

FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE AGREEMENT, dated as of the 30th day of September, 2015, is by and between **CURTISS BUFFALO, INC.**, a corporation duly organized and validly existing under the laws of the State of New York with offices at 257 Franklin Street, Buffalo, New York 14202 (the "Company") and **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").

WITNESSETH:

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act"), the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") 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, commercial and other facilities as authorized by the Act; and

WHEREAS, **CURTISS BUFFALO, INC.**, AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") has submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) a leasehold interest in a parcel(s) of land located at 204-216 Franklin Street, City of Buffalo, Erie County, New York (the "Land") improved thereon with the 57,560+/- SF historic Curtiss Building (the "Existing Improvements"); (ii) the construction, reconstruction and/or renovation, upgrading and equipping of the Existing Improvements on the Land to accommodate a high-end boutique hotel containing 67+/- rooms, a fine dining restaurant and lounge, one (1) residential unit, and a spa and fitness component (the "Improvements"), 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").

WHEREAS, by Resolution dated June 18, 2014 (the "Resolution"), the Agency authorized the Company to act as its Agent for the purposes of constructing, reconstructing and/or renovating, upgrading and equipping the Facility subject to the Company entering into an Agent Agreement (hereinafter defined); and

WHEREAS, the Agency and the Company entered into that certain Agent Agreement, dated as of September 11, 2014, as amended from time to time, (collectively, the "Agent Agreement"); and

WHEREAS, the Company and the Agency desire to amend the Agent Agreement.

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 September 30, 2015 to July 31, 2016.

2. Section 2(k), of the Agent Agreement, is hereby amended to read as follows:

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as Exhibits B-1 and B-2), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the CURTISS BUFFALO, INC. Project located at 204-216 Franklin Street, Buffalo, New York 14202, IDA Project Number "1404-14-18A". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as Exhibit B-3) can be utilized for record keeping purposes.

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]

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

CURTISS BUFFALO, INC.

By: Mark D. Croce
Name: Mark D. Croce
Title: President

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

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