




**Office of the City Manager**  
 5200 Emerald Parkway • Dublin, OH 43017-1090  
 Phone: 614-410-4400 • Fax: 614-410-4490

# Memo

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**To:** Members of Dublin City Council

**From:** Dana L. McDaniel, City Manager 

**Date:** September 7, 2017

**Initiated By:** Colleen Gilger, Director of Economic Development  
 Jeremiah Gracia, Economic Development Administrator

**Re:** Ordinances 60-17, 61-17 and 62-17 -- for Property Assessed Clean Energy (PACE)  
 Special Improvement for 5500 Frantz Road – Scioto Corporate Center

## Background

At the August 28, 2017 City Council approved the first reading for Ordinances 60-17, 61-17, and 62-17. At that same meeting the City Manager and City Council agreed that the second readings for the ordinances would be presented at the September 11, 2017 Council meeting as emergency ordinances. Timing is of the essence for these documents so that the building owner may schedule a closing and complete the necessary energy improvements to their office building.

The Ordinance titles and minor language modifications have been updated to reflect the same and presented for review and approval.

## Appointment of City representatives to Energy Special Improvement District (ESID)

Per ORC Section 1710.04(A), the City of Dublin is entitled to two directors' seats on the Board of the ESID. One Director is to be appointed by the City Council and the other Director is either the City Manager as the "municipal executive" or the municipal executive's designee. The municipal executive's designee must be an employee of the City involved with the City's planning or economic development functions. As part of the closing, a certificate is required from the City indicating the Directors who have been appointed by the City Council and Municipal Executive, respectively.

- Staff recommends Council by motion appoint Colleen Gilger, Director of Economic Development, as their representative to the Board, unless a Member of City Council prefers to serve. Meetings are anticipated to be no more than quarterly and most likely during regular business hours.
- I have appointed Jeremiah Gracia, Economic Development Administrator, as the municipal executive's designee.

## Recommendation

Staff recommends Council passage of Ordinances 60-17, 61-17, and 62-17 as emergency on September 11, 2017. Please feel free to contact Colleen Gilger or Jeremiah Gracia with questions.

# PACE

## Property Assessed Clean Energy

### WHAT IS PACE?

Property Assessed Clean Energy (PACE) is a financing mechanism that enables low-cost, long-term funding for energy efficiency, renewable energy and water conservation projects. PACE financing is repaid as an assessment on the property's regular tax bill, and is processed the same way as other local public benefit assessments (sidewalks, sewers) have been for decades. Depending on local legislation, PACE can be used for commercial, nonprofit and residential properties.

### HOW DOES IT WORK?

PACE is a national initiative, but programs are established locally and tailored to meet regional market needs. State legislation is passed that authorizes municipalities to establish PACE programs, and local governments have developed a variety of program models that have been successfully implemented. Regardless of model, there are several keystones that hold true for every PACE program.

- PACE is voluntary for all parties involved.
- PACE can cover 100% of a project's hard and soft costs.
- Long financing terms up to 20 years.
- Can be combined with utility, local and federal incentive programs.
- Energy projects are permanently affixed to a property.
- The PACE assessment is filed with the local municipality as a lien on the property.

### WHY IS IT SO POPULAR?

Property owners love PACE because they can fund projects with no out-of-pocket costs. Since PACE financing terms extend to 20 years, it's possible to undertake deep, comprehensive retrofits that have meaningful energy savings and a significant impact on the bottom line. The annual energy savings for a PACE project usually exceeds the annual assessment payment, so property owners are cash flow positive immediately. That means there are increased dollars that can be spent on other capital projects, budgetary expenses, or business expansion.

Local governments love PACE because it's an Economic Development initiative that lowers the cost of doing business in their community. It encourages new business owners to invest in the area, and creates jobs using the local workforce. PACE projects also have a positive impact of air quality, creating healthier, more livable neighborhoods.

### HOW CAN I GET PACE?

[www.PACENation.us](http://www.PACENation.us) has all the tools and resources you need to get started with PACE. Check to see if your state has passed a PACE statute, and if your area has an active program. If not, contact us to find out if there is a local initiative in development and we may be able to put you in touch with a working coalition. We look forward to hearing from you!

### BENEFITS OF PACE

**WORKFORCE  
DEVELOPMENT:**  
Creates local jobs

**ECONOMIC  
DEVELOPMENT:**  
Lowers cost of  
doing business

**BUILDING STOCK:**  
Maintained and  
upgraded

**BOTTOM LINE:**  
Directly impacts  
local businesses

**HEALTHY AIR:**  
Environmental  
impact



PACENation is the national, nonprofit advocate for PACE financing. We provide leadership, data, support and resources for the growing marketplace.


[www.pacenation.us](http://www.pacenation.us)  
[info@pacenow.org](mailto:info@pacenow.org)



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# Memo

**To:** Members of Dublin City Council

**From:** Dana L. McDaniel, City Manager 

**Date:** August 24, 2017

**Initiated By:** Colleen Gilger, Director of Economic Development  
 Jeremiah Gracia, Economic Development Administrator

**Re:** Ordinances for Property Assessed Clean Energy (PACE) Special Improvement  
 for 5500 Frantz Road – Scioto Corporate Center (Ordinances 60-17, 61-17  
 and 62-17)

## Background

The City of Dublin is focused on setting appropriate conditions to encourage investment and economic development. City Council continues to support our strategies and tactics to ensure Dublin's office space remains competitive in the market. One particular tool the economic development team has brought to our existing building owners' attention is the use a favorable financing tool for major building energy efficiency improvements.

Property Assessed Clean Energy (PACE) programs represent a great mechanism available for financing energy efficiency and renewable energy improvement projects. PACE-enabling legislation is active in 33 states plus the District of Columbia, and PACE programs are now active (launched and operating) in 19 states plus DC. PACE allows qualifying energy improvements to be financed through assessments on a property owner's real estate tax bill. A summary of PACE is provided as an attachment to this memo.

PACE special assessments are used to secure local government bonds issued to fund the improvements without requiring the borrower or the sponsoring local government to pledge its credit. By allowing participating property owners to pay for energy improvements to their properties via a bond issue tied to a special assessment on their property tax bill, PACE financing enables property owners to reduce energy costs with no upfront investment.

Financing for PACE eligible projects in Central Ohio is provided by the Columbus-Franklin County Finance Authority (Finance Authority). The Finance Authority established the Columbus Regional Special Improvement District that allows for additional properties within the City of Columbus, Ohio and within any municipal corporation or township that is adjacent to any other municipal corporation or township to opt-in to the District. Projects between \$200,000 - \$6,000,000 may be financed through the Finance Authority's bond fund. Eligible uses of funds include LED lighting, energy management and controls that includes, HVAC and boiler replacement, building envelope, and other improvements that result in bottom line operation savings for building owners and tenants.

The building ownership at 5500 Frantz Road is requesting the use of PACE Financing for its energy efficiency improvement project totaling \$515,883. A signed PACE Project Development Agreement

has been executed between the owner, Frantz Investments, LLC, and the project manager, Plug Smart. The scope of work includes interior and exterior LED lighting upgrades, boiler replacement, and other temperature control upgrades. In order to satisfy this request, the City of Dublin must consider a series of Resolutions and Ordinances at the August 14 and August 28 Council meetings to allow building ownership to petition to opt-in to the Regional Special Improvement District. The City has no financial obligations with the establishment of a Special Improvement District for this project.

Below is a summary of the current and future resolutions, ordinances, and special assessments City Council will review at the August 14 and August 28 Council meetings. Timing is of the essence for these documents so that the building owner may schedule a closing and complete the necessary energy improvements to their office building.

August 14 Council Meeting:

1. A RESOLUTION APPROVING THE PETITION FOR SPECIAL ASSESSMENTS FOR SPECIAL ENERGY IMPROVEMENT PROJECTS UNDER OHIO REVISED CODE CHAPTER 1710 (5500 FRANTZ ROAD PROJECT)
2. A RESOLUTION APPROVING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF DUBLIN, OHIO IN COOPERATION WITH THE COLUMBUS REGIONAL ENERGY SPECIALIMPROVEMENT DISTRICT (5500 FRANTZ ROAD PROJECT)

August 28 Council Meeting:

1. AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF DUBLIN, OHIO IN COOPERATION WITH THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
2. AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF DUBLIN, OHIO IN COOPERATION WITH THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT
3. AN ORDINANCE AUTHORIZING AND APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF DUBLIN, OHIO, THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, FRANTZ INVESTMENTS, LLC, AND THE COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, A SPECIAL ASSESSMENT AGREEMENT BY AND BETWEEN THE CITY OF DUBLIN, OHIO, THE COUNTY TREASURER OF FRANKLIN COUNTY, OHIO, THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, AND FRANTZ INVESTMENTS, LLC, AND RELATED AGREEMENTS, ALL OF WHICH PROVIDE FOR

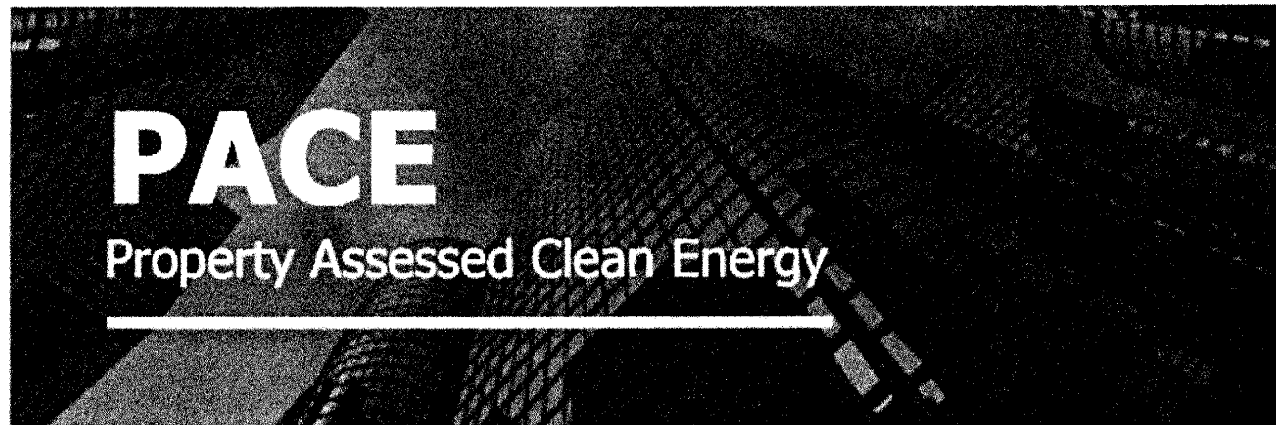


THE FINANCING OF SPECIAL ENERGY IMPROVEMENTS PROJECTS (5500 FRANTZ ROAD PROJECT)

- a. Energy Project Cooperative Agreement
- b. Special Assessment Agreement

**Recommendation**

Staff recommends Council passage of Ordinance 60-17, Ordinance 61-17, and Ordinance 62-17 at their second reading/public hearing September 11, 2017. Staff also will recommend that Council pass these ordinances by emergency (waiving the thirty-day waiting period) at the second reading on September 11, 2017. Please also feel free to contact Colleen Gilger (410-4615) or Jeremiah Gracia (410-4655) with questions.



## WHAT IS PACE?

Property Assessed Clean Energy (PACE) is a financing mechanism that enables low-cost, long-term funding for energy efficiency, renewable energy and water conservation projects. PACE financing is repaid as an assessment on the property's regular tax bill, and is processed the same way as other local public benefit assessments (sidewalks, sewers) have been for decades. Depending on local legislation, PACE can be used for commercial, nonprofit and residential properties.

## HOW DOES IT WORK?

PACE is a national initiative, but programs are established locally and tailored to meet regional market needs. State legislation is passed that authorizes municipalities to establish PACE programs, and local governments have developed a variety of program models that have been successfully implemented. Regardless of model, there are several keystones that hold true for every PACE program.

- PACE is voluntary for all parties involved.
- PACE can cover 100% of a project's hard and soft costs.
- Long financing terms up to 20 years.
- Can be combined with utility, local and federal incentive programs.
- Energy projects are permanently affixed to a property.
- The PACE assessment is filed with the local municipality as a lien on the property.

## WHY IS IT SO POPULAR?

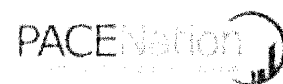
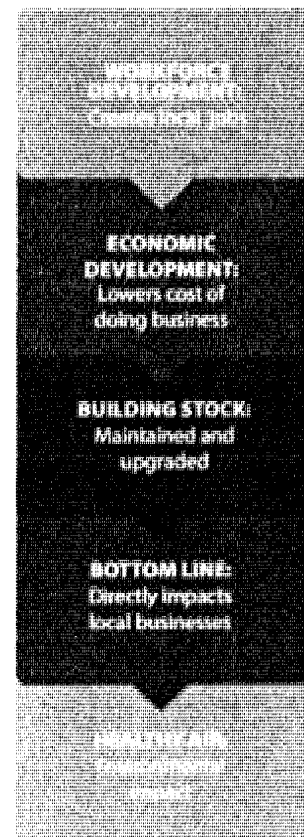
Property owners love PACE because they can fund projects with no out-of-pocket costs. Since PACE financing terms extend to 20 years, it's possible to undertake deep, comprehensive retrofits that have meaningful energy savings and a significant impact on the bottom line. The annual energy savings for a PACE project usually exceeds the annual assessment payment, so property owners are cash flow positive immediately. That means there are increased dollars that can be spent on other capital projects, budgetary expenses, or business expansion.

Local governments love PACE because it's an Economic Development Initiative that lowers the cost of doing business in their community. It encourages new business owners to invest in the area, and creates jobs using the local workforce. PACE projects also have a positive impact of air quality, creating healthier, more livable neighborhoods.

## HOW CAN I GET PACE?

[www.PACENation.us](http://www.PACENation.us) has all the tools and resources you need to get started with PACE. Check to see if your state has passed a PACE statute, and if your area has an active program. If not, contact us to find out if there is a local initiative in development and we may be able to put you in touch with a working coalition. We look forward to hearing from you!

## BENEFITS OF PACE



PACE Nation is a national initiative that promotes the use of PACE as a financing mechanism for energy efficiency, renewable energy and water conservation projects.

For more information, visit [www.PACENation.us](http://www.PACENation.us)

RECORD OF ORDINANCES

Ordinance No. 62-17 (Amended)

Passed \_\_\_\_\_, 20\_\_\_\_

AN ORDINANCE AUTHORIZING AND APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT BY AND BETWEEN THE CITY OF DUBLIN, OHIO, THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, FRANTZ INVESTMENTS, LLC, AND THE COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, A SPECIAL ASSESSMENT AGREEMENT BY AND BETWEEN THE CITY OF DUBLIN, OHIO, THE COUNTY TREASURER OF FRANKLIN COUNTY, OHIO, THE COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, AND FRANTZ INVESTMENTS, LLC, AND RELATED AGREEMENTS, ALL OF WHICH PROVIDE FOR THE FINANCING OF SPECIAL ENERGY IMPROVEMENTS PROJECTS (5500 FRANTZ ROAD PROJECT), AND DECLARING AN EMERGENCY.

**WHEREAS**, Frantz Investments, LLC (together its affiliates or controlled entities, the "Owner") has submitted its *Petition for Special Assessments for Special Energy Improvement Projects and Affidavit* (the "Petition") in order to provide for the completion of a special energy improvement project on real property owned by the Owner in the City of Dublin, Ohio (the "City"); and

**WHEREAS**, on August 14, 2017, this Council approved the Petition and added the Owner's property subject to the Petition to the Columbus Regional Energy Special Improvement District (the "District"); and

**WHEREAS**, on August 14, 2017, this Council duly adopted a resolution declaring the necessity of acquiring, constructing, and improving certain public improvements in the City in cooperation with the District (the "Resolution of Necessity"); and

**WHEREAS**, on \_\_\_\_\_, 2017, this Council passed Ordinance No. 60-17 (Amended) determining to proceed with the Project (as defined in the Resolution of Necessity) and adopted the estimated Special Assessments filed with the Clerk of the Council pursuant to the Resolution of Necessity; and

**WHEREAS**, pursuant to Ordinance No. 61-17 (Amended), passed on \_\_\_\_\_, 2017, the City has levied special assessments against the Property (as defined in the Resolution of Necessity) to pay costs of the special energy improvement project (the "Special Assessments"); and

**WHEREAS**, the City intends to enter into an Energy Project Cooperative Agreement (the "Energy Project Cooperative Agreement") with the District, the Owner, and the Columbus-Franklin County Finance Authority (the "Finance Authority") to provide for, among other things, (i) the making of the Project Advance (as defined in the Energy Project Cooperative Agreement) to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition and construction of the Project and (iii) the transfer of the Special Assessments by the City to the Finance Authority to pay principal and interest and other costs relating to the Project Advance; and

**WHEREAS**, to provide for the security for the Project Advance and for administration of payments on the Project Advance and related matters, the City intends to enter into the Special Assessment Agreement with the County Treasurer of Franklin County, Ohio, the District, and the Owner;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring that:

Section 1. Each capitalized term or definition not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity.

Section 2. This Council hereby approves the Energy Project Cooperative Agreement, a copy of which is on file in the office of the Clerk of Council. The City Manager shall sign and deliver, in the name and on behalf of the City, the Energy Project Cooperative



RECORD OF ORDINANCES

Ordinance No. 62-17 (Amended)
Passed
Page 2 of 2
, 20

Agreement, in substantially the form as is now on file with the Clerk of Council. The Energy Project Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the Energy Project Cooperative Agreement or amendments to the Energy Project Cooperative Agreement.

Section 3. This Council hereby approves the Special Assessment Agreement, a copy of which is on file in the office of the Clerk of Council. The City Manager shall sign and deliver, in the name and on behalf of the City, the Special Assessment Agreement, in substantially the form as is now on file with the Clerk of Council. The Special Assessment Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreement or amendments to the Special Assessment Agreement.

Section 4. The City is hereby authorized to enter into such other agreements that are not inconsistent with the Resolution of Necessity and this Ordinance and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

Section 5. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 6. Under Section 4.04 of the Charter of the City, this Ordinance is an Ordinance for improvements petitioned for by owners of the requisite majority (100%) of the front footage or the area of the property benefited and to be assessed, and declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety or welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to facilitate the construction of the Project; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Signed:

Mayor – Presiding Officer

Attest:

Clerk of Council

Passed:
, 2017

Effective:
, 2017



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**ENERGY PROJECT COOPERATIVE AGREEMENT**

By and between

COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT;

FRANTZ INVESTMENTS, LLC;

COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY; and

CITY OF DUBLIN, OHIO

Dated as of [\_\_\_\_\_], 2017

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BRICKER & ECKLER LLP

## ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into as of [\_\_\_\_], 2017, by and among the COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “ESID”), FRANTZ INVESTMENTS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Nebraska and duly qualified to conduct business within the State (the “Owner”), the COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY, a port authority and body corporate and politic duly organized and validly existing under the laws of the State (the “Finance Authority”), and the CITY OF DUBLIN, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State and its Charter (the “City”) (the capitalized terms used in this Agreement and not defined in the preamble and recitals have the meanings stated in **Exhibit A** to this Agreement):

A. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. 0261X-2015 of the Council of the City of Columbus, Ohio approved on November 23, 2015. Pursuant to the same action, the Columbus Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the “Plan”) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

B. The ESID is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution.

C. On [\_\_\_\_], 2017, by its Resolution No. [\_\_\_\_], the City Council of the City (the “City Council”) approved the Petition for Special Assessments for Special Improvement Projects and Affidavit (the “Petition”) submitted by the Owner to the City, together with the “Supplement to Plan for 5500 Frantz Road, Dublin, Ohio Project” (the “Supplemental Plan”), as a supplement to the Plan.

D. Pursuant to the Plan, the ESID, among other services, shall assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects.

E. In order to obtain financing for special energy improvement projects and to create special assessment revenues available to pay and repay the costs of special energy improvement projects, the Petition requested that the City Council levy Special Assessments against the Owner’s property as more fully described in the Supplemental Plan.

F. The ESID, the Owner, the Finance Authority, and the City (collectively the “Parties,” and each, a “Party”) each have determined that the most efficient and effective way to implement the financing, acquisition, construction, equipment, improvement, and installation of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Act and on the terms set forth in this Agreement, with (i) the

Finance Authority providing the Project Advance to finance the costs of the special energy improvement projects described in the Supplemental Plan, (ii) the ESID and the Owner cooperating to acquire, construct, equip, improve, and install special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, (iv) the City agreeing to assign and transfer all Special Assessment payments actually received by the City to the Finance Authority to repay the Project Advance; and (v) the ESID agreeing to assign, transfer, and set over to the Finance Authority any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or payable to, the City or the ESID, all pursuant to and in accordance with this Agreement.

G. The Parties each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on their respective parts to be performed and observed, and have determined to enter into this Agreement to set forth their respective rights, duties, responsibilities, obligations, and contributions with respect to the implementation of special energy improvement projects within the ESID.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, and agreements contained in this Agreement, the Parties agree as follows; provided, that any obligation of the ESID created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the ESID, or give rise to any pecuniary liability of the ESID, but any such obligation shall be payable solely from the Special Assessments actually received by the ESID, if any; and provided, further, that any obligation of the City created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligation shall be payable solely from the Special Assessments actually received by the City, if any:

## ARTICLE I: DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, words and terms used in this Agreement shall have the meanings set forth in **Exhibit A** to this Agreement unless the context or use clearly indicates another meaning or intent. Definitions shall apply equally to both the singular and plural forms of any of the words and terms. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.2. Interpretation. Any reference in this Agreement to the ESID, the ESID Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority, or to any member or officer of any of the foregoing, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified,

revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Section 1.3. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any of this Agreement's Articles, Sections, subsections, paragraphs, subparagraphs or clauses.

## ARTICLE II: COOPERATIVE ARRANGEMENTS; ASSIGNMENT OF SPECIAL ASSESSMENTS

Section 2.1. Agreement Between the City, the ESID, and the Finance Authority. The Owner and the ESID have requested the assistance of the Finance Authority and the City in the financing of special energy improvement projects within the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the City and the ESID have requested the assistance and cooperation of the Finance Authority in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(A). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Finance Authority, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and the ESID shall assign, transfer, set over, and pay the Special Assessments actually received by the City or the ESID, respectively, to the Finance Authority, to pay the costs of the Project at the times and in the manner provided in this Agreement; provided, however, that the City, the ESID, and the Finance Authority intend that the City shall receive all Special Assessments from the County Treasurer and shall transfer, set over, and pay all Special Assessments received from the County Treasurer directly to the Finance Authority. The City, the ESID, and the Finance Authority further intend and agree that the Finance Authority shall pay to the ESID, out of the Special Assessments received by the Finance Authority, an annual fee of \$500.00 for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Finance Authority in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year and the annual fee of \$500.00 due to the ESID, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the annual fee due to the ESID.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments received by the City to the Finance Authority, shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The



City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the City's faith and credit or taxing power, and the ESID, the Owner, and the Finance Authority do not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

Section 2.2. Special Assessments; City Transfer of Special Assessments.

- (a) The Special Assessment Proceedings. The City has duly enacted the Special Assessment Proceedings.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the Parties agree that the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

- (b) Collection of Delinquent Special Assessments. Subject to the City having received written notice of any Special Assessment delinquency, the ESID and the Finance Authority are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and the Special Assessment Proceedings and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

- (c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act and the Special Assessment Proceedings may be prepaid to the Finance Authority by the Owner in accordance with Section 4.7 of this Agreement. Except as set forth in this Section 2.2(c) and Section 4.7 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and if the City shall have knowledge of the same, the City immediately shall notify the Finance Authority, and, unless provided the express written consent of the Finance Authority, the City shall not cause any reduction in the amount of Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the

owners of property or the transfer of the Special Assessments by the City to the Finance Authority.

- (d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Finance Authority. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, the Finance Authority shall revise the Special Assessments to be collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of 4.95%, a \$500.00 annual administrative fee to the ESID, and a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Upon the City's receipt of the Finance Authority's express written consent or instruction, the City shall certify to the County Auditor, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments to be collected. The Parties agree that the Finance Authority may certify any reduction required by this Section 2.2(d) to the County Auditor directly after requesting and receiving the City's consent to certify the reduction on the City's behalf. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of Special Assessments without the prior written consent or instruction of the Finance Authority.
- (e) Assignment of Special Assessments. The City agrees that it shall establish its funds for the collection of the Special Assessments as separate funds maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Finance Authority all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, and (ii) the City's special assessment funds established for the Project; provided, however, such assignment shall not relate to, and the Finance Authority shall no right, title or interest in any interest earnings which may accrue to the City in respect of the Special Assessments while those Special Assessments are in the City's custody. The City further shall transfer, set over, and pay the Special Assessments to the Finance Authority in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Finance Authority. The Parties agree that each of the City, the ESID, and the Finance Authority, as assignee of the Special Assessments, is authorized to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as

necessary, to institute such prompt and timely foreclosure proceedings. All Parties agree to provide notice to the other Parties within a reasonable period of time following any actions filed to enforce the lien securing any delinquent Special Assessments if such notice is not provided through such action.

- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments to the City on or before May 1 and November 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments, but in any event not later than thirty (30) calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, the City shall deliver to the Finance Authority all such moneys received by the City as Special Assessments. The Finance Authority may from time to time provide written payment instructions to the City for payment of Special Assessments to the Finance Authority or its trustee or other designee by check, wire instructions, or other means. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments directly to the Finance Authority or its trustee or other designee pursuant to instructions or procedures agreed upon by the County Auditor and the Finance Authority, then, upon each transfer of an installment of the Special Assessments from the County Auditor to the Finance Authority or its trustee or other designee, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments to the Finance Authority.
- (g) Repayment of Project Advance. The Finance Authority shall credit, on the dates shown on the Repayment Schedule (which is attached to and incorporated into this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the prepayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Finance Authority, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance and the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, an annual fee of \$500.00 or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each annual installment of the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments to the Finance Authority under Section 2.2 of this Agreement shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Finance Authority, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments is limited to the Special Assessments actually received by or on behalf of the City, and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of this Agreement, all of the Special Assessments received or to be received by the City shall be deemed to have been appropriated to pay the City's obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligation under this Agreement to pay to the Finance Authority all Special Assessments received by the City; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments actually received by the City; and provided further that nothing in this paragraph shall be construed as a waiver of the City's right to be indemnified pursuant to Section 6.4 of this Agreement or pursuant to the Special Assessment Agreement. The City shall have no obligation, legally, morally or otherwise, to use or apply to the payment of the Special Assessments any funds or revenues from any source other than the moneys received by the City as Special Assessments.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments by the City to the Finance Authority, and in accordance with the Special Assessment Act and the Special Assessment Proceedings, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments related to the ESID actually received by or on behalf of the City to the Finance Authority. The Owner and the City agree and consent to that assignment.

### ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 3.1. The City's Representations and Warranties. The City represents and warrants that:

- (a) It is a municipal corporation, duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the City's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the City and does not and will



not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

- (c) It, by proper action, has duly authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's covenants and agreements within this Agreement, as valid and binding obligations of the City, enforceable in accordance with their terms.
- (d) To its knowledge, there is no litigation pending or threatened against or by the City in which an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement.
- (e) The assignment contained in Section 2.2(e) is a valid and binding obligation of the City with respect to the Special Assessments received by the City under this Agreement.

Section 3.2. The ESID's Representations and Warranties. The ESID represents and warrants that:

- (a) It is a nonprofit corporation and special improvement district, duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the ESID's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and will not conflict with or result in a default under any agreement or instrument to which the ESID is a party or by which it is bound.
- (d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the ESID has taken and all steps necessary to establish this Agreement and the ESID's covenants and agreements within this Agreement as valid and binding obligations of the ESID, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the ESID in which an unfavorable ruling or decision would materially adversely affect the ESID's ability to carry out its obligations under this Agreement.
- (f) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

Section 3.3. The Owner's Representations and Warranties. The Owner represents and warrants that:

- (a) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Nebraska, and that it is duly qualified to conduct its business within the State. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.
- (b) It, by proper action, duly has authorized, executed, and delivered this Agreement, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms
- (c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an "Action"), and during the term of this Agreement, the Owner shall promptly notify the Finance Authority of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.
- (e) Except for any financing of the Property and the lien related thereto that the Owner has previously disclosed in writing, it has made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on the Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, constructing, equipping, installing, and improving of the Project.
- (f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to the Finance Authority or the ESID by it or on its behalf contained, as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (g) Since the date of the most recent financial statements of the Owner provided to the Finance Authority, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Finance Authority in writing, and the financial statements which have been delivered to the Finance Authority prior to the date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.
- (h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Finance Authority in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.
- (i) The Project complies in all material respects with all applicable zoning, planning, building, environmental and other regulations of each Governmental Authority having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained.
- (j) The plans and specifications for the Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Project, the tenants under any leases which require approval of the plans and specifications, the purchasers under any sales contracts which require approval of the plans and specifications, any architects for the Project, and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiaries of any such covenants; all construction of the Project, if any, already performed on the Property has been performed on the Property in accordance with such approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Project or violations of any requirement of any Governmental Authorities with respect to the Project; the planned use of the Project complies with applicable zoning ordinances, regulations, and restrictive covenants affecting the Property as well as all environmental, ecological, landmark and other applicable laws and regulations; and all requirements for such use have been satisfied.
- (k) The Owner has the Required Insurance Coverage and will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender pursuant to any agreements between the Owner and its Lender, unless such premium shall have been paid by the Finance Authority, in accordance with the distribution priority specified in Section 4.3.
- (l) Each Disbursement Request Form presented to the Finance Authority, and the receipt of the funds requested by the Disbursement Request Form, shall constitute

an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.

- (m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Finance Authority in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by Plug Smart, the registered trade name of Juice Technologies, Inc., which energy audit demonstrates that the Project is expected to generate \$31,455 in annual energy savings.
- (o) Each of the components of the Project is a qualified “special energy improvement project” pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).
- (p) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act and the Special Assessment Proceedings and shall take any and all action necessary to remain in compliance with the Special Assessment Act and the Special Assessment Proceedings.

Section 3.4. The Owner’s Additional Agreements. The Owner agrees that:

- (a) It shall not transfer or convey any right, title, or interest, in or to the Property and the Project, except after giving prompt notice of any such transfer or conveyance to the Finance Authority; provided, however, that the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Finance Authority, the City, and the ESID a fully executed “Assignment and Assumption of Energy Project Cooperative Agreement” in the form attached to and incorporated into this Agreement as **Exhibit G**; and (ii) execute, cause the transferee or purchaser to execute, and deliver to the Finance Authority, an assignment of all construction contracts related to the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent.
- (b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property, all utility and other

charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Finance Authority, upon reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner's obligation to pay the Special Assessment.

- (c) It shall not, without the prior written consent of the Finance Authority, cause or agree to the imposition of any special assessments, other than the Special Assessments, on the Property for the purpose of paying the costs of "special energy improvement projects," as that term is defined in Ohio Revised Code Section 1710.01(A), as amended and in effect at the time.
- (d) It shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with the acquisition, construction, equipping, installation, and improvement of the Project.
- (e) It promptly shall notify the Finance Authority of any material damage or destruction to the Project.
- (f) Upon the reasonable request of the Finance Authority, it shall take any actions and execute any further certificates, instruments, agreements, or documents as shall be reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.
- (g) It does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and neither the Property nor any other of its premises has been so used previously, in each case, except as previously disclosed in writing to the Finance Authority. There are no underground storage tanks located on the Property. There is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property, which has not been fully remediated in accordance with environmental laws. There is no environmental remediation required (or anticipated to be required) with respect to the Property. The Owner does not know of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation of hazardous substances, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

Section 3.5. [Federal Law Requirements]. The ESID and the Owner acknowledge and agree that pursuant to the Additional Reserve Agreement (the "Additional Reserve Agreement")



between the Finance Authority and the Director of Development Services of the State of Ohio (“DSA”), DSA has provided additional reserves (the “Additional Reserves”) for the Project Advance. The ESID and the Owner further acknowledge and agree that the Additional Reserves constitute federal funds provided under an award to DSA from the U.S. Department of Energy under the Catalog of Federal Domestic Assistance Number 81.041, and that the Finance Authority is authorized under Title 10 of the Code of Federal Regulations Part 420 to use the Additional Reserves as loan loss reserves under such terms and conditions as DSA may determine. The ESID and the Owner further acknowledge and agree that the Additional Reserve Agreement sets such terms and conditions, and that this Agreement is to be interpreted consistent with such Additional Reserve Agreement, provided that the Additional Reserve Agreement shall control in the case of any conflict with this Agreement.

In accordance with Article 2, Section D of the Additional Reserve Agreement, the Owner shall provide to the ESID and the Finance Authority, when and as requested by the ESID and the Finance Authority, any and all information the ESID and the Finance Authority shall determine is necessary to complete reporting required by (i) the State Energy Program (“SEP”) of the American Recovery and Reinvestment Act of 2009 (the “ARRA”) and (ii) the Additional Reserve Agreement. Without limiting the generality of the preceding sentence, Owner hereby agrees to provide the following information:

- (a) During the installation of the Project, monthly financial information and progress reports, which shall cover expenditures, goals accomplished, milestones met, and any performance deficiencies or delays during the immediately preceding month;
- (b) Following the completion of the installation of the Project, a project completion report, containing a written notification that the Project has been completed, documentation reflecting the Owner’s closeout inventory of real and personal property partially or wholly acquired by the Project Advance and a statement of economic impact, including job creation and retention data;
- (c) During and following the completion of the installation of the Project, for all years during which any principal or interest is outstanding on the Project Advance, annual, cumulative, to-date values on the following metrics: (1) verification of SEP-ARRA reporting, (2) annual energy consumption from the completed Project, and (3) any other information that may be requested by DSA; and
- (d) During and following the completion of the installation of the Project, information related to the economic impacts of the Project, including, without limitation, increased production, competitiveness, community impact, and job creation and retention, which includes installation hours, new jobs directly created, and jobs retained at the site.

The Owner shall preserve all financial and accounting records pertaining to this Agreement during this Agreement’s term, and for any further period that may be required by the Internal Revenue Code of 1986, as amended. During such retention period, DSA or the Finance Authority, upon reasonable notice, shall have the right to audit the records to the extent authorized and

permitted by law. The Owner may retain all records in original or electronic form, provided that for electronic records, an off-site duplicate record is preserved.

During the term of this Agreement, the Owner shall comply with all applicable provisions of the SEP-ARRA and the attendant federal regulations, including, without limitation ARRA Section 1605 (“Buy American” / Federal Acquisition Regulations, or “FAR”) Clauses 52.225-21, 52.225-22, and 52.225-24; ARRA Section 1512 (Reporting Requirements), including FAR Clause 52.204-11; ARRA Section 1553 (Whistleblower Protection), including FAR Clause 52.203-15; and ARRA Sections 902, 1514, and 1515 (General Accountability Office and Inspector General Audits and Access to Records), including FAR Clauses 52.212-5, 52.214-26, and 52.215-2. A summary of such provisions are attached to this Agreement as **Exhibit H.**

#### ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. **Project Advance.** The Finance Authority has made available to the Owner the Project Advance in the amount of \$546,133.00. The Finance Authority shall hold the Project Advance in a segregated account established in the custody of the Finance Authority, which account shall be referred to as the “Project Account.” Subject to the terms and conditions of this Agreement, the Finance Authority, upon the direction of the Owner, shall disburse amounts on deposit in the Project Account to the Owner or to such parties as may be named by the Owner in order to pay the costs of the Project.

If the Project Advance is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, construction, equipping, installation, and improvement of the Project, and the Owner shall pay all such additional costs of the Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of the Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments or an increase in the amount of the Special Assessments.

Section 4.2. **Disbursements.** In order to cause disbursement of amounts on deposit in the Project Account to pay or reimburse the costs of the Project, the Owner shall submit to the Finance Authority Disbursement Request Forms (a form of which is attached to this Agreement as **Exhibit C**), which Disbursement Request Forms each shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
  - (i) The Owner shall deliver to the Finance Authority copies of all related receipts and invoices;
  - (ii) The Owner shall deliver to the Finance Authority, as necessary, information detailing any other sources of funds spent to pay any portion of the costs shown on any related receipts and invoices such that all costs shown on related receipts and invoices, including costs not eligible to be paid from the Project Advance, shall be accounted for either as costs being paid by a

- disbursement of a portion of the Project Advance or costs being paid by other sources;
- (iii) The Owner shall deliver to the Finance Authority, as necessary, bank information for wiring the amounts requested for disbursement.
- (b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Finance Authority copies of all construction permits required for the construction of the Project;
  - (ii) The Owner shall deliver to the Finance Authority copies of all agreements with all contractors and subcontractors performing work or furnishing materials for the Project;
  - (iii) The Owner shall deliver to the Finance Authority a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project; and
  - (iv) The Owner shall deliver to the Finance Authority copies of all current policies of the Required Insurance Coverage;
  - (v) The construction plans and specifications shall have been approved in all respects by the Finance Authority in its sole discretion;
  - (vi) The Owner shall deliver to the Finance Authority the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit F**;
  - (vii) The Finance Authority shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the same has been recorded in the records of the County Recorder with respect to the Property;
  - (viii) The Owner and the ESID shall provide to the Finance Authority original executed copies of this Agreement and any related certificates.
- (c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Finance Authority the executed certificate in the form attached as **Exhibit D** to this Agreement; and
  - (ii) The Owner shall deliver to the Finance Authority copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Finance Authority shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Finance Authority approves the payment or reimbursements requested to be disbursed from the Project Account, the Finance Authority shall pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which have been approved by the Finance Authority.

Additionally, the Finance Authority shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed \$20,250.00, as detailed in **Exhibit E** to this Agreement to the parties set forth on **Exhibit E** to this Agreement. Without limiting the

generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Finance Authority, fees to the ESID, legal fees, fees to the City, and other closing costs or contingencies.

Section 4.3. Casualties and Takings. The Owner shall promptly notify the Finance Authority if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a “Casualty”). Upon the occurrence of such Casualty, the Owner’s Lender, if any, may elect, in its sole discretion and judgment, to restore the Property and the Project or to terminate the construction of the Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Owner’s Lender’s agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed first to Owner’s Lender pursuant to its agreements with the Owner, and next to the Finance Authority for repayment of the outstanding balance of the Special Assessments and any related fees, and any excess proceeds will be paid to the Owner.

Upon the occurrence of a Casualty, if no Person is a Lender at the time of such Casualty, the insurance proceeds shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Finance Authority shall remain obligated to make disbursements of up to the total amount of the Project Advance in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Finance Authority’s reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority’s reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a “Taking”), the Owner’s Lender, if any, may elect, in its sole discretion and judgment, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Finance Authority’s obligation to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Finance Authority’s reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority’s reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Finance Authority’s obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be



functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Finance Authority shall release the funds for such purpose. If, in the Finance Authority's reasonable judgment, the Taking proceeds available to the Owner and the Finance Authority are insufficient to complete the restoration, the Owner shall deposit with the Finance Authority such amounts as are necessary, in the Finance Authority's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

Section 4.4. Eligible Costs. The costs of the Project which are eligible for payment or reimbursement pursuant to this Agreement include the following:

- (a) costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping, installation, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;
- (c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;
- (d) taxes, assessments and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;
- (e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and
- (f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Finance Authority, which approval shall not be unreasonably withheld, shall acquire, construct, equip, install, and improve the Project with Project Advance with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, construction, equipment, installation, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall

ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, equipment, installation, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of construction, acquisition, equipping, installation, and improvement of the Project, the ESID and the Finance Authority, and their respective agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Project. The ESID and the Finance Authority and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Finance Authority reserves the right to deny the request for a Project Advance pursuant to Article IV of this Agreement if such inspection reveals that construction is not proceeding with reasonable dispatch. If, in the Finance Authority's opinion, after thirty (30) days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Finance Authority may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Finance Authority, the failure of which by the Owner shall be a default under this Agreement, (ii) utilize funds to continue construction of the Project and such funds shall be considered Project Advances, or (iii) deny any Project Advance until such time as the construction resumes proceeding with reasonable dispatch.

The Owner shall notify the ESID, the City, and the Finance Authority of the Completion Date by a certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Finance Authority; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the Finance Authority for the Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date.

Section 4.6. **Repayment.** The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 4.950%, and

a \$500.00 annual administrative fee to the ESID over 30 semi-annual payments to be collected beginning approximately on January 31, 2018 and continuing through approximately July 31, 2032. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Auditor may charge and collect a County Auditor collection fee on each annual installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36. Interest shall accrue on the entire amount of the Project Advance from the date of this Agreement; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the Finance Authority by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. Notwithstanding anything in this Section 4.6 or this Agreement to the contrary, the Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. Prepayment. At any time after the date of this Agreement, the Owner may prepay any portion of the principal of the Project Advance to the Finance Authority by paying, in immediately available funds, 103% of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

Immediately upon any prepayment pursuant to this Section 4.7, the Finance Authority shall notify the City of the prepayment, and the Owner, the Finance Authority, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Auditor pursuant to Section 2.2(d) of this Agreement.

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the Finance Authority, or the City should incur expenses, including but not limited to attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due under this Agreement, the Owner shall reimburse the ESID, the Finance Authority, and the City, as applicable, for any reasonable out-of-pocket expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount of such expenses, together with interest on such amount from the date of demand for payment at an annual rate equal to the lesser of 10% or the maximum rate allowable by law shall constitute indebtedness under this Agreement, and the ESID, the Finance Authority, and the City, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or by judicial order or decision entered in such proceedings.

Section 4.9. Further Assurances. Upon the request of the Finance Authority, the Owner shall take any actions and execute any further documents as the Finance Authority deems necessary or appropriate to carry out the purposes of this Agreement.

## ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any of the following shall occur, such occurrence shall be an "Event of Default" under this Agreement:

- (a) The Owner shall fail to pay an installment of the Special Assessments when due, after taking into account all applicable extensions;
- (b) The City shall fail to appropriate in any fiscal year the Special Assessments payable to the Finance Authority pursuant to this Agreement in such fiscal year, or shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Finance Authority within the time specified in this Agreement;
- (c) Any Party is in material breach of its representations or warranties under this Agreement; provided, however, that upon the material breach of a Party's representations or warranties under this Agreement, such Party shall have the right to cure such breach within five (5) days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (d) The ESID, the Owner, or the City, shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the ESID, the Owner, or the City, as applicable, by any other Party to this Agreement, or for such longer period to which the notifying Party may agree in writing; provided, however, that if the failure is other than the payment of money, and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the ESID, an Owner, or the City, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;
- (e) The Owner abandons its Property or the Project;
- (f) The Owner commits waste upon its Property or the Project;
- (g) The Owner becomes bankrupt or insolvent or files or has filed against it (and such action is not stayed or dismissed within 90 days) a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes a general assignment for the benefit of creditors; or
- (h) Any workmanship or materials constituting a portion of the Project or incorporated into the Project shall be materially defective and shall not be corrected within 30 days after notice.

The declaration of an Event of Default above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Promptly upon any non-defaulting Party becoming aware that an Event of Default has occurred, such Party shall deliver notice of such Event of Default to each other Party under this Agreement in accordance with the notice procedures described in Section 6.5 of this Agreement.

Section 5.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (a) The ESID, the Finance Authority, and the City, together or separately, may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID or the City, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.
- (b) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

Notwithstanding the foregoing, each of the ESID and the City shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense.

Section 5.3. Foreclosure. Pursuant to Section 2.1 of the Special Assessment Agreement by and among the County Treasurer, the City, the ESID, and the Owner and dated as of the date of this Agreement (the “Special Assessment Agreement”), the County Treasurer has agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the Finance Authority. The ESID hereby agrees that in the event it is asked to provide its consent in accordance with Section 2.1, it will notify the Finance Authority of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Finance Authority’s prior written direction.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or later existing at law, in equity or by statute; provided, however, that the ESID, the Finance Authority, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No



delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Parties to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by the other Parties of any provision of this Agreement shall constitute a waiver of such Party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Parties to observe or comply with any provision of this Agreement.

Section 5.6. Notice of Default. Any Party to this Agreement shall notify every other Party to this Agreement immediately if it becomes aware of the occurrence of any Event of Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

## ARTICLE VI: MISCELLANEOUS

Section 6.1. Owner Waivers. The Owner acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Ohio Revised Code Chapter 727, the Charter of the City of Dublin, Ohio and the ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to the Project and consents to the imposition of the Special Assessments as to the Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to its Energy Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the Charter of the City of Dublin, Ohio or the ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the date of execution and delivery until the payment in full of the entire aggregate amount of the Special Assessments shall have been made to the Finance Authority and the obligations (if any) of each Party under Section 6.4 shall have been fully satisfied, or such time as the Parties shall agree in writing to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Special Assessments which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.3. Litigation Notice. Each Party shall give all other Parties prompt notice of any action, suit, or proceeding by or against the notifying Party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying Party has notice and which, if adversely determined would impair materially the right or ability of the Parties to perform its obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.4. Indemnification. The Owner shall indemnify and hold harmless the ESID, the Finance Authority, and the City (including any member, officer, director, or employee thereof) (collectively, the "Indemnified Parties") against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) the levy and collection of the Special Assessments, (ii) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (iii) any act, failure to act or misrepresentation solely by the Owner in connection with, or in the performance of any obligation on the Owner's part to be performed under this Agreement or related to the Special Assessments resulting in material actual damages, or (iv) (a) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to the Owner, (b) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law ("Materials of Environmental Concern") in, on, within, above, under, near, affecting or emanating from the Property, (c) the failure to timely perform any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (as defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental laws, (d) any past, present or future activity by any person or other source, whether related or unrelated to the Owner in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (e) any past, present or future actual generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a "Release") (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to the Owner, (f) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (g) any misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, such Indemnified Party will promptly give written notice thereof to the Owner. The Owner shall be entitled to participate at its own expense in the defense or, if it so elects, to assume at its own expense the defense of such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume such defense, it shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by such Indemnified Party. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. Each Indemnified Party agrees that the Owner shall have the sole right to compromise, settle or conclude any claim, suit, action or proceeding against any of the Indemnified Parties. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ counsel in any such action at their own expense; and provided further that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Owner, if: (i) the employment of counsel by such Indemnified Party has been authorized by the Owner, (ii) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of such action (in which case the Owner shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Owner shall not in fact have employed counsel to assume the defense of such action. The Owner shall also indemnify the Indemnified Parties from and against all costs and expenses, including reasonable attorneys' fees, lawfully incurred in enforcing any obligations of the Owner under this Agreement. The obligations of the Owner under this Section shall survive the termination of this Agreement and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

None of the Finance Authority, the City, or the ESID shall have any liability to the Owner or any other Person on account of (i) the Owner engaging a contractor from the list of contractors submitted by the ESID or the Finance Authority to the Owner, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. None of the Finance Authority, the City, or the ESID assumes any obligation to the Owner or any other Person concerning contractors, the quality of construction of the Project or the absence of defects from the construction of the Project. The making of a Project Advance by the Finance Authority shall not constitute the Finance Authority's approval or acceptance of the construction theretofore completed. The Finance Authority's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, shall impose no liability of any kind on the Finance Authority, the sole obligation of the Finance Authority as the result of such inspection and approval being to make the Project Advances if, and to the extent, required by this Agreement. Any disbursement made by the Finance Authority without the Finance Authority having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result.

Section 6.5. Notices. All notices, certificates, requests or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Parties, by notice given under this Agreement to the others, may designate any further or different

addresses to which subsequent notices, certificates, requests or other communications shall be sent. Each of the Parties agree to provide the other Parties to this Agreement of any litigation of which it has actual knowledge that may adversely affect its ability to carry out its obligations under this Agreement.

Section 6.6. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the ESID and the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the ESID, the Board, the Owner, the City, the City Council, the Finance Authority, or the Board of Directors of the Finance Authority in other than his or her official capacity; and none of the members of the Board, the City Council, or the Board of Directors of the Finance Authority, nor any official of the ESID, the Owner, the City, or the Finance Authority executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the ESID, the Owner, the City, or the Finance Authority contained in this Agreement.

Section 6.7. Binding Effect; Assignment; Estoppel Certificates. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties. Except as specifically provided below, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Special Assessments.

Notwithstanding anything in this Agreement to the contrary, the Owner freely may sell the Property and the Project or any portion of the Property and the Project from time to time and may assign this Agreement to an arms-length, good faith purchaser of the Property but only after notice of such assignment is given to the Finance Authority, and only upon (i) the execution and delivery to the City, the Finance Authority, and the ESID of an “Assignment and Assumption of Energy Project Cooperative Agreement” in the form attached to and incorporated into this Agreement as **Exhibit G**; and (ii) the execution and delivery to the Finance Authority of an assignment of all construction contracts for the Project. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent. Following any assignment by the Owner as described above, all obligations of the Owner contained in this Agreement, the Special Assessment Agreement, and the Owner Consent shall be obligations of the assignee, and the assigning Owner shall be released of its obligations to a corresponding extent.

Notwithstanding anything in this Agreement to the contrary, the Finance Authority shall have the unrestricted right at any time or from time to time, and without the Owner’s consent, to assign all or any portion of its rights and obligations under this Agreement, and may sell or assign any and all liens received directly or indirectly from the City to any Person (each, a “Finance Authority Assignee”), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Finance Authority shall deem necessary to effect the foregoing so long as such amendment does not materially adversely impact the Owner’s rights and obligations under this Agreement. Any Finance Authority Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Finance Authority under this Agreement (and under any and all other guaranties,

documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Finance Authority pursuant to the assignment documentation between the Finance Authority and such Finance Authority Assignee, and the Finance Authority shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent. If, at any time, the Finance Authority assigns any of the rights and obligations of the Finance Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to a Finance Authority Assignee, the Finance Authority shall give prompt notice of such assignment to the other Parties.

This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that: (i) this Agreement is unmodified and in full force and effect (or, if there has been any modification of this Agreement, that the same is in full force and effect as modified and stating the modification or modifications); (ii) to the best of such Party's actual knowledge (without any duty of inquiry) there are no continuing Events of Default (or, if there is a continuing Event of Default, stating the nature and extent of such Event of Default); (iii) that, to the best of such Party's actual knowledge (without any duty of inquiry) there are no outstanding damages or liability arising from an Event of Default (or, if there is any outstanding damages or liability, stating the nature and extent of such damages or liability); (iv) if such certificate is being delivered by the Owner, the dates to which the Special Assessments have been paid; and (v) if such certificate is being delivered by the Finance Authority, the dates to which the Special Assessments have been paid to the Finance Authority. It is expressly understood and agreed that any such certificate delivered pursuant to this Section 6.7 may be relied upon by any prospective assignee of the Owner or any prospective Finance Authority Assignee.

Section 6.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by unanimous written agreement signed by each of the Parties materially affected by such proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party with respect to which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

Section 6.10. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or



agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 6.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in their respective names, all as of the date first written above.

COLUMBUS REGIONAL ENERGY SPECIAL  
IMPROVEMENT DISTRICT, as the ESID

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FRANTZ INVESTMENTS, LLC, as the Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

COLUMBUS-FRANKLIN COUNTY  
FINANCE AUTHORITY, as the Finance  
Authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF DUBLIN, OHIO, as the City

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## CITY FISCAL OFFICER CERTIFICATE

The undersigned, Director of Finance of the City of Dublin, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2017 (\$0.00) under the foregoing Energy Project Cooperative Agreement have been lawfully appropriated by the City Council of the City of Dublin, Ohio for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Director of Finance  
City of Dublin, Ohio

Dated: \_\_\_\_\_, 2017

**EXHIBIT A**  
**DEFINITIONS**

As used in this Agreement, the following words have the following meanings:

“*Agreement*” means this Energy Project Cooperative Agreement, dated as of [\_\_\_\_], 2017, by and between the ESID, the Owner, the Finance Authority, and the City, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*Board*” means the Board of Directors of the ESID.

“*City*” means the City of Dublin, Ohio.

“*City Council*” means the City Council of the City.

“*Completion Date*” means the latest date on which substantial completion of the Project, in accordance with the Plans occurs, which date shall be established by the Completion Certificate attached to this Agreement as **Exhibit D**.

“*County*” means Franklin County, Ohio.

“*County Auditor*” means the Auditor of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Disbursement Request Form*” means the form attached to this Agreement as **Exhibit C**, which form shall be submitted by the Owner in order to receive disbursements from the Project Account.

“*ESID*” means the Columbus Regional Energy Special Improvement District, a nonprofit corporation and energy special improvement district organized under the laws of the State of Ohio.

“*Finance Authority*” means the Columbus-Franklin County Finance Authority, a port authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio, together with any Finance Authority Assignee.

“*Governmental Authority*” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Lender*” means any Person which has loaned money to the Owner to pay or refinance the costs of acquiring, financing, refinancing, or improving the Property and which loan is secured by a mortgage interest in the Property, or any permitted successors or assigns of such Person.

“*Notice Address*” means:

- (a) As to the City: City of Dublin, Ohio  
5200 Emerald Parkway  
Dublin, Ohio 43017  
Attention: City Manager
- (b) As to the ESID: Columbus Regional Energy Special  
Improvement District  
c/o MORPC  
111 Liberty Street, Suite 100  
Columbus, Ohio 43215  
Attention: Christina O’Keeffe

With copies to: Columbus-Franklin County  
Finance Authority  
350 E. First Avenue, Suite 120  
Columbus, Ohio 43201  
Attention: President

And: J. Caleb Bell, Esq.  
Bricker & Eckler LLP  
100 S. Third Street  
Columbus, Ohio 43215

- (c) As to the Owner Frantz Investments, LLC  
[\_\_\_\_\_]   
[\_\_\_\_\_]   
Attn: [\_\_\_\_\_]

- (d) As to the Finance Authority Columbus-Franklin County  
Finance Authority  
350 E. First Avenue, Suite 120  
Columbus, Ohio 43201  
Attention: President

“*Ordinance Levying Assessments*” means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.25 with respect to levying special assessments on real property within the ESID.

“*Ordinance to Proceed*” means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.23 with respect to levying special assessments on real property within the ESID.

“*Owner*” means Frantz Investments, LLC, a Nebraska limited liability company, and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated [\_\_\_\_], 2017 by Frantz Investments, LLC and recorded in the records of the Franklin County Recorder with respect to the Property.

“*Parties*” means the ESID, the Owner, the Finance Authority, and the City.

“*Party*” means, individually, any one of the Parties.

“*Person*” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

“*Plan*” means the Columbus Regional Energy Special Improvement District Program Plan adopted by the City of Columbus, Ohio by its Resolution No. 0261X-2015 of November 23, 2015, and any and all supplemental plans approved by the ESID and the City, including, without limitation, the Supplemental Plan.

“*Project*” means the special energy improvement project described in the Supplemental Plan with respect to the Property, for which Special Assessments are to be levied by the City, all in accordance with the Supplemental Plan.

“*Project Account*” means the segregated account in the custody of the Finance Authority for the benefit of the Owner which contains the Project Advance, and out of which disbursements may be made in accordance with Article IV of this Agreement.

“*Project Advance*” means the amount of immediately available funds to be transferred, set over, and paid to and held in the Project Account established pursuant to Section 4.1 of this Agreement for the benefit of the Owner.

“*Property*” means the real property subject to the Plan.

“*Repayment Schedule*” means the schedule attached to and incorporated into this Agreement as **Exhibit B**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

“*Required Insurance Coverage*” means, collectively, the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Finance Authority in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Finance Authority.

“*Required Property Insurance Coverage*” means at any time insurance coverage evidenced maintained with generally recognized, responsible insurance companies qualified to do

business in the State in the amount of the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Finance Authority as loss payee/mortgagee.

*“Required Public Liability Insurance Coverage”* means at any time commercial general liability insurance against claims for personal injury, death or property damage suffered by others upon, in or about any premises occupied by the Owner, which insurance coverage shall name the Finance Authority as an additional insured.

*“Resolution of Necessity”* means any resolution or ordinance passed, enacted, or adopted by the City pursuant to Ohio Revised Code Section 727.12 with respect to levying special assessments on real property within the ESID.

*“Special Assessment Act”* means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws.

*“Special Assessment Proceedings”* means, collectively, Resolution No. [\_\_\_\_\_] of the City Council adopted on [\_\_\_\_\_] , 2017 approving the Petition, the Plan, and the Supplemental Plan, Resolution No. [\_\_\_\_\_] of the City Council declaring the necessity of the Project, adopted on [\_\_\_\_\_] , 2017, Ordinance No. [\_\_\_\_\_] , determining to proceed with the Project, adopted on [\_\_\_\_\_] , 2017, and Ordinance No. [\_\_\_\_\_] , levying the Special Assessments, adopted on [\_\_\_\_\_] , 2017, with respect to levying special assessments on the Property subject to the Petition.

*“Special Assessments”* means the special assessments levied pursuant to the Special Assessment Act and the Special Assessment Proceedings by the City with respect to the Project, a schedule of which is attached to- and incorporated into the Plan.

*“State”* means the State of Ohio.

*“Supplemental Plan”* means the Supplement to Plan for 5500 Frantz Road, Dublin, Ohio Project, approved by the City Council on [\_\_\_\_\_] , 2017 by its Resolution No. [\_\_\_\_\_].



# EXHIBIT B

## REPAYMENT SCHEDULE

The Columbus-Franklin County Finance Authority  
to provide PACE financing for  
Frantz Investments LLC - 5500 Frantz Road Energy Improvement Project

Schedule II  
Energy Special Assessments on PACE Loan

Borrower Payment Date	Payment to Lender on	Principal	Interest 4.95%	Accrued Interest	ESID Admin Fee	Semiannual Assessment	Outstanding Balance
	10/4/17						\$ 546,133.00
	11/15/17	\$ -	\$ 3,078.62	\$ (3,078.62)		\$ -	549,211.62
01/31/18	06/15/18	12,569.66	13,592.99		250.00	26,402.66	536,652.16
07/31/18	11/15/18	12,870.51	13,282.14		250.00	26,402.66	523,781.65
01/31/19	06/15/19	13,189.06	12,963.60		250.00	26,402.66	510,592.59
07/31/19	11/15/19	13,515.49	12,637.17		250.00	26,402.66	497,077.10
01/31/20	06/15/20	13,850.00	12,302.66		250.00	26,402.66	483,227.10
07/31/20	11/15/20	14,192.78	11,959.87		250.00	26,402.66	469,034.32
01/31/21	06/15/21	14,544.06	11,608.60		250.00	26,402.66	454,490.26
07/31/21	11/15/21	14,904.02	11,248.63		250.00	26,402.66	439,586.24
01/31/22	06/15/22	15,272.90	10,879.76		250.00	26,402.66	424,313.34
07/31/22	11/15/22	15,650.90	10,501.76		250.00	26,402.66	408,662.44
01/31/23	06/15/23	16,038.26	10,114.40		250.00	26,402.66	392,624.18
07/31/23	11/15/23	16,435.21	9,717.45		250.00	26,402.66	376,188.97
01/31/24	06/15/24	16,841.98	9,310.68		250.00	26,402.66	359,347.00
07/31/24	11/15/24	17,258.62	8,893.84		250.00	26,402.66	342,088.18
01/31/25	06/15/25	17,685.97	8,466.68		250.00	26,402.66	324,402.20
07/31/25	11/15/25	18,123.70	8,028.95		250.00	26,402.66	306,278.50
01/31/26	06/15/26	18,572.26	7,580.39		250.00	26,402.66	287,706.24
07/31/26	11/15/26	19,031.93	7,120.73		250.00	26,402.66	268,674.31
01/31/27	06/15/27	19,502.97	6,649.69		250.00	26,402.66	249,171.35
07/31/27	11/15/27	19,985.66	6,166.99		250.00	26,402.66	229,185.68
01/31/28	06/15/28	20,480.31	5,672.35		250.00	26,402.66	208,705.37
07/31/28	11/15/28	20,987.20	5,165.46		250.00	26,402.66	187,718.18
01/31/29	06/15/29	21,506.63	4,646.02		250.00	26,402.66	166,211.55
07/31/29	11/15/29	22,038.92	4,113.74		250.00	26,402.66	144,172.63
01/31/30	06/15/30	22,584.38	3,568.27		250.00	26,402.66	121,588.24
07/31/30	11/15/30	23,143.35	3,009.31		250.00	26,402.66	98,444.90
01/31/31	06/15/31	23,716.14	2,436.51		250.00	26,402.66	74,728.75
07/31/31	11/15/31	24,303.12	1,849.54		250.00	26,402.66	50,425.63
01/31/32	06/15/32	24,904.62	1,248.03		250.00	26,402.66	25,521.01
07/31/32	11/15/32	25,521.01	631.65		250.00	26,402.66	0.00
<b>Totals</b>		<b>\$ 549,211.62</b>	<b>\$ 238,446.67</b>	<b>\$ (3,078.62)</b>	<b>\$ 7,500.00</b>	<b>\$ 792,079.67</b>	

## **EXHIBIT C**

### **DISBURSEMENT REQUEST FORM**

**STATEMENT NO. [ ] REQUESTING AND  
AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT  
TO SECTION 4.2 OF THE ENERGY PROJECT  
COOPERATIVE AGREEMENT DATED AS OF [ ],  
2017.**

**Amount Requested: \$ \_\_\_\_\_**

Pursuant to Section 4.2 of the Energy Project Cooperative Agreement dated as of [ ], 2017 (the “Agreement”) among the ESID, the Owner, and the Finance Authority, the undersigned authorized representative of Frantz Investments, LLC, as the Owner under the Agreement, hereby requests the Finance Authority having custody of the Project Account, to pay to the Owner or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the “Disbursement Schedule”), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Project Account for the advances, payments and expenditures made in connection with the costs of the Project described in the Disbursement Schedule, all in accordance with Section 4.2 of the Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Agreement).

In connection with this request and authorization (the “Disbursement Request”), the undersigned hereby certifies that:

- (i) each of the representations and warranties made by the Owner in the Agreement remains true and correct, in all material respects, as of the date of this Disbursement Request and no Event of Default by the Owner under the Agreement exists;
- (ii) each item for which disbursement is requested by this Disbursement Request is properly payable out of the Project Account in accordance with the terms and conditions of the Agreement and, except as otherwise noted, none of those items has formed the basis for any disbursement heretofore made from the Project Account;
- (iii) to the extent any portion of the payment requested is for construction work, the Owner has received and herewith delivers to the Finance Authority, conditional waivers of any mechanics’ or other liens with respect to such work;
- (iv) this Disbursement Request and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Finance Authority for its actions taken pursuant hereto; and
- (v) this Disbursement Request constitutes the approval of the Owner of each disbursement hereby requested and authorized.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of  
Owner

Approved in accordance with the Agreement:

Columbus-Franklin County Finance Authority,  
as the Finance Authority:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**SCHEDULE 1 TO DISBURSEMENT REQUEST FORM**

Payee	Amount	Purpose

## **EXHIBIT D**

### **FORM OF COMPLETION CERTIFICATE**

Frantz Investments, LLC (the “Owner”) hereby certifies that the Project, as such term is defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the Columbus Regional Special Improvement District, Inc., the City of Dublin, Ohio and the Columbus-Franklin County Finance Authority (the “Finance Authority”) dated as of [\_\_\_\_\_], 2017 (the “Agreement”) has been completed at 5500 Frantz Road, Dublin, Ohio (the “Property”) in strict compliance with the requirements of the Agreement.

Note: Capitalized terms used but not defined in this Completion Certificate have the meaning assigned to them in the Agreement to which a form of this Completion Certificate is attached and of which it forms a part.

#### **THE OWNER HEREBY CERTIFIES:**

(a) That the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed on \_\_\_\_\_;

(b) That all other facilities necessary in connection with the Project have been acquired or are otherwise available to the Owner;

(c) That the acquisition, construction, equipping, installation, and improvement of the Project and those other facilities have been accomplished in such a manner as to conform with all applicable zoning, planning, building, environmental, and other similar governmental regulations;

(d) That except as provided in clause (e) below, all costs of that acquisition, construction, equipping, installation, and improving then or theretofore due and payable have been paid; and

(e) The amounts, if any, the Finance Authority shall retain in the Project Account for the payment of costs not yet due or for liabilities that the Owner is contesting or which otherwise should be retained and the reasons such amounts should be retained.

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NOTICE: DO NOT SIGN THIS COMPLETION CERTIFICATE UNLESS YOU AGREE TO EACH OF THE ABOVE STATEMENTS.

Frantz Investments, LLC, as Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT E**

**CLOSING COSTS DETAIL**

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Finance Authority shall disburse to the respective payee set forth below, the following closing costs:

PAYEE	AMOUNT	REASON
Bricker & Eckler LLP	\$10,000.00	Counsel to the Investor fee
DiPerna Advisors	3,500.00	Investor Financial Advisor fee
Columbus-Franklin County Finance Authority	3,500.00	Investor's closing fee
Columbus Regional Energy Special Improvement District	1,250.00	ESID closing fee (0.25%)
The Huntington National Bank	1,000.00	Disbursing Agent fee
City of Dublin, Ohio	1,000.00	City Legal fee
<b>TOTAL</b>	<b>\$20,250.00</b>	

**EXHIBIT F**  
**CONSENT OF MORTGAGEE**

[See Attached]

**EXHIBIT G**

**FORM OF ASSIGNMENT AND ASSUMPTION OF ENERGY PROJECT  
COOPERATIVE AGREEMENT**

ASSIGNMENT AND ASSUMPTION  
OF  
ENERGY PROJECT COOPERATIVE AGREEMENT

[\_\_\_\_\_] (“Assignor”), in consideration of the sum of \$[\_\_\_\_\_] in hand paid and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Assignor’s execution of this Assignment and Assumption of Energy Project Cooperative Agreement (“Assignment”), assigns, transfers, sets over, and conveys to [\_\_\_\_\_] (“Assignee”) all of Assignor’s right, title, and interest in and to that certain Energy Project Cooperative Agreement dated as of [\_\_\_\_\_] 2017 between the Columbus Regional Energy Special Improvement District, Assignor, the Columbus-Franklin County Finance Authority, and the City of Dublin, Ohio (the “Energy Project Cooperative Agreement”).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Energy Project Cooperative Agreement. Assignee further represents and warrants that it has taken title to the “Property,” as that term is defined in the Energy Project Cooperative Agreement, subject to the Special Assessment Agreement dated as of even date with the Energy Project Cooperative Agreement between the Franklin County Treasurer, the City of Dublin, Ohio, the Columbus Regional Energy Special Improvement District, and Frantz Investments, LLC (the “Special Assessment Agreement”) and to the “Owner Consent” dated [\_\_\_\_\_] 2017 by Frantz Investments, LLC and recorded in the records of the Franklin County Recorder with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Special Assessment Agreement and the Owner Consent.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the City, the Finance Authority, and the ESID, as each of those terms are defined in the Energy Project Cooperative Agreement, all in accordance with Sections 3.4(a) and 6.7 of the Energy Project Cooperative Agreement

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this \_\_\_\_\_ day of \_\_\_\_\_, [\_\_\_\_\_] 2017, which Assignment is effective this date. This Assignment may be executed in any number of counterparts, which when taken together shall be deemed one agreement.

[Signature Pages Follow]

ASSIGNOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **[EXHIBIT H**

### **FEDERAL LAW PROVISIONS SUMMARY**

*The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (“Recovery Act” or “ARRA”) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use loan funds in a manner that maximizes job creation and economic benefit.*

*Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as set forth below.*

*None of the funds provided under this Agreement derived from the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.*

1. *Timely and Accurate Reporting.* *Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to comply with all reporting requirements outlined in Section 1512 of ARRA and such additional reporting guidance as may be issued from time to time. Each Energy Loan Loss Reserve Project Beneficiary’s reporting must be sufficient to support the requirements of the Contracting Party to make timely and accurate reports to the federal agency from which the Contracting Party receives ARRA funds. Each Contracting Party’s reports to the federal agency are due no later than ten (10) calendar days after each calendar year in which Contracting Party receives assistance funded in whole or in part by ARRA funds. Contracting Party’s annual reporting requirements include the amount of ARRA funds received; the amount of ARRA funds expended or obligated; detailed list of all projects or activities for which the ARRA funds were expended; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and detailed information concerning subcontracts or sub-loans including the state Ohio. Information from such reports will be made available to the public.*
- a. *Separate Tracking and Reporting.* *Section 1512 of ARRA mandates special reporting for expenditure of ARRA funds. ARRA funds may be used in conjunction with funds from other sources, including federal funds not provided under the authority of ARRA and State funds, to complete the Project, but tracking and reporting of ARRA funds must be separate from tracking and reporting of other funds used for the Project. The Contracting Party cause each Energy Loan Loss Reserve Project Beneficiary to ensure that the loan of ARRA funds is established and maintained in its accounting system to accommodate tracking and reporting of ARRA funds separate from other revenue streams.*



- b. Separate Accounts for ARRA Funds. Contracting Party shall deposit and maintain funds provided under the authority of ARRA in separate accounts. No part of the ARRA funds shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.
- c. Identification of ARRA Funds with “ARRA-” Prefix. If Contracting Party is subject to the requirements of the Single Audit Act Amendments of 1996 and OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” Contracting Party shall separately identify the expenditures of funds provided under the authority of ARRA on the Schedule of Expenditures of Federal Awards (“SEFA”) and, if required, the Data Collection Form (SF-SAC). The separate identification shall be accomplished by identifying expenditures of ARRA funds separately on the SEFA and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number and by including the prefix “ARRA-” in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.
- d. Central Contractor Registration. During the term of this Agreement, Contracting Party shall maintain a current registration in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)). A Dun and Bradstreet Universal Numbering System (DUNS) Number ([www.dnb.com](http://www.dnb.com)) is one of the requirements for registration in the Central Contractor Registration.
- e. State of Ohio Reporting Form. Each Energy Loan Loss Reserve Project Beneficiary shall complete and provide to Contracting Party the “OBM, Ohio Energy Loan Loss Reserve Project Beneficiary and Sub-Recipient Spending Report in Compliance with ARRA Sec. 1512.” The State of Ohio must report information described in Section 1512 of ARRA using the reporting instructions and data elements that are provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov) and ensure that any information that is pre-filled is corrected or updated as needed. Accordingly, each Energy Loan Loss Reserve Project Beneficiary shall provide to Contracting Party as promptly as possible and within the time required for the State to comply with reporting requirements any information needed by the State to complete the online reporting.
- f. Monthly Reporting. The Energy Loan Loss Reserve Project Beneficiary shall report its performance and spending under the Agreement monthly as provided in the Agreement notwithstanding that the Contracting Party will report quarterly to federal agencies. In order to comply with reporting deadlines to which the Contracting Party may be subject, the Contracting Party reserves the right to accelerate the deadline for reports required from each Energy Loan Loss Reserve Project Beneficiary.
- g. Jobs Created and Retained. The Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to report the number of jobs created and retained directly by each Energy Loan Loss Reserve Project Beneficiary and by each of its contractors as a result of the ARRA funding provided pursuant to this Agreement as well as an estimate of jobs created or retained elsewhere as a result of ARRA

*funding.*

(1) *“Jobs or positions created” means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of ARRA funding. “Jobs or positions retained” means those previously existing filled positions that are retained as a result of ARRA funding. This description may rely on job titles, broader labor categories, or the contractor’s existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.*

(2) *For purposes of estimating the number of jobs created and jobs retained in the United States and outlying areas, at a minimum, the estimate shall include any new positions created and any existing filled positions that were retained to support or carry out ARRA projects or activities managed directly by the recipient, and if known, by subrecipients. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the recipient. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.*

(3) *A job cannot be reported both as created and retained.*

(4) *Additional guidance will be provided for reporting jobs created and retained.*

a. *Additional or Modified Reporting Requirements. The Contracting Party may, from time to time as it deems appropriate and necessary, communicate specific instructions and requests to each Energy Loan Loss Reserve Project Beneficiary concerning any additional reporting requirements related to the ARRA funds received under this Agreement.*

b. *Information in Support of ARRA Reporting. Contracting Party may be required to submit back-up documentation for expenditures of ARRA funds, including such items as timecards and invoices. Each Energy Loan Loss Reserve Project Beneficiary shall provide copies of back-up documentation at the request of Contracting Party or USDOE Contracting Officer or designee.*

2. *Accessibility to Records and Project Sites.*

a. *Comptroller General of the United States Authority to Inspect. Pursuant to Section 902 of ARRA, the Comptroller General of the United States and his representatives have the authority to:*

(1) *Examine any records of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary and any contractor and subcontractors of the Contracting Party or Energy Loan Loss Reserve Project Beneficiary that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and*

(2) *Interview any officer or employee of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary or any of its contractors or*

*subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and*

(3) *Designate a time and place to examine those records and interview those officers and employees described above.*

b. *Inspector General Authority to Inspect. Pursuant to Section 1515(a) of ARRA, an Inspector General or any representative of an Inspector General has the authority to:*

(1) *Examine any records of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, and any contractor and subcontractors of the Contracting Party or Energy Loan Loss Reserve Project Beneficiary that directly pertain to, and involve transactions relating to, the contract or subcontract, or of any State or local agency administering such contract; and*

(2) *Interview any officer or employee of the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, or any of its contractors or subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and*

(3) *Designate a time and place to examine those records and interview those officers and employees described above.*

c. *Duty to Incorporate in Contracts. To facilitate access to records and personnel by the Comptroller General and/or an Inspector General as described in paragraphs (a) and (b), the Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to include verbatim in any agreement with a contractor, and shall cause each of its contractors to include verbatim in any agreement with a subcontractor, from which the Energy Loan Loss Reserve Project Beneficiary or a contractor acquires any goods or services for the Project the language set forth in paragraphs (a) and (b) of this Section 2.*

3. *Equal Employment Opportunities.*

a. *Compliance with Federal Laws. In addition to the Contracting Party's equal employment opportunity requirements set forth in the Agreement, the Contracting Party shall cause each Energy Loan Loss Reserve Project Beneficiary to comply, and each Energy Loan Loss Reserve Project Beneficiary shall obtain the agreement of each of its contractors and any subcontractors to comply, with all of the following federal laws pertaining to civil rights and anti-discrimination:*

*Title VI & Title VII of Civil Rights Act of 1964*

*Equal Pay Act of 1962*

*Age Discrimination in Employment Act of 1967*

*Title IX of Educational Amendments of 1972*

*Section 504 of the Rehabilitation Act of 1973*

*Age Discrimination Act of 1975*

*Title I & Title V of Americans with Disabilities Act of 1990  
Fair Housing Act  
Fair Credit Reporting Act  
Equal Educational Opportunities Act  
Uniform Relocation Act*

*Failure by the Contracting Party and each Energy Loan Loss Reserve Project Beneficiary to comply with these laws shall constitute a breach of a material obligation of the Contracting Party and may result in termination of the Agreement.*

- b. Implementation Plan for Small and Disadvantaged Businesses. Each Energy Loan Loss Reserve Project Beneficiary shall provide the Contracting Party an implementation plan for training and hiring minority and disadvantaged workers. Each Energy Loan Loss Reserve Project Beneficiary shall also demonstrate to the Contracting Party that when contactors are being hired by the Energy Loan Loss Reserve Project Beneficiary, if applicable, small disadvantaged business enterprises are offered opportunities to bid on and receive contracted work on the Project. Information about the Energy Loan Loss Reserve Project Beneficiary's outreach to small and disadvantaged business enterprises shall be provided to the Contracting Party when contracts are presented for review and approval in accordance with Section 1 of this Appendix.*
- 4. Job Postings. The Contracting Party shall post all jobs created by the Energy Loan Loss Reserve Project Beneficiary resulting from the award of the contract and the use of ARRA funds on [www.ohiomeansjobs.com](http://www.ohiomeansjobs.com). The Contracting Party shall also cause each Energy Loan Loss Reserve Project Beneficiary to require each of its contractors to post all jobs created by the contractor resulting from the award of this contract and the use of ARRA funds on [www.ohiomeansjobs.com](http://www.ohiomeansjobs.com). "Jobs created" are those positions created and filled or previously existing unfilled positions that are retained as a result of ARRA funding.*
- 5. Protections for Individuals Reporting Compliance Issues (Whistleblower Protection).*
  - a. Prohibition on Reprisals: Pursuant to Section 1553 of ARRA, the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, and each of its contractors and any subcontractors are prohibited from discharging, demoting, or otherwise discriminating against any employee of the Contracting Party, contractor or subcontractor, as a reprisal for disclosing information that the employee reasonably believes is evidence of:*
    - (1) gross mismanagement of the contract relating to funds for the Project;*
    - (2) gross waste of ARRA funds;*
    - (3) substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;*
    - (4) an abuse of authority related to the implementation of or use of ARRA funds;*  
*or*

- (5) *a violation of law, rule, or regulation related to the contract (including the competition for or negotiation of the contract) relating to ARRA funds.*
- b. *Agency Action: ARRA authorizes an appropriate inspector general to receive and investigate all complaints alleging a violation as described in paragraph (a) of this section. Not later than 30 days after receiving an inspector general report of an alleged reprisal, the federal agency loaning funds for this Agreement is required to make a determination about whether an employee has been subjected to a prohibited reprisal. The federal agency must either issue an order denying relief in whole or in part or take one or more of the following actions:*
  - (1) *order the employer to take affirmative action to abate the reprisal;*
  - (2) *order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken;*
  - (3) *order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.*
- c. *Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by ARRA Section 1553 may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of the circumstances for which employees are protected by Section 1553.*
- d. *Requirement to Post Notice of Rights and Remedies: All employers receiving ARRA funds, including the Contracting Party, each Energy Loan Loss Reserve Project Beneficiary, its contractors and any subcontractors, shall post notice of employee rights as described above in conspicuous locations with other required employee rights information.*
6. *False Claims Act. Contracting Party shall promptly refer to the USDOE Inspector General or any other appropriate inspector general any credible evidence that a principal, employee, agent, contractor, Contracting Party, Energy Loan Loss Reserve Project Beneficiary subcontractor or other person has submitted a false claim under the False Claim Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving any Loan Funds.*
7. *Availability of Funds. Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs pursuant to the SEP-ARRA program.*

*Publication. Information about this Agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the federal Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code (the Freedom of Information Act).]*

SPECIAL ASSESSMENT AGREEMENT

by and among

COUNTY TREASURER OF FRANKLIN COUNTY, OHIO  
("Treasurer"),

And

CITY OF DUBLIN, OHIO  
("City"),

And

COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT  
("District"),

And

FRANTZ INVESTMENTS, LLC  
("Owner")

Dated as of [\_\_\_\_\_], 2017



## SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [\_\_\_\_], 2017, by and among the County Treasurer of Franklin County, Ohio (the “Treasurer”), the City of Dublin, Ohio (the “City”), the Columbus Regional Energy Special Improvement District (“District”), and Frantz Investments, LLC (the “Owner”).

### BACKGROUND:

WHEREAS, the District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution No. 0261X-2015 of the Council of the City of Columbus, Ohio approved on November 23, 2015; and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition and installation and subsequent operation of certain improvements, including but not limited to the acquisition, construction, installation, improvement, and equipping of interior high-efficiency LED lighting upgrades, exterior high-efficiency LED lighting upgrades, DDC controls, boiler upgrades, variable speed pumping, and related improvements (collectively, the “Project”) on the real property located within Franklin County, Ohio (the “County”) and the City, and as more fully described in Exhibit A to this Agreement (the “Property”); and

WHEREAS, pursuant to Resolution No. [\_\_\_\_] of the Council of the City (the “Council”), approved on [\_\_\_\_], 2017, and Resolution No. [\_\_\_\_] of the Council of the City of Columbus, Ohio, approved on [\_\_\_\_], 2017, the Property were added to the territory of the District; and

WHEREAS, the costs of the Project are being funded through an advance in the amount of \$546,133 (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [\_\_\_\_], 2017 between the Columbus-Franklin County Finance Authority (the “Finance Authority”), the District, the Owner, and the City (the “Energy Project Cooperative Agreement”); and

WHEREAS, to secure the payment of the principal of, and any premium and unpaid interest on the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner has signed and delivered to the Clerk of Council a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”), for the acquisition, construction, installation, equipping and improvement of the Project and evidencing the Owner’s agreement to the levy and collection of special assessments by the City (the “Special Assessments”) on the Property, which are located within the District in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Chapter 727 of the Ohio Revised Code, including, without limitation, the passage of the assessing ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Franklin County, Ohio (the “County Auditor”) for collection by the Treasurer in semi-annual installments, and (b) hereby has

agreed to transfer to the District the payments of Special Assessments received, which payments are to be transferred to the District to pay the Project Costs; and

WHEREAS, the Owner agrees that its delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the parties to this Agreement have acted and will act in reliance on the agreements contained in the Petition; and

WHEREAS, pursuant to the Petition, the Special Assessments have been levied against the Property as described in the Petition and pursuant to this Agreement the Owner is willing to agree to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Chapters 323 and 5721 of the Ohio Revised Code set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid; and

WHEREAS, upon the occurrence of an Event of Default pursuant to the Energy Project Cooperative Agreement, it may be necessary for the District to foreclose on the lien of the Special Assessments with respect to the Property as set forth in Section 1 of this Agreement; and

WHEREAS, in consideration of the Project Advance, the Owner is willing to consent to an expedited foreclosure process with respect to the lien of the Special Assessments, the form of the consent being attached hereto as Exhibit B (the "Owner Consent") and the Owner Consent with respect to the foreclosure of the Special Assessments as soon as possible (as referenced in Section 1 hereof) shall be a covenant running with the Property and binding upon the Owner and upon future owners of the Property until Project Costs are paid in full; and

WHEREAS, based on the Owner Consent and other considerations, at the request of the District, upon the occurrence of an Event of Default under the Energy Project Cooperative Agreement, the Treasurer has agreed to foreclose the lien of the Special Assessments as soon as possible as described herein; and

WHEREAS, if any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Property are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the "Delinquent Tax Lien Sale Act"), specifically Ohio Revised Code Section 5721.33, may, in his discretion, but is not required to, negotiate with one or more persons the sale of any number of tax certificates ("Tax Certificates") which evidence the liens (the "Tax Liens") of the State of Ohio (the "State") and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Property; and

WHEREAS, pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in his discretion, may sell such Tax Certificates at a discount from the full amount of the general real estate taxes, assessments, including the Special Assessments, penalties and interest that have become delinquent; and

WHEREAS, if the Treasurer were to sell such Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of such sale representing the delinquent Special Assessments might be insufficient to pay the Project Costs; and

WHEREAS, the Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District; and

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default under the Energy Project Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the Property and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and desiring to be legally bound hereunder, the parties hereto covenant and agree as follows:

Section 1.     Special Assessments.

1.1     The Owner, prior to the execution and delivery of this Agreement, has signed and delivered to the Clerk of Council the Petition for the acquisition, construction, installation, equipping and improvement of the Project and evidencing the agreement of the Owner to the levy and collection of the Special Assessments as security for the Project Advance. The Owner agrees that its delivery of the Petition and the requests and agreements made therein are irrevocable and that the parties hereto have acted and will act in reliance on the agreements contained in that Petition. The City has duly enacted Resolution No. \_\_\_\_, Ordinance No. \_\_\_\_, and Ordinance No. \_\_\_\_ (the "Assessing Ordinance") to provide for the levy and collection of the Special Assessments on the Property. The Clerk of Council certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2     The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor pursuant to the requirements of Section 727.33 of the Ohio Revised Code.

1.3     In the event the Project Advance is prepaid or redeemed, in whole or in part, the parties shall, in cooperation with the Owner, and to the extent permitted by law, cause the aggregate lien of the Special Assessments to be no greater than the remaining principal of and interest and premium, if any, on the Project Advance through maturity.

1.4 To the extent that the Owner prepays any of the required payments pursuant to the Energy Project Cooperative Agreement, then the amounts of the Special Assessments shall be reduced in accordance with the Assessment Schedule attached to the Petition.

1.5 To secure payments made on the Project Advance, the City hereby assigns to the District all of its rights, title to, and interest in the Special Assessments to be levied with respect to the Project Costs. As long as the Project Advance shall be outstanding and amounts shall be due and owing under the Energy Project Cooperative Agreement with respect to the Project Advance, the City assigns to the District all of its right, title and interest in and to, and grants to the District a security interest in, the Special Assessments received by the City and in the City's related special assessment fund. The District, as assignee of the City, is hereby authorized to take any and all such actions as assignee of and, to the extent required by law, in the name of and for and on behalf of the City, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement and the Energy Project Cooperative Agreement. The Treasurer, the City, the District, and the Owner each hereby acknowledges, agrees with, and consents to those assignments.

1.6 The City, upon receipt of any moneys received by the City as Special Assessments, but in any event not later than fifteen (15) calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, shall deliver to the District all such moneys received by the City as Special Assessments. The City's obligation to transfer the Special Assessments to the District shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the District, the Owner, or any other person; provided, however, that the City's obligation to transfer special assessments is limited to the Special Assessments actually received by the City from the County Auditor. The District may from time to time provide written payment instructions to the City for payment of Special Assessments by check, wire instructions, or other means.

1.7 Notwithstanding anything in this Agreement to the contrary, the Treasurer's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer's obligations shall be limited to the moneys levied, collected and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County.

1.8 Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of

any moneys raised by taxation. The City's obligation under this Agreement shall be limited to any moneys received from the County in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City.

## Section 2.     Foreclosure Process.

2.1     The Treasurer, the City and the Owner each acknowledge that the Special Assessments are to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Energy Project Cooperative Agreement. The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs thereon, and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, upon the Treasurer's receipt of written notice from the District, with a copy to the Owner, and the City that an Event of Default (as defined under the Energy Project Cooperative Agreement) has occurred and is continuing and which notice directs Treasurer to foreclose on the lien of the Special Assessments, the Treasurer will, not later than thirty (30) days from the date of the receipt of such notice, file and diligently prosecute a foreclosure action against the Property, following the procedures for lien foreclosures established in Ohio Revised Code § 323.25 and related sections. The foreclosure action shall be to collect all Special Assessments then due and owing on the Property in accordance with the Petition. Without the prior written consent of the District, the Treasurer will not confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the District to the Treasurer pursuant to the records of the Treasurer. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner.

2.2     The Treasurer hereby acknowledges that the District has an interest in the Special Assessments and the Treasurer hereby agrees that so long as the Project Advance is outstanding and the Project Costs thereon and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will not sell or negotiate the sale of one or more Tax Certificates related to the Property for an amount less than 100% of the amount levied and certified for collection without the prior written consent of the District.

2.3     The Treasurer hereby covenants and agrees that if any of the general real estate taxes, payments in lieu of taxes, assessments, including the Special Assessments, governmental charges, or penalties and interest on the Property are delinquent and the Delinquent Tax Lien Sale Act would permit the Treasurer to negotiate the sale of Tax Certificates with respect thereto, the Treasurer will, prior to giving any notice under the Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to the Property, give written notice to the District regarding the same and state therein whether the Treasurer reasonably anticipates receiving no less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, originally levied and certified for collection plus other

charges, including attorney's fees, or whether the Treasurer reasonably expects to receive less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, levied and certified for collection plus other charges, including attorney's fees, and in accordance with this Agreement is requesting the consent of the District for such a sale.

2.4 The Treasurer agrees, on behalf of the County, not to utilize the authority contained in Ohio Revised Code Chapter 5722 to transfer any of the Property to the county land reutilization corporation, to sell or convey any of the Property to any political subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the liens and encumbrances applicable to the Property under the authority contained in Ohio Revised Code Chapter 5722 without the express written consent of the District.

2.5 Nothing in this Agreement shall, or shall be construed to, prevent the Treasurer from selling one or more Tax Certificates with respect to the Property to a third party without the consent of the District if the price received for the Tax Certificate or Tax Certificates equals or exceeds 100% of the delinquent general real estate taxes, assessments, including the Special Assessments, penalties and interest on the Property outstanding against the Property at the time of such sale.

2.6 The District hereby agrees that upon written notice from the Treasurer pursuant to Section 2.1 of this Agreement, it, within thirty (30) days of receipt of the Treasurer's notice, shall give a written response to the Treasurer indicating therein whether it consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 No delay or failure of the District to give a written response shall be construed to be a consent to such request or to be a waiver of the right to give such consent. No consent or refusal thereof by the District in response to a request by the Treasurer shall extend to or affect any subsequent request of the Treasurer or shall impair the rights of the District with respect any such subsequent request.

2.8 So long as the Project Costs are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the District, as appropriate and as provided for herein, not more than thirty (30) days from the date of collection by the Treasurer, all Special Assessments collected from the Property, including amounts collected from Tax Certificates; and (b) to the extent the Treasurer seeks and is appointed as receiver for the Property, as provided for in Chapter 323 of the Revised Code, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer, as receiver for the Property and collected as a result of the Special Assessments, shall be remitted to the District.

### Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, and their respective officers, directors and employees (the "Indemnified Parties"), from, agrees that the Indemnified Parties, shall not be liable for, and indemnifies the Indemnified Parties against, all

liabilities, claims, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against Indemnified Parties, on account of: (i) the levy and collection of the Special Assessments; (ii) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, installation, equipment, improvement maintenance, operation and use of the Project; (iii) any breach or default on the part of the Owner in the performance of any covenant, obligation or agreement of the Owner under the Energy Project Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner's agents, contractors, servants, employees or licensees; (iv) the Owner's failure to comply with any requirement of this Agreement; (v) the efforts of the City and the Treasurer to collect Special Assessments; (vi) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Energy Project Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); (vii) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), (v) or (vi) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost or expenses arises out of or results from the willful misconduct or breach of this Agreement or the Energy Project Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, agrees to pay, and hold each of the Indemnified Parties harmless, from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees, arising out of any federal, state or local environmental laws, regulations or ordinances, incurred by any of the Indemnified Parties as a result of the existence on, or release from the Project Site of Hazardous Materials which in any way result from any act of omission or commission of the Owner or any of their agents, employees, independent contractors, invitees, licensees, successors, assignees or tenants.

#### Section 4. Additional Agreements and Covenants.

4.1 The agreements of the parties hereafter with respect to the foreclosure process shall be a covenant running with the Property and, so long as Project Costs are payable from or secured, at least in part, by the revenues derived from the Special Assessments, such covenant shall be binding upon the Property (except as released as provided in the Owner Consent), the Owner and any future owner of all or any portion of the Property. This Agreement, the Owner Consent, and all other required documents and agreements, shall be recorded with the Franklin County, Ohio Recorder's Office, so that the agreements of the parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Property.

4.2 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.3 This Agreement shall inure to the benefit of each of the parties, and each of their successors and assigns, all subject to the provisions of this Agreement. This Agreement may



be amended only by a written instrument of the parties, and any attempt to amend or modify this Agreement without a written instrument signed by all of the parties to this Agreement shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the parties as follows:

If to City:                   City of Dublin, Ohio  
5200 Emerald Parkway  
Dublin, Ohio 432017  
Attention: City Manager

If to Treasurer:           County Treasurer  
Franklin County, Ohio  
373 S. High Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
Attention: Ron Hagan

If to the District:       Columbus Regional Energy Special Improvement District, Inc.  
c/o MORPC  
111 Liberty Street, Suite 100  
Columbus, Ohio 43215  
Attention: Christina O’Keeffe

With a Copies to:       Columbus-Franklin County Finance Authority  
350 East First Street, Suite 120  
Columbus, Ohio 43201  
Attention: President

And:                       J. Caleb Bell  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

If to Owner:              Frantz Investments, LLC  
[\_\_\_\_\_]   
[\_\_\_\_\_]   
Attn: [\_\_\_\_\_]

4.4       This Agreement shall be construed in accordance with the laws of the State of Ohio.

4.5       This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

4.6 The Parties hereby acknowledge and agree that this Agreement does not constitute a contract involving the expenditure of money by the County.

(Signature Pages Immediately Follow)



“CITY”  
CITY OF DUBLIN, OHIO

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO )  
 ) SS:  
COUNTY OF FRANKLIN )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named CITY OF DUBLIN, OHIO by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he or she did sign the foregoing instrument and that the same is his or her free act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public

[SEAL]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

[SEAL]



FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Dublin, Ohio, hereby certifies that the City has established a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
Director of Finance  
City of Dublin, Ohio

EXHIBIT A

DESCRIPTION OF PROPERTY

The Property subject to this Agreement is located at the commonly used address 5500 Frantz Road, Dublin, Ohio, with Franklin County Auditor Parcel ID No. 273-005366-00, and having the following legal description:

[Insert Legal Description]



## EXHIBIT B

### FORM OF OWNER CONSENT

This consent is given by Frantz Investments, LLC, a Nebraska limited liability company registered to do business in the State of Ohio (the “Owner”) pursuant to the Special Assessment Agreement dated as of [\_\_\_\_\_], 2017 (the “Agreement”) by and among the County Treasurer of Franklin County, Ohio (the “Treasurer”), the City of Dublin, Ohio (the “City”), the Columbus Regional Energy Special Improvement District (the “District”) and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an accelerated foreclosure process with respect to the Special Assessments on the Property, such Property being described in the Exhibit A to the Agreement. The Agreement further provides that if an event of default occurs and is continuing with respect to a required semi-annual payment of Special Assessments or an “Event of Default” (as that term is defined in the Energy Project Cooperative Agreement) under the Energy Project Cooperative Agreement occurs and is continuing, the Treasurer will pursue an accelerated foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the accelerated foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Property, as provided in the Agreement.

The Owner is the owner of the Property. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the Finance Authority, as applicable, in writing, the accelerated foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Property, the Owner and all future owners of the Property. Any release, modification or waiver of the covenant running with the land by the District or the Finance Authority, as applicable, shall be filed of record with the Franklin County, Ohio Recorder’s Office. The Owner agrees that this Owner Consent shall be recorded with the Franklin County, Ohio Recorder’s Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the accelerated foreclosure process with respect to the lien of the Special Assessments is a covenant on and running with the Property and is binding on the Owner and any and all future owners of all or any portion of the Property.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

(Signature Page Immediately Follows)

IN WITNESS WHEREOF, the Owner has executed and delivered this Owner Consent as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

“OWNER”  
FRANTZ INVESTMENTS, LLC,  
a Nebraska limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named FRANTZ INVESTMENTS, LLC by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as such officer and of said corporation/company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

[SEAL]

This instrument prepared by:  
J. Caleb Bell, Esq.  
Bricker & Eckler LLP  
100 South Third St.  
Columbus, Ohio 43215

**Description of Property**

The Property subject to this Agreement is located at the commonly used address 5500 Frantz Road, Dublin, Ohio, with Franklin County Auditor Parcel ID No. 273-005366-00, and having the following legal description:

[Insert Legal Description]