

9. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the Federal or state courts located in Rensselaer County, New York.

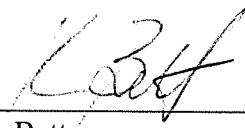
10. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Authority for (1) legal services, including but not limited to those provided by the Authority's general counsel or bond/transaction counsel, and (2) other consultants retained by the Authority in connection with the Project; with all such charges to be paid by the Company commensurate herewith and within ten (10) business days of receipt of the Authority's invoices therefore.

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

TROY INDUSTRIAL
DEVELOPMENT AUTHORITY

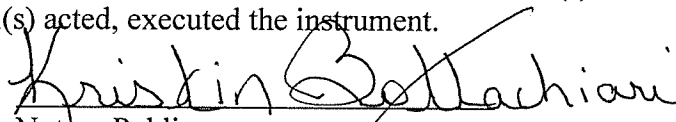
By: 
Name: William Dunne
Title: Executive Director

FIRST COLUMBIA 433 RIVER STREET,
LLC

By: 
Name: Kevin Bette
Title: Member

State of New York)
County of Rensselaer) ss.:

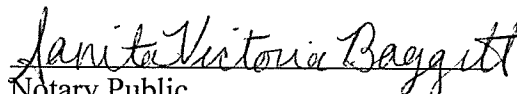
On the 13th day of March in the year 2013, before me, the undersigned, personally appeared WILLIAM DUNNE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

KRISTIN BOTTACHIARI
Notary Public, State of New York
No. 01BO6066702
Qualified in Rensselaer County
Commission Expires Nov. 19, 2013

State of New York)
County of Albany) ss.:

On the 18th day of March in the year 2013, before me, the undersigned, personally appeared KEVIN BETTE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

SANITA VICTORIA BAGGETTA
Notary Public, State of New York
No. 01BA6256184
Qualified in Schenectady County
Commission Expires February 21, 2016