



To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager

Date: February 16, 2021

Initiated By: Colleen Gilger, CECd, Director of Economic Development
Sara O'Malley, Economic Development Administrator

Re: Ordinances 48-20, 49-20, and 50-20 for Property Assessed Clean Energy (PACE)
Special Improvement for 600 Metro Place North

Background

The building ownership for 600 Metro Place North requested the use of PACE financing assessments totaling \$8,732,416.80 for the retrofit and conversion of a former Crowne Plaza hotel into a DoubleTree hotel by Hilton. As part of this process, the two resolutions were approved at the City Council meeting on Nov. 16, 2020. The three ordinances were tabled, at the request of the applicant, at the second reading/public hearing on Dec. 7, 2020. At the Council Meeting on Feb. 8 2021, building ownership requested Ordinances 48-20, 49-20, and 50-20 be removed from the table and scheduled for second reading/public hearing on February 22, which was approved, in order to move forward with the PACE project.

Process

PACE allows qualifying energy improvements to be financed through special assessments on a property owner's real estate tax bill. To satisfy this request, Dublin City Council must pass a series of two resolutions and three ordinances:

- The first resolution approves the owner's petition to the City to levy special assessments. (Approved Nov. 16, 2020)
- The second resolution and two of the ordinances, provide for the steps set forth in the Ohio Revised Code for levying special assessments. (Resolutions approved Nov. 16, 2020; Ordinances were introduced)
- The last ordinance approves the transaction documents. (Introduced Nov. 16, 2020)

This process, while detailed, follows the requirements of the Ohio Revised Code and City's Charter. The City has no financial obligations with any PACE project and serves only as a pass-through entity for financing.

Recommendation

Staff recommends Council approve Ordinances 48-20, 49-20, and 50-20 on Feb. 22, 2021. Please contact Sara O'Malley with any questions.

50-20 (AMENDED)

**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, INC., DUBLIN WITNESS,
LLC, AND TWAIN COMMUNITY PARTNERS III LLC, 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, INC., DUBLIN WITNESS,
LLC, AND TWAIN COMMUNITY PARTNERS III LLC,
AND RELATED AGREEMENTS, ALL OF WHICH
PROVIDE FOR THE FINANCING OF SPECIAL
ENERGY IMPROVEMENTS PROJECTS (600 METRO
PLACE NORTH, DUBLIN, OHIO PROJECT)**

WHEREAS, Dublin Witness, LLC (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 November 16, 2020, this Council approved the Petition and added the Owner's property subject to the Petition to the Columbus Regional Energy Special Improvement District, Inc. (the "District"); and

WHEREAS, on November 16, 2020, 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 February 22, 2021, this Council passed Ordinance No. ____-21 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. ____-21 passed on February 22, 2021, 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");

WHEREAS, the City intends to enter into an Energy Project Cooperative Agreement (the "Energy Project Cooperative Agreement") with the District, the Owner, and Twain Community Partners III LLC (the "Investor") 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, construction, and improvement of the Project and the transfer of the Special Assessments by the City to the Investor 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 Investor, 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 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 shall be in full force and effect immediately upon its passage.

[Signature Page Follows]

Passed this _____day of _____, 20__.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GROVE CITY, HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP,
SHARON TOWNSHIP, WHITEHALL, WORTHINGTON
REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:
COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;

DUBLIN WITNESS, LLC;

TWAIN COMMUNITY PARTNERS III LLC; and

CITY OF DUBLIN, OHIO

Dated as of [____], 20[____]

BRICKER & ECKLER LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into as of [____], 20[____] (the “Closing Date”), among the BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GROVE CITY, HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP, SHARON TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name COLUMBUS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “ESID”), DUBLIN WITNESS, LLC, a limited liability company duly organized and validly existing under the laws of the State (the “Owner”), TWAIN COMMUNITY PARTNERS III LLC, a Missouri limited liability company duly organized and validly existing under the laws of Missouri (the “Investor”), and the CITY OF DUBLIN, OHIO, a municipal corporation duly organized and validly existing under the constitution and laws of the State (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 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 [____], 2020, 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 600 Metro Place North, 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 Investor, 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, installation, equipping, and improvement of energy special improvement

projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor 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, install, equip and improve 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 Investor to repay the Project Advance; and (v) the ESID agreeing to assign, transfer, and set over to the Investor 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 be payable to, the City, the County Auditor, 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 Investor, 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 Special Assessment 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 among the City, the ESID, and the Investor. The Owner and the ESID have requested the assistance of the Investor 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 Investor 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, installation, equipping, and improvement 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(I). 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 Investor, 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 Investor, 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 Investor 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 Investor. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual fee of \$905.10 for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year and the semi-annual fee of \$905.10 due to the ESID, the Special Assessments received shall first be applied to the payment of the semi-annual fee due to the ESID, then to the payment of interest on the Project Advance, and then to the repayment of the principal of the Project Advance.

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 Investor, shall be a special obligation of the City and shall be required to be made only from the 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 Investor 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 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 Investor 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 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 Investor 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 shall notify the Investor, and, unless provided the express written consent of the Investor, 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 Investor.

- (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 Investor. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor'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 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 5.35%, and a \$905.10 semi-annual administrative fee to the ESID. The parties acknowledge and agree that County Auditor may calculate, charge, and collect a fee on each installment of the Special Assessments in an amount that the County Auditor deems necessary to defray the expenses of collecting 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. 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 Investor.
- (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 Investor all of its right, title and interest in and to: (i) the Special Assessments and any Delinquency Amounts 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 Investor shall have no right, title or interest in any interest earnings which may accrue to the City in respect of the Special Assessments and any Delinquency Amounts while those Special Assessments and any Delinquency Amounts are in the City's custody under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Investor in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Investor. The Parties agree that each of the City, the ESID, and the Investor, 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 and Delinquency Amounts 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 and Delinquency Amounts to the City on or before June 1 and December 1 of each year. Upon receipt of any moneys received by the City as Special Assessments and Delinquency Amounts, but in any event not later than 30 calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit H** on the Closing Date. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit H** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments or any Delinquency Amounts to the Investor.
- (g) Repayment of Project Advance. The Investor, within 10 business days of the dates shown on the Repayment Schedule as the “Date Calculated,” shall pay to the ESID out of the Special Assessments received by the Investor an amount equal to its semi-annual fee of \$905.10; provided, that if amounts received by the Investor as Special Assessments with respect to the applicable date on the Repayment Schedule is insufficient to pay all or any portion of the ESID’s semi-annual fee due with respect to that date, the Investor shall have no obligation to pay to the ESID any amount in excess of the amount received as Special Assessments with respect to that date. The Investor shall then credit, on the dates shown on the Repayment Schedule as the “Date Calculated” (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 scheduled to be repaid on such date. The Investor shall then credit, on the dates shown on the Repayment Schedule as the “Date Calculated”, Special Assessments in the amounts shown on the Repayment Schedule to the repayment of portion of the principal on the Project Advance scheduled to be repaid on such date or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of the ESID’s semi-annual fee of \$905.10 and the payment of accrued interest on 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 installment of the Special Assessments in an amount that the County

Auditor deems necessary to defray the expenses of collecting 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 and any Delinquency Amounts to the Investor 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 Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts 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 and any Delinquency Amounts 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 Investor all Special Assessments and any Delinquency Amounts 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 and any Delinquency Amounts 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 Investor all Special Assessments and any Delinquency Amounts 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 and any Delinquency Amounts 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 and any Delinquency Amounts any funds or revenues from any source other than the moneys received by the City as Special Assessments and any Delinquency Amounts.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments and any Delinquency Amounts by the City to the Investor, 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 and any Delinquency Amounts related to the ESID actually received by or on behalf of the City to the Investor. 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 and its Charter.
- (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 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. 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 Investor 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 an Event of 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 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 its 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, installing, equipping and improving of its 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 Investor 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 Investor, 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 Investor in writing, and the financial statements which have been delivered to the Investor prior to the Closing Date 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 Investor 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. The Owner shall provide to the Investor satisfactory evidence of the Required Insurance Coverage, either in the form of duplicate policies, binders or certificates (identifying each insurance policy, name of insurer, amount of coverage, deductible provisions and expiration date) that Owner has purchased, and has in full force and effect 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 Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, 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 Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy audit prepared by Donovan Energy, which energy audit demonstrates that the Project is expected to generate annual energy savings in the amounts set forth therein.
- (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 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.
- (q) There are no past due real property taxes or assessments owing on the Property or owing from the Owner on any other property.
- (r) The Owner has not made and will not make to Investor, the ESID, or the City, in this Agreement or otherwise, any untrue statement of a material fact, nor has it omitted to state a material fact necessary to make any statement made not misleading. All information provided by the Owner to Investor, the ESID, or the City in writing or in electronic form is complete, true and correct in all material respects.
- (s) No Insolvency Event shall have occurred or is continuing with respect to the Owner. The Owner is not aware of any circumstances or conditions with respect to the Owner, its properties, the Project, the Property, or the Special Assessments that could reasonably be expected to materially and adversely affect the Owner, its properties, the Project, the Property, or the Special Assessments. For purposes hereunder, “Insolvency Event” shall mean the Owner has (i) consented to the

appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceeding or of relating to the Owner or relating to all or substantially all of such Owner's property, (ii) fails to pay its debts as they become due and such failure has not been cured within thirty (30) days of the event; (iii) admitted in writing its inability to pay its debts as they become due, (iv) filed a petition to take advantage of any applicable insolvency or reorganization statute, (v) made an assignment for the benefit of its creditors, (vi) has filed against it a petition for involuntary bankruptcy or some other involuntary insolvency proceeding which is not dismissed within thirty (30) days, or (vii) voluntarily suspended payment of its obligations.

- (t) The Property is undamaged by waste, vandalism, fire, hurricane, earthquake or earth movement, windstorm, flood, tornado or other casualty adversely affecting the value of the Property or the use for which the Property was intended and the Property is in substantially the same condition it was at the time the most recent appraisal was obtained. There is no proceeding pending or, to the knowledge of the Owner, threatened for the total or partial condemnation of the Property.

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 Investor; 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 Investor, 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**; (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to the Project; and (iii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. 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 Investor, upon payment thereof, 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 Assessments.

- (c) It shall not, without the prior written consent of the Investor, 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(I), 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, installation, equipping, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) Within 120 days after the end of each fiscal year of the Owner, the Owner shall provide to the Investor a copy of its unaudited financial statements, which shall include (at a minimum) a balance sheet and income statement. To the extent already prepared by the Owner in its ordinary course of business, the Owner shall provide to the Investor unaudited quarterly financial statements within 60 days after the end of each quarter.
- (g) It promptly shall notify the Investor of any material damage or destruction to the Project or the Property.
- (h) Upon the reasonable request of the Investor, 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.
- (i) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels or combined into any one or more parcels in the records of the County Auditor without the prior written consent of the Investor.
- (j) It shall cause the Property, and any tax parcels which comprise the Property, to be maintained as a single integral going concern, and will not allow individual tax parcels to be sold, mortgaged, or pledged individually without all tax parcels comprising the Property to be sold, mortgaged, or pledged together.
- (k) 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 Investor. 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.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. On the date of this Agreement, the Investor shall make the Project Advance in the amount of \$4,742,149.39 available to the Owner on the terms and subject to the conditions of this Agreement. A portion of the total Project Advance equal to \$165,612.98 shall be retained by the Investor on the Closing Date and used to pay capitalized interest due in the amounts and on the dates set forth in the Repayment Schedule. Subject to the terms and conditions of this Agreement, the Investor, 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, installation, equipping, and improvement of its Project, and the Owner shall pay all such additional costs of its Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments.

If at any time (and from time to time) the Owner or the Investor determines that the undisbursed amount of the Project Advance will not be sufficient to complete and pay for the completion of the Project in compliance with the approved Construction Contracts (as defined in Section 4.2(b)), the Owner shall immediately notify the Investor, as applicable, and prior to the Investor approving any further Disbursement Request Forms, the Owner shall certify to the Investor that the Owner will have sufficient sources from sources other than the Project Advance to complete the Project in compliance with the approved Construction Contracts.

Section 4.2. Disbursements. Each disbursement of the Project Advance shall be made as set forth and pursuant to the terms contained in the Disbursing Agreement.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may disapprove any requests for disbursement until the Event of Default is cured and its effects are removed. Nothing in the previous sentence shall be construed to limit the Investor's remedies under this Agreement, including, without limitation, Section 5.2, except as stated in the previous sentence.

If the Investor discovers a material misstatement or deficiency in any of the documents provided by the Owner in connection with any request for disbursement, the Investor may stop all disbursements not yet completed until (a) the Investor shall have reasonably determined the misstatement has been corrected or (b) the Owner shall have cured such deficiency or misstatement to the Investor's sole satisfaction, as applicable.

In addition, on the Closing Date, the Investor shall disburse to the Persons stated on **Exhibit E** attached to, and incorporated into this Agreement, the amounts stated as closing costs associated with the Project Advance. The amounts stated on **Exhibit E** shall not exceed \$59,463.41.

Section 4.3. **Casualties and Takings.** The Owner shall promptly notify the Investor 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 Investor 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 Investor 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 Investor's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor'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 Investor'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. Subject to the rights of Lender pursuant to the terms of the documents evidencing

and securing Lender's loan to Owner, if, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor'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 Investor'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 Investor shall release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor'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, installation, equipping, 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, installation, equipping, 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 Investor, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve its Project with the 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, installation, equipping, 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, installation, equipping, 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 acquisition, installation, equipping, and improvement of the Project, the ESID and the Investor, 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 Investor and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Investor 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 Investor's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with reasonable dispatch, the Investor may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, 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 Investor of the Completion Date by a Completion Certificate in the form attached as Exhibit C to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, installation, equipping, 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 Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or 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 Investor 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 5.35%, and a \$905.10 semi-annual administrative fee to the ESID over 48 semi-annual payments to be collected beginning approximately on January 31, 2022 and continuing through approximately June 20, 2045. 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, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Interest shall accrue on the entire amount of the Project Advance from the Closing Date; 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 Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. 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 following the effective date of this Agreement, the Borrower may prepay all of the Project Advance, together with all accrued and unpaid interest thereon through the date of the prepayment and a prepayment premium equal to: (a) 5% of the principal amount of the Project Advance prepaid if prepaid before the third anniversary of the Closing Date; and (b) 2% of the principal amount of the Project Advance prepaid if prepaid after the third anniversary of the Closing Date but before the fifth anniversary of the Closing Date. Following the fifth anniversary of the Closing Date, the Borrower may prepay all or any portion of the Project Advance, together with all accrued and unpaid interest thereon through the date of the prepayment.

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 Investor, or the City should incur expenses, including 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 Investor, 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 maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the ESID, the Investor, 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 Investor, the Owner shall take any actions and execute any further documents as the Investor 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 transfer, or cause the transfer of, any of the Special Assessments to the Investor 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 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 its Project;
- (f) The Owner commits waste upon its Property or its 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) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, 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 Investor, 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.
- (c) 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 Investor, 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 Closing Date (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 Investor. The ESID hereby agrees that in the event it is asked to provide its consent in accordance with Section 2.1 of the Special Assessment Agreement, it will notify the Investor of such request, and it will not

provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Investor'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 Investor, 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.

Section 5.7. Amending Petition for Non-Completion Assessment. In addition to any other rights provided to Investor under this Agreement, in the event that (i) Owner fails to install the Project in compliance with the Special Assessment Act; (ii) Owner otherwise fails to meet the conditions established by the ESID for financing through the Act; or (iii) Owner defaults hereunder or under any of the other PACE Documents and Investor stops disbursements of the Project Advance under the PACE Documents, then Owner hereby freely and willingly agrees to cooperate in the preparation of, sign, and submit to the City an amendment to the Petition (the "Amending Petition") requesting additional special assessments (the "Non-Completion Assessments") which shall include all costs incurred by Investor, the ESID, and the City associated with the Non-Completion Assessments including without limitation: (i) all costs of amending the PACE Documents; (ii) any prepayment premium for any prepayment of the Project Advance with unused proceeds of the Project Advance; and (iii) all closing costs, including but not limited to the fees set forth on **Exhibit E**. Owner acknowledges that submission of the Amending Petition to the City will authorize City Council to levy the Non-Completion Assessments on the Property for collection in the first available property tax collection year following the certification of the City Council legislation authorizing the Non-Completion Assessments to the County Auditor for collection. The Parties hereby acknowledge that any determination by the City to consider legislation to authorize the Non-Completion Assessments shall be within the sole discretion of the City.

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, and the resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its 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 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 or resolutions or 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 Investor 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 their 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 Investor, 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 Investor, 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 Investor 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 Investor, 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 Investor shall not constitute the Investor's approval or acceptance of the construction theretofore completed. The Investor'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 Investor, the sole obligation of the Investor 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 Investor without the Investor 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 notice to the other Parties 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, or the Investor in other than his or her official capacity; and none of the members of the Board or the City Council, nor any official of the ESID, the Owner, the City, or the Investor 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 Investor 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 Investor, and only upon (i) the execution and delivery to the City, the Investor, 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**; (ii) the execution and delivery to the Investor of an assignment of all construction contracts for the Project; and (iii) the payment by the Owner of all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. 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 Investor 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, an “Investor 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 Investor 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 Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor 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 Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor 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 Investor assigns any of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to an Investor Assignee, the Investor shall (i) give prompt notice of such assignment to the other Parties and (ii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

In addition, the Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Owner, to grant to one or more Persons (each, a “Participant”) participating interests in Investor’s obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection

with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

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 Investor, the dates to which the Special Assessments have been paid to the Investor. 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 Investor 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.

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GROVE CITY,
HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP, SHARON
TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL
ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC., as the ESID

By: _____

Name: _____

Title: _____

DUBLIN WITNESS, LLC, as the Owner

By: _____

Name: _____

Title: _____

TWAIN COMMUNITY PARTNERS III LLC,
as Investor

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 2020 under the foregoing Energy Project Cooperative Agreement (\$0.00) 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. The City has no obligation to make payments pursuant to the attached agreement except from Special Assessments to be collected for deposit into a fund, established for said purpose. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Director of Finance
City of Dublin, Ohio

Dated: _____, 2020

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 the Closing Date, by and among the ESID, the Owner, the Investor, 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.

“*Closing Date*” means the date identified in the Preamble.

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

“*City Council*” means the 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 C**.

“*County*” means the County of Franklin, 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.

“*Delinquency Amounts*” means any penalties or interest which may become due on or with respect to any installment of the Special Assessments and which are not paid or payable to any party other than the Investor under the law.

“*Disbursing Agreement*” means the Disbursing Agreement dated as of the Closing Date between the Investor and the Owner.

“*ESID*” means the Bexley, Columbus, Dublin, Gahanna, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Whitehall, Worthington Regional Energy Special Improvement District, Inc., doing business under the registered trade name Columbus Regional Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State of Ohio.

“*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.

“Investor” means Twain Community Partners III LLC, a limited liability company duly organized and validly existing under the laws of the State of Missouri, together with any Investor Assignee.

“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
5555 Perimeter Drive
Dublin, Ohio 43017
Attention: City Manager |
| (b) | As to the ESID: | Columbus Regional Energy Special
Improvement District, Inc.
c/o Columbus-Franklin County
Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43215
Attention: Jeremy Druhot |
| | With a copy to: | J. Caleb Bell
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215 |
| (c) | As to the Owner | Dublin Witness, LLC
600 Enterprise Drive
Lewis Center, Ohio 43017
Attention: _____ |
| (d) | As to the Investor | Twain Community Partners III LLC
1232 Washington Ave., Suite 200
St. Louis, MO 63103
Attention: Legal |

“Owner” means Dublin Witness, LLC, a limited liability company duly organized and validly existing under the laws of the State and any permitted successors or assigns.

“Owner Consent” means the Owner Consent dated as of the Closing Date by the Owner and recorded in the records of the Franklin County Recorder with respect to the Property.

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

“*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.

“*PACE Counsel*” means Bricker & Eckler LLP, an Ohio limited liability partnership.

“*PACE Documents*” means this Agreement, the Special Assessment Agreement, the Petition, the Supplemental Plan, the Unlimited Guaranty and any other documents and instruments to be executed and delivered in connection with the Special Assessments, as they may be amended, modified, and supplemented from time to time under their terms.

“*PACE Legislation*” means, collectively, each resolution or ordinance adopted or passed by the City related to the Project and the levying of the Special Assessments on the Property.

“*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 Investor 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, 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 Supplemental 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, such policies of insurance in such amounts set forth on **Exhibit J**.

“*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. [__]-2020 of the City Council adopted on _____, 2020 approving the Petition and the Supplemental Plan, Resolution No. [__]-2020 of the City Council adopted on _____, 2020 declaring the necessity of the Project, Ordinance [__]-2020, determining to proceed with the Project, adopted on _____, 2020, Ordinance [__]-2020, levying the Special Assessments, adopted on _____, 2020, with respect to levying the special assessments on the Property subject to the Petition, and Ordinance [__]-2020, approving the documents relating to the Special Assessments, adopted on _____, 2020.

“Special Assessments” means the special assessments levied pursuant to the Special Assessment Act 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 600 Metro Place North, Dublin, Ohio Project adopted by the City Council by its Resolution [__] adopted on [__], 2020.

“Unlimited Guaranty” means the Unlimited Guaranty by [__] dated as of [__], 2020.

EXHIBIT B

REPAYMENT SCHEDULE

	Date Due	Date Calculated*	Beg. Balance	Payment	Interest	Principal	End Balance	Servicing Fee	Total Assessment
	12/8/2020	12/8/2020	\$4,742,149.39	\$0.00	\$0.00	\$0.00	\$4,742,149.39	\$0.00	\$0.00
0	12/8/2020	7/31/2021	\$4,742,149.39	\$165,612.98	\$165,612.98	\$0.00	\$4,742,149.39	\$0.00	\$165,612.98
1	1/31/2022	5/30/2022	\$4,742,149.39	\$181,020.25	\$213,535.04	(\$32,514.79)	\$4,774,664.18	\$905.10	\$181,925.35
2	7/31/2022	11/30/2022	\$4,774,664.18	\$181,020.25	\$130,560.54	\$50,459.71	\$4,724,204.47	\$905.10	\$181,925.35
3	1/31/2023	5/30/2023	\$4,724,204.47	\$181,020.25	\$127,074.54	\$53,945.71	\$4,670,258.76	\$905.10	\$181,925.35
4	7/31/2023	11/30/2023	\$4,670,258.76	\$181,020.25	\$127,705.63	\$53,314.62	\$4,616,944.15	\$905.10	\$181,925.35
5	1/31/2024	5/30/2024	\$4,616,944.15	\$181,020.25	\$124,875.51	\$56,144.73	\$4,560,799.41	\$905.10	\$181,925.35
6	7/31/2024	11/30/2024	\$4,560,799.41	\$181,020.25	\$124,712.53	\$56,307.72	\$4,504,491.69	\$905.10	\$181,925.35
7	1/31/2025	5/30/2025	\$4,504,491.69	\$181,020.25	\$121,164.57	\$59,855.68	\$4,444,636.01	\$905.10	\$181,925.35
8	7/31/2025	11/30/2025	\$4,444,636.01	\$181,020.25	\$121,536.10	\$59,484.15	\$4,385,151.87	\$905.10	\$181,925.35
9	1/31/2026	5/30/2026	\$4,385,151.87	\$181,020.25	\$117,954.49	\$63,065.75	\$4,322,086.11	\$905.10	\$181,925.35
10	7/31/2026	11/30/2026	\$4,322,086.11	\$181,020.25	\$118,185.04	\$62,835.20	\$4,259,250.91	\$905.10	\$181,925.35
11	1/31/2027	5/30/2027	\$4,259,250.91	\$181,020.25	\$114,567.93	\$66,452.31	\$4,192,798.60	\$905.10	\$181,925.35
12	7/31/2027	11/30/2027	\$4,192,798.60	\$181,020.25	\$114,649.75	\$66,370.50	\$4,126,428.10	\$905.10	\$181,925.35
13	1/31/2028	5/30/2028	\$4,126,428.10	\$181,020.25	\$111,608.42	\$69,411.83	\$4,057,016.27	\$905.10	\$181,925.35
14	7/31/2028	11/30/2028	\$4,057,016.27	\$181,020.25	\$110,936.86	\$70,083.39	\$3,986,932.87	\$905.10	\$181,925.35
15	1/31/2029	5/30/2029	\$3,986,932.87	\$181,020.25	\$107,242.96	\$73,777.29	\$3,913,155.58	\$905.10	\$181,925.35
16	7/31/2029	11/30/2029	\$3,913,155.58	\$181,020.25	\$107,003.07	\$74,017.18	\$3,839,138.40	\$905.10	\$181,925.35
17	1/31/2030	5/30/2030	\$3,839,138.40	\$181,020.25	\$103,267.49	\$77,752.76	\$3,761,385.64	\$905.10	\$181,925.35
18	7/31/2030	11/30/2030	\$3,761,385.64	\$181,020.25	\$102,853.00	\$78,167.25	\$3,683,218.40	\$905.10	\$181,925.35
19	1/31/2031	5/30/2031	\$3,683,218.40	\$181,020.25	\$99,073.46	\$81,946.79	\$3,601,271.61	\$905.10	\$181,925.35
20	7/31/2031	11/30/2031	\$3,601,271.61	\$181,020.25	\$98,474.77	\$82,545.48	\$3,518,726.13	\$905.10	\$181,925.35
21	1/31/2032	5/30/2032	\$3,518,726.13	\$181,020.25	\$95,171.77	\$85,848.48	\$3,432,877.65	\$905.10	\$181,925.35
22	7/31/2032	11/30/2032	\$3,432,877.65	\$181,020.25	\$93,870.13	\$87,150.12	\$3,345,727.53	\$905.10	\$181,925.35
23	1/31/2033	5/30/2033	\$3,345,727.53	\$181,020.25	\$89,995.42	\$91,024.82	\$3,254,702.71	\$905.10	\$181,925.35
24	7/31/2033	11/30/2033	\$3,254,702.71	\$181,020.25	\$88,998.04	\$92,022.21	\$3,162,680.50	\$905.10	\$181,925.35
25	1/31/2034	5/30/2034	\$3,162,680.50	\$181,020.25	\$85,071.71	\$95,948.54	\$3,066,731.96	\$905.10	\$181,925.35
26	7/31/2034	11/30/2034	\$3,066,731.96	\$181,020.25	\$83,858.08	\$97,162.17	\$2,969,569.80	\$905.10	\$181,925.35
27	1/31/2035	5/30/2035	\$2,969,569.80	\$181,020.25	\$79,877.30	\$101,142.94	\$2,868,426.85	\$905.10	\$181,925.35
28	7/31/2035	11/30/2035	\$2,868,426.85	\$181,020.25	\$78,435.54	\$102,584.71	\$2,765,842.14	\$905.10	\$181,925.35
29	1/31/2036	5/30/2036	\$2,765,842.14	\$181,020.25	\$74,808.35	\$106,211.90	\$2,659,630.24	\$905.10	\$181,925.35
30	7/31/2036	11/30/2036	\$2,659,630.24	\$181,020.25	\$72,726.11	\$108,294.14	\$2,551,336.11	\$905.10	\$181,925.35
31	1/31/2037	5/30/2037	\$2,551,336.11	\$181,020.25	\$68,627.40	\$112,392.85	\$2,438,943.25	\$905.10	\$181,925.35
32	7/31/2037	11/30/2037	\$2,438,943.25	\$181,020.25	\$66,691.55	\$114,328.70	\$2,324,614.55	\$905.10	\$181,925.35
33	1/31/2038	5/30/2038	\$2,324,614.55	\$181,020.25	\$62,528.90	\$118,491.35	\$2,206,123.21	\$905.10	\$181,925.35
34	7/31/2038	11/30/2038	\$2,206,123.21	\$181,020.25	\$60,325.21	\$120,695.03	\$2,085,428.18	\$905.10	\$181,925.35
35	1/31/2039	5/30/2039	\$2,085,428.18	\$181,020.25	\$56,095.12	\$124,925.13	\$1,960,503.05	\$905.10	\$181,925.35
36	7/31/2039	11/30/2039	\$1,960,503.05	\$181,020.25	\$53,608.87	\$127,411.38	\$1,833,091.67	\$905.10	\$181,925.35
37	1/31/2040	5/30/2040	\$1,833,091.67	\$181,020.25	\$49,580.04	\$131,440.21	\$1,701,651.46	\$905.10	\$181,925.35
38	7/31/2040	11/30/2040	\$1,701,651.46	\$181,020.25	\$46,530.71	\$134,489.53	\$1,567,161.92	\$905.10	\$181,925.35
39	1/31/2041	5/30/2041	\$1,567,161.92	\$181,020.25	\$42,154.48	\$138,865.77	\$1,428,296.15	\$905.10	\$181,925.35
40	7/31/2041	11/30/2041	\$1,428,296.15	\$181,020.25	\$39,055.96	\$141,964.28	\$1,286,331.87	\$905.10	\$181,925.35
41	1/31/2042	5/30/2042	\$1,286,331.87	\$181,020.25	\$34,600.54	\$146,419.71	\$1,139,912.16	\$905.10	\$181,925.35
42	7/31/2042	11/30/2042	\$1,139,912.16	\$181,020.25	\$31,170.26	\$149,849.98	\$990,062.18	\$905.10	\$181,925.35
43	1/31/2043	5/30/2043	\$990,062.18	\$181,020.25	\$26,631.30	\$154,388.95	\$835,673.23	\$905.10	\$181,925.35
44	7/31/2043	11/30/2043	\$835,673.23	\$181,020.25	\$22,851.02	\$158,169.23	\$677,504.00	\$905.10	\$181,925.35
45	1/31/2044	5/30/2044	\$677,504.00	\$181,020.25	\$18,324.60	\$162,695.65	\$514,808.35	\$905.10	\$181,925.35
46	7/31/2044	11/30/2044	\$514,808.35	\$181,020.25	\$14,077.15	\$166,943.10	\$347,865.26	\$905.10	\$181,925.35
47	1/31/2045	5/30/2045	\$347,865.26	\$181,020.25	\$9,357.09	\$171,663.16	\$176,202.10	\$905.10	\$181,925.35
48	7/31/2045	11/30/2045	\$176,202.10	\$181,020.25	\$4,818.15	\$176,202.10	(\$0.00)	\$905.10	\$181,925.35
Total:				\$8,854,584.89	\$4,112,435.49	\$4,742,149.39			

EXHIBIT C

COMPLETION CERTIFICATE

Dublin Witness, LLC (the **Owner**) hereby certifies that the Project, as defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the City of Dublin, Ohio, the Columbus Regional Energy Special Improvement District, Inc., and Twain Community Partners III LLC (the **Investor**) dated as of [____], 2020 (the **Energy Project Cooperative Agreement**) has been completed at the Property in strict compliance with the requirements of the Energy Project Cooperative Agreement.

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

THE OWNER HEREBY CERTIFIES:

1. As of _____, the work has been completed in accordance with the terms of the Energy Project Cooperative Agreement. The Owner has no service requests and no unresolved complaints regarding the work performed. The above date is hereby established as the “Completion Date” under the Energy Project Cooperative Agreement.
2. The Project has been completed in all material respects in accordance with the plans and specifications, permits, budget, and Construction Contracts approved by the Investor.
3. The Owner have complied, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and construction of the Project.
4. The Owner holds fee ownership in the Property on which the Energy Project was completed.
5. The contractor for the work has not offered the Owner any payment, refund, or any commission in return for completing the Project.
6. All funds provided to the Owner by the Investor for the Project have been used in accordance with the Energy Project Cooperative Agreement.

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

DUBLIN WITNESS, LLC, as Owner

By: _____

Name: _____

Title: _____

EXHIBIT D

FORM OF FINAL LIEN WAIVER AND RELEASE

Contractor: _____ (the "Contractor")

Property Address: _____ (the "Property")

1. Contractor is the contractor pursuant to an agreement dated _____, (the "Contract") entered into by and between Contractor and _____ (the "Owner") in connection with the renovation or retrofit of the Property to reduce energy consumption or to install renewable energy systems at the Property (the "Project").
2. This Final Lien Waiver and Release is delivered in consideration of a final payment of \$ _____ ("Payment") under the Contract for labor performed and/or materials supplied by the Contractor in connection with the Project.
3. The Contractor and the individual signing on behalf of the Contractor warrant and represent that: (i) all taxes applicable to the materials furnished and the work performed under the Contract have been fully paid and (ii) all laborers, mechanics, subcontractors of any tier, materialmen and suppliers for all work done and for all materials, machinery, equipment, fixtures, tools, scaffolding and appliances furnished for the performance of the Contract and for any other indebtedness connected therewith have been paid in full to the date hereof. The undersigned acknowledges and agrees that Twain Community Partners III LLC ("Lender"), the Owner, lessees, lessors, mortgage holders, lenders, and any other persons or entities claiming an interest in connection with the Project or the Property, and any person or entity associated with the foregoing, may rely on the statements, agreements, and representations made by the undersigned herein.
4. The Contractor, for itself, its successors, and on behalf of all persons able to claim through or under the Contractor hereby:
 - (a) Waives, relinquishes and releases Owner, its sureties, if any, and the Property from all mechanic's liens, claims of mechanic's lien, and claims against labor and material payment bonds that Contractor has for the labor and materials furnished to the Project or Property;
 - (b) Releases Owner, and the Property of and from all, and all manner of action and actions, cause and causes of actions, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, in admiralty, or in equity from the beginning of the world to the date hereof; and
 - (c) Agrees to save harmless Lender and Owner from all liability, costs and expenses, including reasonable attorney's fees to discharge (by bond or otherwise) any

such mechanic's lien or claim of mechanic's lien, to defend suit to enforce or foreclose upon any such mechanic's lien, claim of mechanic's lien, or bond substituted for such mechanic's lien, and to defend suit to enforce any such labor and material payment bond.

5. This Final Release and Lien Waiver is intended to be enforceable to the fullest extent permitted by law and shall be governed under the laws of the State of Ohio. Should any term or provision herein be determined to be unenforceable or otherwise rendered null or void as a matter of law, the terms and provisions hereof shall be deemed modified only to the most limited extent necessary to render this Final Release and Lien Waiver enforceable to the fullest extent permitted by law.

Dated: _____

Contractor: _____

By: _____

Name: _____

Title: _____

EXHIBIT E

CLOSING COSTS DETAIL

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Investor, on the date on which the Energy Project Cooperative Agreement becomes effective, shall disburse to the ESID or to the respective payee set forth below, the following closing costs:

Expenses and Fees	Amount	Payee
ESID Closing Fee	\$11,292.68	Columbus Regional Energy Special Improvement District
ESID Legal Fee	45,170.73	Bricker & Eckler LLP
Energy Audit Fee	2,750.00	
Title	250.00	
Total	\$59,463.41	

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 [____], 2020 between the Columbus Regional Energy Special Improvement District, Inc. (the “ESID”) Assignor, Twain Community Partners III LLC, 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 ESID, Dublin Witness, LLC, and Twain Community Partners III LLC (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of [____], 2020 by Dublin Witness, 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 Investor, 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 _____, _____, 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

INVESTOR PAYMENT INSTRUCTIONS

Twain Community Partners III LLC
Payment Instructions

Bank Name: [BANK NAME]
[BANK ADDRESS]

ABA: [NUMBER]
Beneficiary Name: [Twain Community Partners III LLC]
[ADDRESS LINE 1]
[CITY, STATE ZIP]
Beneficiary Account: [NUMBER]

Reference: [NUMBER]

Contact: [Information]

If sending by check, please make checks payable to: [NAME/REFERENCE] and mail to:

[Twain Community Partners III LLC]
[ADDRESS LINE 1]
[CITY STATE ZIP]
Attention: [NAME]

EXHIBIT I

OWNERS AUTHORIZED REPRESENTATIVES

Authorized Representatives for Owner

The following individuals are authorized to provide instructions and directions to the Investor on behalf of the Owner until such time as an updated list has been provided. Owner may change, modify, or amend, the list of authorized individuals by providing five (5) days prior written notice to the Investor. Instructions may be provided via electronic mail and are valid so long as one of the individuals below are copied thereto.

Name: _____

Name: _____

Title: _____

Title: _____

Email: _____

Email: _____

Name: _____

Name: _____

Title: _____

Title: _____

Email: _____

Email: _____

EXHIBIT J

REQUIRED INSURANCE COVERAGE



TWAIN COMMUNITY PARTNERS III LLC'S PACE INSURANCE REQUIREMENTS DURING CONSTRUCTION

LIABILITY INSURANCE

- Acord Form 25 Certificate
- Coverage at least \$2,000,000 per occurrence
- General liability coverage can be combined with umbrella coverage to meet the \$2,000,000 requirement
- List the borrowing entity as a Named Insured
 - o If different than the borrowing entity, list the property owning entity as an Additional Named Insured
- List Twain Community Partners III LLC and Twain Funding I LLC as Additional Insureds and Lender's Loss Payees, and provide Additional Insured and Lender's Loss Payee Endorsements
- List Certificate Holders as: Twain Community Partners III LLC and Twain Funding I LLC; 1232 Washington Avenue, Suite 200, St. Louis, MO 63103

BUILDER'S RISK

- All-Risk or Special form
- Coverage period for the projected duration of construction
- Policy provided by project's General Contractor
- List borrowing entity and property owning entity (if different) as Additional Named Insureds
- Submit policy exclusions for review
- Coverage limits:
 - o If new construction: an amount equal to the "As Completed" value of property (from appraisal); list soft cost coverage separately in amounts sufficient to cover project soft costs
 - o If renovation: list these coverage limits separately
 - Existing building coverage equal to the "As Is" value of the property
 - Hard cost coverage equal to the project hard costs (or remaining hard costs)
 - Soft cost coverage equal to the project soft costs (or remaining soft costs)
- List Twain Community Partners III LLC and Twain Funding I LLC as Additional Insureds and Lender's Loss Payees and provide Additional Insured and Lender's Loss Payee Endorsements
- List Certificate Holders as: Twain Community Partners III LLC and Twain Funding I LLC; 1232 Washington Avenue, Suite 200, St. Louis, MO 63103
- Include fire, flood (if requested by Twain), earthquake, extended coverage and vandalism, comprehensive general liability, rent loss and/or business interruption coverage, boiler explosion coverage and/or sprinkler leakage coverage.



TWAIN COMMUNITY PARTNERS III LLC'S PACE INSURANCE REQUIREMENTS POST-CONSTRUCTION

LIABILITY INSURANCE

- Acord Form 25 Certificate
- Coverage at least \$2,000,000 per occurrence
- General liability coverage can be combined with umbrella coverage to meet the \$2,000,000 requirement
- List the borrowing entity as a Named Insured
 - o If different than the borrowing entity, list the property owning entity as an Additional Named Insured
- List Twain Community Partners III LLC and Twain Funding I LLC as Additional Insureds and Lender's Loss Payees, and provide Additional Insured and Lender's Loss Payee Endorsements
- List Certificate Holders as: Twain Community Partners III LLC and Twain Funding I LLC; 1232 Washington Avenue, Suite 200, St. Louis, MO 63103

PROPERTY INSURANCE

- Acord Form 28 Certificate
- Coverage limit in an amount equal to the "As Completed" value of property (from appraisal)
- List Twain Community Partners III LLC and Twain Funding I LLC as Additional Insureds and Lender's Loss Payees, and provide Additional Insured and Lender's Loss Payee Endorsements
- List Certificate Holders as: Twain Community Partners III LLC and Twain Funding I LLC; 1232 Washington Avenue, Suite 200, St. Louis, MO 63103
- Include fire, flood (if requested by Twain), earthquake, extended coverage and vandalism, comprehensive general liability, rent loss and/or business interruption coverage, boiler explosion coverage and/or sprinkler leakage coverage.

SPECIAL ASSESSMENT AGREEMENT
(*ORC Sections 5721.33 and 9.482*)

by and among

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

And

CITY OF DUBLIN, OHIO
("City"),

And

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GROVE CITY, HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP,
SHARON TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT,
INC., D/B/A:

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

And

DUBLIN WITNESS, LLC
("Owner")

And

TWAIN COMMUNITY PARTNERS III LLC
("Investor")

Dated as of [____], 2020

SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [___], 2020, by and among the County Treasurer of Franklin County, Ohio (the “Treasurer”), the City of Dublin, Ohio (the “City”), the Bexley, Columbus, Dublin, Gahanna, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Whitehall, Worthington Regional Energy Special Improvement District, Inc., doing business under the registered trade name Columbus Regional Energy Special Improvement District, Inc. (“District”), Dublin Witness, LLC (the “Owner”), and Twain Community Partners III LLC (together with its permitted successors and assigns, the “Investor”) (the Treasurer, the District, the Owner, the City, and the Investor are collectively referred to herein as the “Parties”).

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, installation, equipping, and improvement of special energy efficiency improvements, including, without limitation, building envelope improvements, LED lighting, HVAC system improvements, plumbing fixtures, 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 “Assessed Lands”); and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of \$4,742,149.39 (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [___], 2020 (the “Energy Project Cooperative Agreement”) between the District, the Investor, the Owner, and the City; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of City Council of the City (the “Council”) a Petition for Special Assessments for Special Energy Improvement Projects and Affidavit (the “Petition”) for the acquisition, 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 Assessed Lands, 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 Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or 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 Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, the Owner agrees that the delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the Parties 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 Assessed Lands as described in the Petition and pursuant to this Agreement the Owner agrees to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 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 Assessed Lands as set forth in Section 2 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 2 hereof) shall be a covenant running with Assessed Lands and binding upon the Owner and upon future owners of the Assessed Lands until the 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 with respect to the Owner under Section 5.1(a) of the Energy Project Cooperative Agreement, the Treasurer and the City have 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 Assessed Lands 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 Assessed Lands; and

WHEREAS, pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in their 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 or adversely affect the payment of the Project Costs without the consent of the District; and

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default with respect to the Owner 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 Assessed Lands 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, signed and delivered to the Clerk of Council the Petition for the acquisition, installation, equipping, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that the delivery of the Petition and the requests and agreements made therein are irrevocable and that the Parties have acted and will act in reliance on the agreements contained in that Petition. The City has duly enacted Resolution No. [__]-2020, Ordinance No. [__]-2020 and Ordinance No. [__]-2020 (the "Assessing Ordinance") to levy and collect the Special Assessments on the Assessed Lands. 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 Ohio Revised Code Section 727.33. The Parties acknowledge that pursuant to such certification, the Special Assessments are expected to be collected and paid to the City pursuant to Ohio Revised Code Chapters 319, 321, 323, and 727.

1.3 In the event the Project Advance is prepaid or redeemed in accordance with the Energy Project Cooperative Agreement, 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, plus any applicable surviving fee payable to the Investor and administrative fee payable to the District.

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

1.5 To facilitate the repayment of the Project Advance, the City, pursuant to Section 2.2 of the Energy Project Cooperative Agreement, assigned to the Investor all of its right, title, and interest in and to the Special Assessments and the funds of the City established to collect and hold the Special Assessment, provided, however, such assignment shall not relate to, and the Investor shall have 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 Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.6 Pursuant to Section 2.5 of the Energy Project Cooperative Agreement, the District assigned to the Investor any and all of its right, title, and interest it may have in and to the Special Assessments related to the District actually received by or on behalf of the City under the Energy Project Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

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, the District, the Investor, 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 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 Investor or the District, with a copy to the other of the Investor or the District, and to the Owner and the City, that an Event of Default (as defined under the Energy Project Cooperative Agreement, as applicable) with respect to the Owner 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 30 days from the date of the receipt of such notice, file and diligently prosecute a foreclosure action against the Assessed Lands, following the procedures for lien foreclosures established in Ohio Revised Code Section 323.25 and related sections. The foreclosure action shall be to collect all Special Assessments then due and owing on the Assessed Lands in accordance with the Petition. Without the prior written consent of the District and the Investor, the Treasurer will not confirm the sale of the Assessed Lands 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 Assessed Lands, 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 City has assigned all of its right, title, and interest in and to the Special Assessments to the Investor, and that the District has assigned all of its right, title, and interest it may have in and to the Special Assessments to the Investor, and the Treasurer hereby agrees that so long as the Project Advance is outstanding and the Project Costs 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 Assessed Lands for an amount less than 100% of the amount levied and certified for collection without the prior written consent of the District and the Investor.

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 Assessed Lands 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 Assessed Lands, give written notice to the District and the Investor 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 and the Investor 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 Assessed Lands to the county land reutilization corporation, to sell or convey any of the Assessed Lands to any political

subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the liens and encumbrances applicable to the Assessed Lands under the authority contained in Ohio Revised Code Chapter 5722 without the express written consent of the District and the Investor.

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 Assessed Lands 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 Assessed Lands outstanding against the Assessed Lands at the time of such sale.

2.6 The District and the Investor each hereby agrees that upon written notice from the Treasurer pursuant to Section 2.1 of this Agreement, it, within 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 or the Investor 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 or the Investor 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 or the Investor with respect any such subsequent request.

2.8 So long as the Special Assessments are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the Investor, as appropriate and as provided for herein, not more than 30 calendar days from the date of collection by the Treasurer, any amounts collected with respect to the Assessed Lands as payment for delinquent Special Assessments, including any amounts collected from Tax Certificates; and (b) to the extent the Treasurer seeks and is appointed as receiver for the Assessed Lands, 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 Assessed Lands and collected as a result of any delinquent Special Assessments, shall be remitted to the Investor.

Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Investor, and their respective officers, directors, Council Members, officials, and employees (the "Indemnified Parties"), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, any and all actual or potential claims, liabilities, demands, losses, damages (both direct and indirect), costs, fines, penalties, judgments, awards, 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, equipping, 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 levy and collect Special Assessments; (vi) any legal costs or out-of-pocket costs incurred by the City or the District specifically related to additional approvals or actions that may be required by the City or 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 City or the District); and (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 shall comply with all Environmental, Safety & Health Laws with respect to the acquisition, construction, installation, equipping, improvement, maintenance, operation, and use of the Project. The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against any and all actual or potential claims, liabilities, demands, losses, damages (both direct and indirect), costs, fines, penalties, judgments, awards, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees, arising out any non-compliance with any Environmental, Safety & Health Laws in conjunction with the Project or as a result of any release of Hazardous Materials at or from the the Assessed Lands which in any way results from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants. The term "Environmental, Safety & Health Law" means any federal, state or local law, ordinance or regulation pertaining to health, industrial hygiene, waste disposal, the environment, natural resources or endangered species, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§6901 *et seq.*; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§1251 *et seq.*; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§7401 *et seq.*; and the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§651 *et seq.* The term "Hazardous Materials" includes oil and petroleum products, asbestos, polychlorinated biphenyls, radon and urea formaldehyde, and any other materials classified as hazardous or toxic or as pollutants or contaminants under any Environmental, Safety & Health Law.

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 Assessed Lands 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 Assessed Lands (except as released as provided in the Owner Consent), the Owner and any future owner of all or any portion of the Assessed Lands. 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 constitutes a covenant running with and is enforceable against the Assessed Lands.

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
5555 Perimeter Drive
Dublin, Ohio 43017
Attention: City Manager

If to Treasurer: County Treasurer
Franklin County, Ohio
373 S. High Street, Fl. 17
Columbus, Ohio 43215
Phone: (614) 525-3438

If to the District: Columbus Regional Energy Special
Improvement District, Inc.
c/o Columbus-Franklin County Finance Authority
300 Spruce Street, Suite 220
Columbus, Ohio 43215
Attention: Jeremy Druhot

With a Copy To: Caleb Bell
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215

If to the Owner: Dublin Witness, LLC
600 Enterprise Drive
Lewis Center, Ohio 43035
Attention: _____

If to the Investor: Twain Community Partners III LLC
1232 Washington Ave., Suite 200
St. Louis, MO 63103
Attention: Legal

4.4 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or 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, an "Investor Assignee"). 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 Investor shall deem necessary to effect the foregoing. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor 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 Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor 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.

(b) The Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Treasurer, the City, the District, or the Owner, to grant to one or more persons (each, a "Participant") participating interests in the Investor's obligation to make Project Advances under the Energy Project Cooperative Agreement or any or all of the loans held by Investor under the Energy Project Cooperative Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Treasurer, the City, the District, and the Owner, the Investor shall remain responsible for the performance of its obligations under the Energy Project Cooperative Agreement and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under the Energy Project Cooperative Agreement.

(c) The Investor may furnish any information concerning the Owner or the Assessed Lands in its possession from time to time to Investor Assignees and prospective Investor Assignees, Participants and prospective Participants, rating agencies, Investor's third party consultants, and Investor's counsel.

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

4.6 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.

(Signature Pages Immediately Follow)

IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

“TREASURER”
COUNTY TREASURER OF FRANKLIN
COUNTY, OHIO

Treasurer
County of Franklin, Ohio

“CITY”
CITY OF DUBLIN, OHIO

By: _____

Name: _____

Title: _____

“DISTRICT”

BEXLEY, COLUMBUS, DUBLIN, GAHANNA, GROVE CITY,
HILLIARD, MARBLE CLIFF, PERRY TOWNSHIP, SHARON
TOWNSHIP, WHITEHALL, WORTHINGTON REGIONAL
ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC., D/B/A:

COLUMBUS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC.

By: _____

Name: _____

Title: _____

“OWNER”
DUBLIN WITNESS, LLC

By: _____

Name: _____

Title: _____

“INVESTOR”
TWIN COMMUNITY PARTNERS III LLC

By: _____

Name: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer 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 and the Energy Project Cooperative Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: _____, 2020

Fiscal Officer
City of Dublin, Ohio

EXHIBIT A
DESCRIPTION OF ASSESSED LANDS
EXHIBIT "A"

Real property in the City of Dublin, County of Franklin, State of Ohio, described as follows:

Parcel 1.

Situate in the State of Ohio, County of Franklin, Village (now City) of Dublin, and being 4.430 acres of Lot Number 3 of Metrocenter, of record in Plat Book 55, pages 8 and 9, all references being to records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Beginning at an iron pin in the westerly line of Metro Place North (60 feet in width), at the southeasterly corner of Lot Number 3, being also the northeasterly corner of Lot Number 4 of the said Metrocenter;

Thence along the southerly line of said Lot Number 3 and being also the northerly line of the said Lot Number 4, North 71° 28' 46" West, 483.64 feet to an iron pin;

Thence continuing along the southerly line of said Lot Number 3 and being also the northerly line of the Prudential Insurance Company of America 13.260 acre tract of record in Deed Book 3713, page 610, North 83° 30' 45" West, 261.66 feet to an iron pin at the southwesterly corner of the said Lot Number 3;

Thence along the northwesterly lines of the said Lot Number 3 and being also the southwesterly right-of-way line of Interstate 270 the following courses and distances:

North 30° 21' 53" East, 34.94 feet to an iron pin;

North 39° 11' 11" East, 173.95 feet to an iron pin; and

North 52° 58' 53" East, 182.83 feet to an iron pin;

Thence South 65° 36' 43" East, 671.51 feet to an Iron pin in the northwesterly right-of-way line of said Metro Place North;

Thence along said right-of-way line and being the arc of a curve to the left (Radius=630 feet, Sub-Delta 22° 24' 05") a chord bearing and distance South 41° 59' 38" West, 244.75 feet to the place of beginning and containing 4.430 acres more or less.

Parcel 2:

Situate in the State of Ohio, County of Franklin, Village (now city) of Dublin, and being 6.242 acres of Lot Number 3 of Metrocenter, of record in Plat Book 55, pages 8 and 9, all references being to records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Beginning at an iron pin in the northerly line of Metro Place North at the southeasterly corner of Lot Number 3 and being also the southwesterly corner of Lot Number 2 of the said Metrocenter;

Thence along said right-of-way line and being the arc of a curve to the left, (Radius=630 feet, Sub-Delta 22° 24' 04") a chord bearing and distance of South 64° 23' 43" West, 244.75 feet to an Iron pin;

Thence North 65° 36' 43" West, 671.51 feet to an Iron pin in the northwesterly line of the said Lot Number 3 and being also the southeasterly line of Interstate 270;

Thence along said line the following courses and distances:

North 52° 58' 53" East, 37.47 feet to an Iron pin;

North 72° 03' 42" East, 359.78 feet to an Iron pin;

North 63° 06' 36" East, 209.62 feet to an iron pin; and,

North 41° 59' 49" East, 102.91 feet to an iron pin in the northerly line of the said Lot Number 3 and being also the southerly line of the JOHN MCKITRICK et al 3 TRUSTEES 40.325 acre of record in Deed Book 1363, page 545;

Thence along said line South 83° 15' 23" East, 208.23 feet to an Iron pin at the northeasterly corner of the said Lot Number 3;

Thence along the easterly line of the said Lot Number 3 and being the westerly line of Lot Number 2 of the said Metrocenter South 00° 18' 50" West, 451.74 feet to the place of beginning and containing 6.242 acres more or less.

PARCEL NUMBER: 273-001704

PARCEL NUMBER: 273-001311

ADDRESS:

600 N. Metro Place
Dublin, OH 43017

EXHIBIT B

OWNER CONSENT

(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, [____], having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the [____] of Dublin Witness, LLC, an Ohio limited liability company (the “Owner”).

This Owner Consent, dated as of [____], 2020, is given by the Owner pursuant to the Special Assessment Agreement made effective as of [____], 2020 (the “Agreement”) by and among the County Treasurer of Franklin County, Ohio (the “Treasurer”), the Bexley, Columbus, Dublin, Gahanna, Grove City, Hilliard, Marble Cliff, Perry Township, Sharon Township, Whitehall, Worthington Regional Energy Special Improvement District, Inc., d/b/a Columbus Regional Energy Special Improvement District, Inc. (the “District”), Twain Community Partners III LLC (together with its permitted successors and assigns under the Agreement, the “Investor”), the City of Dublin, Ohio (the “City”), and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an expedited foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this Owner Consent.

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, as appropriate) with respect to the Owner under the Energy Project Cooperative Agreement occurs and is continuing, the Treasurer will pursue an expedited 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 expedited foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District and the Investor, as applicable, in writing, the expedited foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner, and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, or the Investor, as applicable, shall be filed of record with the Franklin County, Ohio Recorder's Office. The Owner covenants and agrees that, except upon receipt of the prior written consent of the Investor, the Owner shall take no action to cause or permit the splitting, subdividing, merging, combination, or any other action which would modify the tax parcel(s) included in the Assessed Lands. The Owner further covenants and agrees that, except upon receipt of the prior written consent of the Investor, the Owner shall cause the tax parcel(s) included in the Assessed Lands to be maintained as a single integral going concern and will not allow individual tax parcel(s) to be sold, mortgaged, or pledged individually without all tax parcel(s) comprising the Assessed Lands to be sold, mortgaged, or pledged together. 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 expedited foreclosure process with respect to the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Owner acknowledges that the Special Assessments have been levied by the City and certified for direct collection in semi-annual installments due on January 31 and June 30 of each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Under certain circumstances described in the Agreement, the Special Assessments may be certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, Owner acknowledges that the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

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)

Further affiant sayeth naught.

“OWNER”

DUBLIN WITNESS, LLC

By: _____

Name: _____

Title: _____

STATE OF _____)

)

SS:

COUNTY OF _____)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Dublin Witness, LLC by _____, its _____, who acknowledged that they did sign the foregoing instrument and that the same is such officer's free act and deed as such officer and of said entity.

The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2020.

Notary Public

EXHIBIT 1
DESCRIPTION OF ASSESSED LANDS

EXHIBIT "A"

Real property in the City of Dublin, County of Franklin, State of Ohio, described as follows:

Parcel 1.

Situate in the State of Ohio, County of Franklin, Village (now City) of Dublin, and being 4.430 acres of Lot Number 3 of Metrocenter, of record in Plat Book 55, pages 8 and 9, all references being to records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Beginning at an iron pin in the westerly line of Metro Place North (60 feet in width), at the southeasterly corner of Lot Number 3, being also the northeasterly corner of Lot Number 4 of the said Metrocenter;

Thence along the southerly line of said Lot Number 3 and being also the northerly line of the said Lot Number 4, North 71° 28' 46" West, 485.64 feet to an iron pin;

Thence continuing along the southerly line of said Lot Number 3 and being also the northerly line of the Prudential Insurance Company of America 13.260 acre tract of record in Deed Book 3713, page 610, North 83° 30' 45" West, 261.66 feet to an iron pin at the southwest corner of the said Lot Number 3;

Thence along the northwesterly lines of the said Lot Number 3 and being also the southwesterly right-of-way line of Interstate 270 the following courses and distances:

North 30° 21' 53" East, 34.94 feet to an iron pin;

North 39° 11' 11" East, 173.95 feet to an iron pin; and

North 52° 58' 53" East, 182.83 feet to an iron pin;

Thence South 65° 36' 43" East, 671.51 feet to an Iron pin in the northwesterly right-of-way line of said Metro Place North;

Thence along said right-of-way line and being the arc of a curve to the left (Radius=630 feet, Sub-Delta 22° 24' 05") a chord bearing and distance South 41° 59' 38" West, 244.75 feet to the place of beginning and containing 4.430 acres more or less.

Parcel 2:

Situate in the State of Ohio, County of Franklin, Village (now city) of Dublin, and being 6.242 acres of Lot Number 3 of Metrocenter, of record in Plat Book 55, pages 8 and 9, all references being to records of the Recorder's Office, Franklin County, Ohio, and being more particularly bounded and described as follows:

Beginning at an iron pin in the northerly line of Metro Place North at the southeasterly corner of Lot Number 3 and being also the southwest corner of Lot Number 2 of the said Metrocenter;

Thence along said right-of-way line and being the arc of a curve to the left, (Radius=630 feet, Sub-Delta 22° 24' 04") a chord bearing and distance of South 64° 23' 43" West, 244.75 feet to an Iron pin;

Thence North 65° 36' 43" West, 671.51 feet to an Iron pin in the northwesterly line of the said Lot Number 3 and being also the southeasterly line of Interstate 270;

Thence along said line the following courses and distances:

North 52° 58' 53" East, 37.47 feet to an Iron pin;

North 72° 03' 42" East, 359.78 feet to an Iron pin;

North 63° 06' 36" East, 209.62 feet to an iron pin; and,

North 41° 59' 49" East, 102.91 feet to an iron pin in the northerly line of the said Lot Number 3 and being also the southerly line of the JOHN MCKITRICK et al 3 TRUSTEES 40.325 acre of record in Deed Book 1363, page 545;

Thence along said line South 83° 15' 23" East, 208.23 feet to an Iron pin at the northeasterly corner of the said Lot Number 3;

Thence along the easterly line of the said Lot Number 3 and being the westerly line of Lot Number 2 of the said Metrocenter South 00° 18' 50" West, 451.74 feet to the place of beginning and containing 6.242 acres more or less.

PARCEL NUMBER: 273-001704

PARCEL NUMBER: 273-001311

ADDRESS:

600 N. Metro Place
Dublin, OH 43017

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

Special Assessment Payment Date ¹	Total Special Assessment Installment Amount ²	Parcel 273-001704-00 Special Assessment Installment Amount ²	Parcel 273-001311-00 Special Assessment Installment Amount ²
January 31, 2022	\$181,925.35	\$73,168.56	\$108,756.79
July 31, 2022	181,925.35	73,168.56	108,756.79
January 31, 2023	181,925.35	73,168.56	108,756.79
July 31, 2023	181,925.35	73,168.56	108,756.79
January 31, 2024	181,925.35	73,168.56	108,756.79
July 31, 2024	181,925.35	73,168.56	108,756.79
January 31, 2025	181,925.35	73,168.56	108,756.79
July 31, 2025	181,925.35	73,168.56	108,756.79
January 31, 2026	181,925.35	73,168.56	108,756.79
July 31, 2026	181,925.35	73,168.56	108,756.79
January 31, 2027	181,925.35	73,168.56	108,756.79
July 31, 2027	181,925.35	73,168.56	108,756.79
January 31, 2028	181,925.35	73,168.56	108,756.79
July 31, 2028	181,925.35	73,168.56	108,756.79
January 31, 2029	181,925.35	73,168.56	108,756.79
July 31, 2029	181,925.35	73,168.56	108,756.79
January 31, 2030	181,925.35	73,168.56	108,756.79
July 31, 2030	181,925.35	73,168.56	108,756.79

[Continued on next page]

Special Assessment Payment Date ¹	Total Special Assessment Installment Amount ²	Parcel 273-001704-00 Special Assessment Installment Amount ²	Parcel 273-001311-00 Special Assessment Installment Amount ²
January 31, 2031	\$181,925.35	\$73,168.56	\$108,756.79
July 31, 2031	181,925.35	73,168.56	108,756.79
January 31, 2032	181,925.35	73,168.56	108,756.79
July 31, 2032	181,925.35	73,168.56	108,756.79
January 31, 2031	181,925.35	73,168.56	108,756.79
July 31, 2031	181,925.35	73,168.56	108,756.79
January 31, 2033	181,925.35	73,168.56	108,756.79
July 31, 2033	181,925.35	73,168.56	108,756.79
January 31, 2034	181,925.35	73,168.56	108,756.79
July 31, 2034	181,925.35	73,168.56	108,756.79
January 31, 2035	181,925.35	73,168.56	108,756.79
July 31, 2035	181,925.35	73,168.56	108,756.79
January 31, 2036	181,925.35	73,168.56	108,756.79
July 31, 2036	181,925.35	73,168.56	108,756.79
January 31, 2037	181,925.35	73,168.56	108,756.79
July 31, 2037	181,925.35	73,168.56	108,756.79
January 31, 2038	181,925.35	73,168.56	108,756.79
July 31, 2038	181,925.35	73,168.56	108,756.79
January 31, 2039	181,925.35	73,168.56	108,756.79
July 31, 2039	181,925.35	73,168.56	108,756.79
January 31, 2040	181,925.35	73,168.56	108,756.79
July 31, 2040	181,925.35	73,168.56	108,756.79
January 31, 2041	181,925.35	73,168.56	108,756.79
July 31, 2041	181,925.35	73,168.56	108,756.79
January 31, 2042	181,925.35	73,168.56	108,756.79
July 31, 2042	181,925.35	73,168.56	108,756.79
January 31, 2043	181,925.35	73,168.56	108,756.79
July 31, 2043	181,925.35	73,168.56	108,756.79
January 31, 2044	181,925.35	73,168.56	108,756.79
July 31, 2044	181,925.35	73,168.56	108,756.79
January 31, 2045	181,925.35	73,168.56	108,756.79
July 31, 2045	181,925.35	73,168.56	108,756.79

¹ Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment by the Franklin County Auditor under certain conditions

² Pursuant to Ohio Revised Code Section 727.36, the Franklin County Auditor may charge and collect a fee in addition to the amounts listed in the above schedule.