

FINANCIAL ASSISTANCE AGREEMENT

THIS FINANCIAL ASSISTANCE AGREEMENT (hereinafter, the “Financial Assistance Agreement”), made as of December 1, 2022, by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the “Agency”), and **OAHS TONAWANDA TC 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 980 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Chapter 293 of the Laws of 1970 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has requested the Agency’s assistance with a certain project (the “Project”) consisting of: (A) (1) the acquisition of an interest in a portion of approximately 0.39 acres of land located at 5 Main Street in the City of Tonawanda, Erie County, New York (the “Land”), (2) the acquisition, reconstruction and renovation of an existing 11-story tower consisting of 100 apartment units and containing approximately 81,224 square feet in the aggregate known as the Tonawanda Tower Apartments located on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to hereinafter as the “Project Facility”), all of the foregoing to constitute a low-income housing facility to be operated by the Company and leased to residential tenants, and any other directly and indirectly related activities; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2022 Bonds in an aggregate principal amount not to exceed \$13,000,000; (C) the payment of a portion of the costs incidental to the issuance of the Series 2022 Bonds, including issuance costs of the Series 2022 Bonds and any reserve funds as may be necessary to secure the Series 2022 Bonds; (D) the granting of certain other “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from deed transfer taxes and mortgage recording taxes (collectively with the Series 2022 Bonds, the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company and OAHS Tonawanda Housing Development Fund Corporation, a New York not-for-profit corporation (the “HDFC” and together with the Company, the “Owner”), as nominee for and on behalf of the Company, or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by Resolution dated November 30, 2022 (the “Resolution”), the Agency resolved to approve and provide the Financial Assistance to the Company in connection with the Project; and

WHEREAS, the Company has confirmed that it no longer requires or requests that the Agency provide a mortgage recording tax exemption benefit with respect to the Project; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to provide the Financial Assistance as described herein, that the Company provide certain assurances with respect to the undertaking of the Project.

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. Purpose of Project. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project to advance job opportunities, health, general prosperity and economic welfare of the people of Erie County, and to specifically promote the investment commitment, employment commitment, local labor commitment, equal pay commitment, and the unpaid real property tax policy commitment as related to the undertaking of the Project and as required by and described within the Resolution.

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

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Financial Assistance Agreement, and has duly authorized the execution and delivery of this Financial Assistance Agreement.

(b) Neither the execution and delivery of this Financial Assistance Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Financial Assistance 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 it 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, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency 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 Financial Assistance 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) that 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, except as disclosed in writing to the Agency, (iv) that no underground storage tanks will be located on the Facility except as disclosed in writing to the Agency, 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 Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, 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 Section. In the event the Agency 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 reasonable expenses of same to the Agency upon demand.

(f) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

(g) In accordance with the policies of the Agency and the Resolution, the Company covenants and agrees as follows:

(i) The Company has not made a materially false or misleading statement, or omitted any information which, if included, would have rendered any information in its application for Financial Assistance or supporting documentation false or misleading in any material respect.

(ii) Investment Commitment - that the total investment made with respect to the Project at the time of the Project completion date equals or exceeds \$21,284,612 (which represents the product of 85% multiplied by \$25,040,720, being the total Project cost as stated in the Company's application for Financial Assistance), confirmation of same to be submitted by the Company to the Agency on an appropriate form to be provided to the Company by the Agency.

(iii) Employment Commitment - that within two years of the Project completion date, the Company has maintained employment at the Facility equal to 3 FTE employees and 1 PTE employee. In order to certify and verify the foregoing the Company, on an annual basis, and on a form provided to it from the Agency, shall provide a certified statement and documentation enumerating the FTE and PTE jobs retained and created as a result of the Financial Assistance, by category, including FTE independent contractors or employees of independent contractors that work at the

Project location as well as indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created as provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created.

(iv) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.

(v) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.

(vi) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

2. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, 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 Financial Assistance Agreement or (ii) liability arising from or expense incurred by the Agency’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 Agency, or any of its respective executive director, directors, members, 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 Agency or any other person or entity to be indemnified.

3. This Financial Assistance 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.

4. 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, or by a nationally recognized overnight courier, addressed as follows:

To the Agency: Erie County Industrial Development Agency
95 Perry Street, Suite 403
Buffalo, New York 14203
Attn: Chief Executive Officer

With a copy to: Harris Beach PLLC
726 Exchange Street, Suite 1000
Buffalo, New York 14210
Attn: Robert G. Murray, Esq.

To the Company: OAHS Tonawanda TC LLC
c/o Orbach Affordable Housing Solutions LLC
980 Sylvan Avenue
Englewood Cliffs, New Jersey 07632
Attn: Jay Reinhard, Manager

RJ MT OAHS Tonawanda TC L.L.C.
c/o Raymond James Affordable Housing
Investments, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Attention: Steven J. Kropf, President

With a copy to: Cannon Heyman & Weiss LLP
726 Exchange Street, Suite 500
Buffalo, New York 14210
Attn: Stephen L. Yonaty, Esq.

Nixon Peabody LLP
55 West 46th Street
New York, New York 10036
Attn: Aaron J. Yowell, Esq

Klein Hornig LLP
1325 G Street NW – Suite 770
Washington, DC 20005
Attention: Dawna Steelman, 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.

5. This Financial Assistance 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 Erie County, New York.

6. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Financial Assistance Agreement to the Agency, and termination of this Financial Assistance Agreement, regardless of any investigation made by the Agency. The obligations of the

Company under this Financial Assistance Agreement shall be absolute and unconditional and shall remain in full force and effect until two years following the Project completion date.

7. By executing this Financial Assistance Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency, and (c) with respect to enforcing this Financial Assistance Agreement (including reasonable attorney fees). The Agency counsel fees are based upon the Company's representations made in its application for Agency assistance and as established in accordance with the Agency counsel fee schedule. The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

(Remainder of page intentionally left blank)

[Signature Page to Financial Assistance Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Dated: December 16, 2022

By: _____

Name: John C. Cappellino

Its: Chief Executive Officer



**OAHS TONAWANDA TC LLC, a New
York limited liability company**

By: OAHS Tonawanda MM LLC, a Delaware
limited liability company, its managing member

By: OAHS Manager LLC, a Delaware limited
liability company, its manager

Dated: _____

By: _____

Name: Jay Reinhard

Title: Manager

[Signature Page to Financial Assistance Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Dated: _____

By: _____

Name: John C. Cappellino

Its: Chief Executive Officer

**OAHS TONAWANDA TC LLC, a New
York limited liability company**

By: OAHS Tonawanda MM LLC, a Delaware
limited liability company, its managing member

By: OAHS Manager LLC, a Delaware limited
liability company, its manager

Dated: _____

By:  _____

Name: Jay Reinhard

Title: Manager