

AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT

THIS AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT (the “Agent Agreement”), is made as of June 1, 2021 by and between the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York, having its principal office at 95 Perry Street, Suite 403, Buffalo, New York (the “Agency” or “Issuer”) and ELMWOOD SQUARE HOUSING, L.P., a New York limited partnership, with an office at 30 Hudson Yards – 72nd Floor, New York, New York (the “Company”).

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 305 of the 1975 Laws of New York, as amended, constituting Section 891-a of the General Municipal Law (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, Related Affordable, LLC, a Delaware limited liability company and affiliate of Elmwood Square Housing, GP, LLC, a New York limited liability company, submitted an application (the “Application”) on behalf of the Company to the Issuer, a copy of which is on file at the office of the Issuer, which Application requested that the Issuer consider undertaking a project (the “Project”) for the benefit of the Company or such other person as may be designated by the Company and agreed upon by the Issuer, said Project consisting of the following: (A) (1) the acquisition of an interest in a portion of approximately 0.99 acres of land located at 501 Elmwood Avenue in the City of Buffalo, Erie County, New York (the “Land”), (2) the acquisition, reconstruction and renovation of an existing 12-story tower consisting of 138 apartment units and containing approximately 107,000 square feet in the aggregate known as the Elmwood Square 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, together with incidental and related commercial space leased to various commercial entities, 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 revenue bonds of the Issuer in one or more issues or series in an aggregate principal amount sufficient to pay all or a portion of the cost of undertaking the Project, together with necessary incidental costs in connection therewith; (C) the payment of a portion of the costs incidental to the issuance of the Series 2021 Bonds (as defined herein), including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Series 2021 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 potential exemptions from certain Sales and Use Taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (for purposes of this Agent Agreement, such potential exemptions being collectively referred to hereinafter as the “Financial Assistance”); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, the Chief Executive Officer of the Issuer (A) caused notice of public hearing of the Issuer (the “Public Hearing”) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and, pursuant to the applicable provisions of Section 859-a and 859-b of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Issuer with respect to the Project, to be mailed on September 4, 2020 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be published on September 5, 2020 in The Buffalo News, a newspaper of general circulation available to the residents of the City of Buffalo, Erie County, New York, (C) in accordance with Executive Order 202.1 and the suspension of the Open Meetings Law relating to public hearings pursuant to Executive Order 202.15, each as issued by Governor Cuomo and as supplemented by subsequent Executive Orders issued by Governor Cuomo, and Revenue Procedure 2020-21 issued by the Internal Revenue Service on May 4, 2020, all in response to the on-going Coronavirus (COVID-19) health crisis, conducted the Public Hearing via video conference rather than in person on September 18, 2020 at 9:00 a.m., local time, and (D) prepared a report of the Public Hearing (the “Hearing Report”) which fairly summarized the views presented at said Public Hearing and distributed same to the members of the Issuer and the County Executive of Erie County, New York (the “County Executive”); and

WHEREAS, by resolution adopted by the members of the board of directors of the Issuer on September 23, 2020 (the “Bond Resolution”), the members of the Issuer (A) determined that the Project constitutes a “Type II Action,” as such quoted term is defined under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), and therefore that no further action with respect to the Project was required under SEQRA; (B) authorized the circulation of a preliminary official statement (the “Preliminary Official Statement”) in connection with the marketing of the Series 2021 Bonds (as hereinafter defined) and (C) authorized the issuance of the Issuer’s Multifamily Housing Revenue Bonds (Elmwood Square Housing, L.P. Project), Series 2021 in the aggregate principal amount of \$8,590,000 (the “Series 2021 Bonds”) for the purpose of financing a portion of the costs of the Project, delegating to the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice President and Assistant Treasurer of the Issuer authority to determine the final details of the Series 2021 Bonds (the “Bond Details”) once the marketing of the Series 2021 Bonds is completed and the Company has agreed to the Bond Details; and

WHEREAS, the Issuer will now issue the Series 2021 Bonds under the Bond Resolution, a certificate of determination dated June 1, 2021 (the “Certificate of Determination”) executed by the Chairperson, Vice Chairperson, President and Chief Executive Officer, Chief Financial Officer, Vice

President or Assistant Treasurer of the Issuer and a trust indenture dated as of June 1, 2021 (the "Indenture") by and between the Issuer and U.S. Bank National Association, as trustee (the "Trustee"); and

WHEREAS, by a certificate executed by the County Executive on October 13, 2020 (the "Public Approval"), the County Executive approved the issuance of the Series 2021 Bonds for purposes of Section 147(f) of the Code; and

WHEREAS, pursuant to Section 146 of the Code, the Issuer was awarded an allocation of private activity bond volume cap in the amount of \$28,748,592 for calendar year 2021 ("Volume Cap") and intends to use the Volume Cap to support the issuance of the Series 2021 Bonds; and

WHEREAS, simultaneously with the issuance of the Series 2021 Bonds, (A) the Company and the Issuer will execute and deliver a lease to issuer dated as of June 1, 2021 (the "Lease to Issuer") by and between the Company, as landlord, and the Issuer, as tenant, pursuant to which the Company will lease the Land and the Facility to the Issuer for a term ending on the completion of the Project, (B) the Company will execute and deliver a bill of sale dated as of June 1, 2021 (the "Bill of Sale") from the Company to the Issuer, pursuant to which the Company will convey to the Issuer its interest in the portion of the Project Facility constituting fixtures and other personal property; and

WHEREAS, also simultaneously with the issuance of the Series 2021 Bonds, the Issuer will execute and deliver an installment sale agreement dated as of June 1, 2021 (the "Installment Sale Agreement") by and between the Issuer, as seller, and the Company, as purchaser, pursuant to the terms of which Installment Sale Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, (2) as agent of the Issuer, to undertake and complete the Project, (3) to purchase the Project Facility from the Issuer, and (4) to make certain installment purchase payments to or upon the order of the Issuer as the purchase price for the Project Facility, which installment purchase payments shall include amounts equal to the debt service payments due on the Series 2021 Bonds, and (B) the Issuer will agree to (1) undertake the Project, (2) appoint the Company as agent of the Issuer to undertake and complete the Project, and (3) sell the Project Facility to the Company; and

WHEREAS, by the Bond Resolution, the Agency determined to issue the Series 2021 Bonds and approved other certain financial assistance for the benefit of the Company in connection with the Project consisting of an exemption from all State and local Sales and Use Taxes for purchases and rentals related to the Project undertaking with respect to the qualifying personal property included in or incorporated into the Project or used in the acquisition, construction or equipping of the Project; and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern the administration of, and provide assurances with respect to, the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agent Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agency appointment of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of 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:

ARTICLE I.
DEFINITIONS

Section 1.1. Definitions of Terms. The words and terms as used in this Agent Agreement shall have the same meanings as used in Schedule A attached hereto and made a part hereof, unless the context or list- indicates another or different meaning or intent.

ARTICLE II.
REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project Undertaking:

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

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent 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 Project and the operation thereof will conform with all applicable zoning (including a legal non-conforming use) planning, and building laws and regulations of governmental authorities having jurisdiction over the Project, 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 Section 2.1(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 is reasonably likely and would in any way materially diminish or adversely impact the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Project will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations and except as otherwise disclosed to the Agency in writing as of the date hereof, (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 Project, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Project or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Project and if any asbestos exists it will be managed in accordance with applicable law, (iv) to the Company's knowledge that no underground storage tanks will be located on the Project, 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 2.1(e) 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 agree to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (other than 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 Section 2.1(e) except in the case of the Agency's gross negligence or willful misconduct. In the event the Agency in its reasonable discretion deems it reasonably necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Project, the Company agrees to pay the reasonable expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in Erie County, New York after such acquisition, except for temporary periods during ordinary use.

(g) The Company hereby represents to the Agency that the costs of acquiring and rehabilitating the facilities and property (if any) that are primarily used in making retail sales of goods and services to customers who personally visit the Project will not constitute more than one-third (1/3) of the total costs of the Project, except in accordance with New York General Municipal Law (the "GML") Section 862.

(h) The Company acknowledges and agrees that, except to the extent of the Series 2021 Bonds proceeds, the Agency shall not be liable, either directly or indirectly or contingently, 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.

(i) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period (as hereinafter defined), it will (i) maintain its existence, continue to operate the Project as contemplated by the Application and the Bond Resolution and not dissolve, (ii) continue to be a limited partnership subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agent Agreement may not be assigned in whole or part without the prior written consent of the Agency or otherwise in accordance with the Installment Sale Agreement.

(j) 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 Undertaking, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Project or any part thereof, or to any use, manner of use or condition of the Project or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of

the nature referred to this Section 2.1(j). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld), may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

ARTICLE III.
GENERAL

Section 3.1. 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, and the equal pay commitment, all as contained herein and within the Company's Application.

ARTICLE IV.
FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1. In accordance with the Bond Resolution, the Company further: (i) covenants, with respect to the Sales Tax Exemption, that it shall comply with this Agent Agreement, specifically, but not limited to, Section 4.3 hereof.

Section 4.2. Sales Tax Exemption.

(a) The Agency hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to the Bond Resolution.

(b) The Company, as agent of the Agency, will undertake the Project Undertaking. The Company hereby agrees to limit its activities as agent of the Agency under the authority of the Bond Resolution to acts reasonably related to the acquisition, construction, rehabilitation and equipping of the Project. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) **June 1, 2023** ("Termination Date"); provided however, that the Agency, through its Authorized Officer, may extend the Company's agent appointment at its discretion upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(c) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Subagent (as defined in Schedule B attached hereto) or any third party that any Sales Tax Exemption is available under this Agent Agreement.

(d) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Agent Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's

authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Agent Agreement shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Agent Agreement, (B) the Termination Date, (C) failure of the Company to file Form ST-340, as described in Section 4.5(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 6.2 hereof or (E) the date upon which the Company received the Maximum Sales Tax Exemption.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Agent Agreement (or related document) until such default is cured to the satisfaction of the Agency.

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Agent Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by (or on behalf of) the Company at the Project or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company or Subagent at the Project or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Project, other than the Company, without the prior written consent of the Agency.

(vi) By execution by the Company of this Agent Agreement, the Company agrees to accept the terms hereof and it represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(vii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Project shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 4.3. Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent, including, but not limited to, the individuals and entities described on Schedule B attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Agent Agreement, it must complete the following steps:

(a) The Company shall have the right to amend Schedule B from time to time and shall be solely responsible for maintaining an accurate list of all parties acting as agent for the Agency and for the avoidance of doubt such amendment of Schedule B shall not require any amendment to this Agent Agreement. The Company's right to appoint Subagents is expressly conditioned upon updating of Schedule B attached hereto, and the Company must also complete "IDA Appointment of Project Operator

or Agent For Sales Tax Purposes” (NYS Form ST-60), in the form attached hereto as Exhibit A, for each Subagent, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Company acknowledges and agrees that it shall be the Company’s sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent and the failure to timely do so could result in an Event of Default.

(b) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Agent Agreement.

(c) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Agency shall not serve as a Sales Tax Exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales or use tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE NEW YORK STATE TAX AND FINANCE LAW (THE “TAX LAW”), THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(d) Form ST-123 Requirement and Form FT-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as Exhibit B-1, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form FT-123, attached hereto as Exhibit B-2, for each contract, agreement, invoice, bill or purchase order for fuel entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project.

Form ST-123 and Form FT-123 require that each seller or vendor accepting Form ST-123 or Form FT-123 identify the Project on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state:

“I, ELMWOOD SQUARE HOUSING, L.P. [OR NAME OF 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 Elmwood Square Housing, L.P. Project (the “Project”) located at 501-505 Elmwood Avenue (aka 258 West Utica Street), in the City of Buffalo, Erie County, New York, and any lands located in Erie County and occupied by license or easement during construction or improved by third parties for the benefit of the Project, being IDA OSC Project Number 1404-21-02A.

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. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Subagent, the Form ST-123 or Form FT-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 or Form FT-123, attached hereto as Exhibit B-1 and Exhibit B-2 respectively, should be completed using the name and address of the Project as indicated on the Form ST-60 used to appoint the Subagent and; (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

All contracts entered into by the Company and all Subagents thereof as agent for the Agency shall include the language contained within Schedule C attached hereto. Failure by the Company and/or any Subagent thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Agent Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contracts entered into by the Company and any Subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.

Section 4.4. Form ST-340 Filing Requirement. The Company shall annually file a statement with the State Department of Taxation and Finance (the "Commissioner") on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as Exhibit C) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8) until completion of construction. Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency's participation in the Project and not those received as a result of other available State exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufactures or those exemptions that apply to capital improvements. On or before February 15th of each year until completion of construction, the Company shall provide a copy of same to the Agency. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency and/or Recapture of Agency Benefits as described in Section 4.7 hereof.

Section 4.5. GML and Agency Policy Provisions Relating to Sales Tax Savings.

(a) In accordance with Section 874 and 875 of the New York General Municipal Law, the policies of the Agency, and the Bond Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential modification, recapture and/or termination of any and all Financial Assistance, as described herein, if the Company receives, or any duly appointed subagent receives any Financial Assistance from the Agency, and it is determined by the Agency, or Agency staff, as appropriate, that:

- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the Sales and Use Tax Exemption benefits; or
- (2) the Sales and Use Tax Exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or
- (3) the Sales and Use Tax Exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of a written certification submitted on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of two (2) years following either (x) the construction completion date, or (y) the Termination Date (said time period so referenced being hereinafter defined as the "Material Terms and Conditions Monitoring Period"), confirming:

(i) Investment Commitment — the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$13,452,857 (which represents the product of 85% multiplied by \$15,826,891, being the total project cost as stated in the Company's application for Financial Assistance).

(ii) Employment Commitment — that there are at least four (4) existing full time equivalent ("FTE") employees retained as a result of the Project as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year employed as a result of the Project; and
- that the Company has maintained FTE employment as a result of the Project equal to four (4) FTE employees.

In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency. In order to certify and verify the foregoing the Company shall provide to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was 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. Exhibit E contains the form of annual certification as so required; and

(iii) 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.

(iv) Equal Pay Commitment — that the Company adheres to and complies with the Agency's Pay Equity Policy.

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

The findings made by the Agency, or Agency staff, as appropriate, with respect to Section 4.5(a)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 4.5(a)(5) with respect to the thresholds and requirements as identified in Section 4.5(a)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 4.5(a)(5) above, may potentially be determined by the Agency, in accordance with the Agency’s “Policy for Termination and/or Modification of Agency Financial Assistance and Recapture of Agency Financial Assistance Previously Granted”, or by Agency Staff, as appropriate, to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency’s policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 4.5(a)(1), (2), (3) and/or (4) and/or the failure under Section 4.5(a)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 4.5(a)(5) are hereby defined as a “Recapture Event Determination”). If the Agency makes a Recapture Event Determination, or notwithstanding anything contained herein to the contrary, Agency staff makes a finding with respect to Section 4.5(a)(1), (2), or (3) above, and/or Agency staff determines that the Company has shut down the Project, then the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any and all Financial Assistance obtained by the Company and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or Erie County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

(b) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine any amounts owed by the Company, if any.

Section 4.6. In accordance with the Bond Resolution, the Application, and the cost-benefit analysis, the Company further:

(a) Covenants that the purchase of goods and services relating to the Project and subject to New York State and local Sales and Use Taxes shall be in an amount estimated up to \$3,800,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 4.5(a) of this Agent Agreement, cannot exceed \$332,500. For the avoidance of doubt, this provision shall not be deemed to create a cap on the amount that can be spent on goods and services on a taxable basis.

(b) Covenants that the value of the mortgage recording tax exemption benefit shall not exceed \$67,500.

Section 4.7. The Company acknowledges and understands that a Recapture Event Determination made with respect to Section 4.5(a)(4) of this Agent Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

Section 4.8. The Company further covenants and agrees to submit to the Agency a Local Labor Utilization Report, which is attached hereto as Exhibit D, on a quarterly basis within ten (10) business days of each quarter end during the construction period. This report represents verification that the Company and its Subagents, if any, adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Certification Policy and Local Labor Reporting Requirements.

ARTICLE V. INSURANCE

Section 5.1. Insurance Required.

During the term of this Agent Agreement, the Company shall maintain insurance policies in the amounts and types of coverage required by Section 6.3 of the Installment Sale Agreement.

ARTICLE VI. EVENTS OF DEFAULT AND REMEDIES

Section 6.1. The following shall each be "Events of Default" under this Agent Agreement:

- (a) the failure by the Company to observe and perform any material covenant contained in Sections 2.1(e), 2.1(g), 2.1(i), 2.1(j), 4.3, 4.5, 5.1, 5.2, 7.1 and 7.6 hereof;
- (b) the failure by the Company to comply with instructions provided to it by the Agency with respect the Agency's Recapture Event Determination on the due date;
- (c) the occurrence and continuation of action or inaction leading to a Recapture Event Determination;
- (d) the occurrence and continuance of an Event of Default under the Installment Sale Agreement;
- (e) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for ninety (90) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors.

Section 6.2. Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all due and owing Financial Assistance that is the subject of a Recapture Event Determination and (B) all other payments due under this Agent Agreement; or

(ii) terminate this Agent Agreement and the Sales Tax Exemption authorization if a Recapture Event Determination has been made; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Agent Agreement.

(b) No action taken pursuant to this Section 6.2 (including termination of the Agent Agreement) shall relieve the Company from its obligation to make all payments required by the Installment Sale Agreement.

For the avoidance of doubt, no Recapture of Agency Benefits shall occur after an Event of Default unless a Recapture Event Determination has occurred.

Section 6.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agent Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agent Agreement.

Section 6.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agent Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other actual, out-of-pocket expenses so incurred.

ARTICLE VII.
MISCELLANEOUS

Section 7.1. 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 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 Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning

and leasing of the Equipment or 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 directors, members, officers, employees, agents (except the Company), representatives, successors and assigns 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 gross negligence or willful misconduct on the part of the Agency or any other person or entity to be indemnified. In the event of any claim against the Agency or its directors, members, officers, employees, agents (except the Company), representatives, successors and assigns by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under Worker's Compensation acts, disability benefits or other employee benefit acts. Any other provisions of this Agent Agreement to the contrary notwithstanding, the obligations of the Company shall remain in full force and effect after the termination of this Agent Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its directors, members, officers, employees, agents (except the Company), representatives, successors and assigns, relating thereto.

Section 7.2. This Agent 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.

Section 7.3. 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:

If to the Agency:

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

With a copy to:

Harris Beach PLLC
726 Exchange Street – Suite 1000
Buffalo, New York 14210
Attention: Robert G. Murray, Esq.

And a copy to:

Hodgson Russ LLP
677 Broadway – Suite 301
Albany, New York 12207
Attention: Christopher C. Canada, Esq.

If to the Company:

Elmwood Square Housing, L.P.
c/o Related Companies
30 Hudson Yards – 72nd Floor
New York, New York 10001
Attention: Matthew Finkle, Vice President

With a copy to:

Levitt & Boccio, LLP
423 West 55th Street – 8th Floor
New York, New York 10019
Attention: David Boccio, Esq.

And a copy to:

Hudson Elmwood LLC
c/o Hudson Housing Capital LLC
630 Fifth Avenue – 28th Floor
New York, New York 10111
Attention: General Counsel

And a copy to:

Holland & Knight, LLC
10 St. James Avenue – 12th Floor
Boston, Massachusetts 02116
Attention: Dayna M. Hutchins, 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.

Section 7.4. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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.

Section 7.5. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent Agreement to the Agency, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Installment Sale Agreement, as described below.

Section 7.6. The parties are contemplating that pursuant to the Company and Issuer entering into the Lease to Issuer and the Installment Sale Agreement, the Company shall execute a bill of sale (a form of which is attached hereto as Exhibit F) given by the Company to the Agency which sells, transfers and delivers unto the Agency and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this

Agent Agreement which Equipment is located or intended to be located within and used exclusively in furtherance of the operations of the Project.

Section 7.7. By executing this Agent Agreement, the Company covenants and agrees to pay all reasonable 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 and bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Agent Agreement (including reasonable attorneys' fees). 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 and reasonable costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company'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 Agent and Financial Assistance Project Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

Dated: 6-29-21

By: Karen M. Fiala
Name: Karen M. Fiala
Its: Vice President

**ELMWOOD SQUARE HOUSING, L.P.,
a New York limited partnership**

By: **Elmwood Square Housing, GP, LLC,
a New York limited liability company,
its General Partner**

Dated: _____

By: _____
Name: Matthew Finkle
Title: Vice President

[Signature Page to Agent and Financial Assistance Project Agreement]

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

**ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

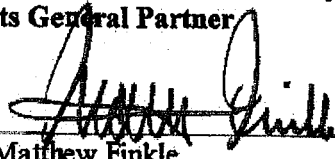
Dated: _____

By: _____
Name: Karen M. Fiala
Its: Vice President

**ELMWOOD SQUARE HOUSING, L.P.,
a New York limited partnership**

By: Elmwood Square Housing, GP, LLC,
a New York limited liability company,
its General Partner

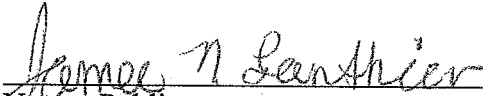
Dated: _____

By: 
Name: Matthew Finkle
Title: Vice President

[Acknowledgment Page to Agent and Financial Assistance Project Agreement]

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

On the 29th day of June, 2021, 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.



Notary Public

JAMEE N. LANTHIER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01LA6392759
Qualified in Erie County
My Commission Expires 06-03-2023

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

On the _____ day of _____, 2021, before me, the undersigned, personally appeared **MATTHEW FINKLE**, 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.

Notary Public

[Acknowledgment Page to Agent and Financial Assistance Project Agreement]

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

On the _____ day of June, 2021, 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.

Notary Public

STATE OF NEW YORK)
COUNTY OF ~~ERIE~~) SS.:
New York

On the 28 day of June, 2021, before me, the undersigned, personally appeared **MATTHEW FINKLE**, 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.

Alex Deixler

Notary Public

