

**PETITION TO ADD TERRITORY TO  
THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT  
AND FOR SPECIAL ENERGY IMPROVEMENT PROJECT**

To: The Mayor and City Council of the City of Cleveland, Ohio

The undersigned does hereby respectfully petition the City of Cleveland, Ohio (the “City”) for the addition of territory to **The Northeast Ohio Advanced Energy District** (the “Advanced Energy District”) pursuant to Chapter 1710 of the Ohio Revised Code, as amended from time to time (the “Act”) and the rules and regulations governing the Advanced Energy District (such rules and regulations are collectively referred to in this Petition as the “Advanced Energy District Documents”). Attached to this Petition as Exhibit A is the approving resolution (“Approving Resolution”) of the Board of Directors (“Board”) of the Advanced Energy District approving the addition of real property to the Advanced Energy District as being in accordance with the Advanced Energy District Documents. The undersigned acknowledges receipt of the Advanced Energy District Documents from the Advanced Energy District and by the execution and submission of this petition hereby agrees to the terms and provisions of the Advanced Energy District Documents. Capitalized words and terms used and not otherwise defined in this Petition shall have the meanings assigned to them in the Energy Project Cooperative Agreement (as defined below).

The undersigned represents that he or she is the owner within 60 days of the date of submission of this Petition for purposes of Ohio Revised Code Section 1710.02(E) (“Owner”) or the duly authorized signatory or officer of the Owner of one hundred per cent of the property or properties set forth in Exhibit B (the “Assessed Property”), and that the Owner will develop and implement a “special energy improvement project,” as described in Exhibit C, (the “Project”) on each parcel of real property described in Exhibit B.

In support of this petition, the undersigned petitioner(s) agree to and approve the following:

- 1. Plan.** The Project will be developed and implemented in accordance with the Advanced Energy District Documents, the Approving Resolution, an Energy Project Cooperative Agreement (the “Energy Project Cooperative Agreement”) between the Owner, the City, the Advanced Energy District, and the Northeast Ohio Public Energy Council (the “Investor”) and a Special Assessment Agreement (the “Special Assessment Agreement”) by and among the Owner, the Advanced Energy District, the City, the County Treasurer of Cuyahoga County, Ohio (the “County Treasurer”), and the Investor.
- 2. Assessment for Special Energy Improvement Project.** The undersigned as Owner of the Assessed Property, hereby consents to, requests, and agrees in writing that the Assessed Property be included within the Advanced Energy District. The Owner further petitions for 100% of the Assessed Property to be assessed to pay costs of the Project, in accordance with the Advanced Energy District Documents.
- 3. Project Costs to be Assessed and Collected.** The Owner requests that (A) the whole costs of the Project, other than any payments or other amounts required to be contributed by the Owner or others for the Project costs under the Energy Project Cooperative Agreement, be specially assessed, together with interest at the Applicable Rate and such other additional amounts as are

necessary to repay the Project Advance and Administrative Expenses, in proportion to the benefits that may result from the Project upon the Assessed Property pursuant to Section 701.05 and Chapter 727 of the Revised Code, (B) those special assessments (the “Special Assessments”) be levied in accordance with the schedule attached to this Petition as Exhibit D, (C) any amounts so assessed be certified to the Cuyahoga County Fiscal Officer to be placed on the tax list and duplicate and (D) the Special Assessments be collected by the County Treasurer.

In connection with this Petition and in furtherance of the purposes hereof, the Owner acknowledges that it has reviewed or has caused to be reviewed (A) the plans and specifications and the profiles for the Project, and (B) the estimate of costs of the Project and the estimate of amounts available from grants, loans and other moneys for Project costs as prepared by the Owner with the assistance of its Consultants, which are now on file with the Clerk of Council of the City. In connection with this Petition and in furtherance of the purposes of this Petition, the Owner also acknowledges that it has reviewed or has caused to be reviewed the estimated special assessments to be levied for the Project, which are now on file with the Clerk of Council and are set forth on Exhibit D to this Petition.

In consideration for the Project, the Owner agrees (A) that the Special Assessments do not exceed the benefit to be received by the Assessed Property as a result of the Project, (B) that the Assessed Property is benefited by the Project in the proportionate amounts set forth below, (C) that the Assessed Property is the only property specially benefited by the Project and the only property that should be assessed for the Project, (D) that the Owner will pay promptly all installments of the Special Assessments levied against the Assessed Property as they become due, (E) that the determination by the Council of the Special Assessments against the Assessed Property pursuant to and in accordance with this Petition will be final, conclusive and binding upon the Owner, its successors and assigns and grantees of the Assessed Property and (F) to include in each deed conveying all or any portion of the Assessed Property (i) a reference to the Special Assessments allocable to the property or portion being conveyed, as determined and approved by the City and the Advanced Energy District, and (ii) a covenant running with such property to be bound by the provisions of this Petition and to timely pay the installments of the Special Assessments as they come due. The Owner further acknowledges and agrees that the Applicable Rate is substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City.

In the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the Fiscal Officer of Cuyahoga County, Ohio, then the Petitioner hereby requests that the Special Assessments be allocated among the resulting parcels in proportion to the improved building square footage of the existing parcels that is contained in each resulting parcel that contains a portion of an existing parcel. The Petitioner hereby certifies, represents, and warrants to the Advanced Energy District and the City that the portion of the Special Assessments allocated to each resulting parcel as described above will be in proportion to, and will not exceed, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Petition.

**4. Adjustment of the Special Assessments and of the Installments of Special Assessments to be Collected.** The levy and collection of the Special Assessments may be subject to adjustment pursuant to the provisions of the Energy Project Cooperative Agreement. Pursuant to the Energy Project Cooperative Agreement, the City will take such actions as may be permitted by law and

are necessary to certify to the Cuyahoga County Fiscal Officer for collection any adjustment to any installment of the Special Assessments.

**5. Prepayment of Special Assessments.** The Special Assessments as to any parcel shall only be prepayable as provided in the Energy Project Cooperative Agreement.

**6. Waivers.** The Owner consents and requests that the Special Assessments be levied and collected without limitation as to the value of the Assessed Property, and waive all the following relating to the Project and the Special Assessments:

(1) Any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision restricting these special assessments, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future, and also including, but not limited to, any provision restricting these special assessments to 33-1/3% of the actual improved value of the Assessed Property as enhanced by the Project;

(2) Any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision limiting special assessments for reimprovement when a special assessment has been levied and paid previously;

(3) Any and all damages or claims for damages of whatsoever kind, character or description resulting from the Project or the construction of the Project, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(4) Any and all resolutions, ordinances and notices required for the construction of the Project, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, any increase in the cost of labor and materials over the estimated cost, and the passage of the assessing ordinance, including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(5) Any and all irregularities and defects in the proceedings;

(6) The right to strict construction of proceedings specified by Section 727.40 of the Revised Code (the Owner hereby requesting and agreeing that the proceedings for the Project and the levying of the Special Assessments be liberally construed in all respects);

(7) Any waiver of the lien of the Special Assessments after two years as specified by Section 727.34 of the Revised Code, (the Owner hereby requesting and agreeing that such lien against the properties it owns continue in force so long as any of the Special Assessments against them remain uncollected); and

(8) Any and all rights, benefits and privileges specified by Sections 727.12, 727.15, 727.23, 727.24, 727.25 and 727.251 of the Revised Code, including but not limited to the filing of plans, specifications, profiles and estimate of cost relating to the Project, the preparation and filing of estimated assessments and the right to file objections to the proposed assessment or to the cost of the labor and

materials for the Project, and the right to request a deferment of payment of those Special Assessments.

The Owner, in accordance with Ohio Revised Code Section 1710.02(A), further agrees that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Owner further agrees not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Owner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any Special Assessments levied against such Property.

The Owner further agrees and consents to the City Council promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Owner further consents and requests that (A) all legislation required to be enacted to permit the Project to commence immediately be enacted at one Council meeting, including, without limiting the generality of the foregoing, the resolution of necessity specified in Section 727.12 of the Revised Code, the ordinance to proceed specified in Section 727.23 of the Revised Code and the assessing ordinance specified in Section 727.25 of the Revised Code, (B) the Special Assessments be levied (and may be collected) before the Project is commenced and the actual cost of the Project is ascertained, and (C) notwithstanding Section 727.24 of the Revised Code, the Project be undertaken pursuant to the Cooperative Agreement.

The Owner agrees that it will not contest, in a judicial or administrative proceeding, the Special Assessments levied against its properties for the Project.

**7. Transfer of Special Energy Improvement Project.** In accordance with the Section 1710.02(G)(4) of the Revised Code and the Act and Section 20 of Article VIII of the Ohio Constitution, the undersigned hereby requests that the City or the Board, acting as agent and on behalf of the City, sell, transfer, lease or convey the special energy improvement project to the undersigned in accordance with the Advanced Energy District Documents for public purposes as set forth in the Act, one purpose being to permit taxpayers (such as the Owner) that subsequently own special energy improvement projects to be able to claim federal investment tax credits, grants in lieu of tax credits, state grants, accelerated depreciation, renewable energy credits and other tax or monetary benefits (collectively, “Benefits”) available to taxpayers that own special energy improvement projects. The undersigned agrees that it will apply for or cause others to apply for Benefits available to the undersigned in connection with the undersigned’s ownership of the Project as the consideration for such sale, transfer, lease or conveyance as determined by the Board in the Advanced Energy Documents.

**8. Boundaries.** A legal description of the territory to be added to the Advanced Energy District and a definitive listing, as identified by parcel number, of such property or properties to be included in the Advanced Energy District are provided in Exhibit B.

**9. Improvements Plan.** If approved by the City, this Petition shall constitute an amendment and supplement to the Advanced Energy District’s Commercial-Industrial Program Project Plan, as amended (the “Improvements Plan”) to add the real property described on Exhibit B to the territory of the Advanced Energy District and to include the Project described on Exhibit C as “Authorized Improvements” (as defined in the Improvements Plan).

**The Owner acknowledges and understands that the City and the Advanced Energy District will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioner, any successors, assigns, or affiliates of the Petitioner, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioner acknowledges that it has had the opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in the Petition.**

**The Owner further deposes and states that this Petition and actions provided for herein impose burdens and obligations upon the Property and provide for Special Assessments to be levied upon the Property in accordance with this Petition, and that this Petition is available for inspection at the office of the Clerk of Council of the City.**

**The Cleveland City Council is hereby respectfully requested to approve, by resolution, this Petition to Add Territory to The Northeast Ohio Advanced Energy District and for Special Energy Improvement Project within 60 days of this Petition being filed with the City.**

**PETITION TO ADD TERRITORY TO  
THE NORTHEAST OHIO ADVANCED ENERGY DISTRICT  
AND FOR SPECIAL ENERGY IMPROVEMENT PROJECT**

**Signature of Property Owner**

Date: \_\_\_\_\_

**SUPERIOR ROAD APARTMENTS LLC, an Ohio limited liability company**

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

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

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

**Address for notices to Superior Road Apartments LLC:**

11201 Shaker Boulevard  
Suite 203  
Cleveland, OH 44104

[Signature Page to Petition]

**EXHIBIT A  
(To Petition)**

**ADVANCED ENERGY DISTRICT BOARD  
APPROVAL TO ADD TERRITORY TO  
ADVANCED ENERGY DISTRICT AND FOR  
SPECIAL ENERGY IMPROVEMENT PROJECT**

**EXHIBIT B**  
(To Petition)

***ASSESSED PROPERTY LEGAL DESCRIPTION***

The Assessed Property subject to this Petition and owned by Superior Road Apartments, LLC is located at 11201 Shaker Boulevard in Cleveland, Ohio with Cuyahoga County Permanent Parcel ID Number 128-08-009, and is described as follows:

**Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio and known as being Parcel "A" in the Lot Split for St. Luke's Hospital Association of a part of Original 100 Acre Lot No. 427 as shown by the recorded plat in Volume 232 of Maps, Page 13 of Cuyahoga County Records, bounded and described as follows:**

**Beginning at a drill hole and cross set in the concrete walk, in the Northerly curved line of Shaker Boulevard S.E., 176 feet in width, at the most Southeasterly corner of Parcel "A" in said Lot Split for St. Luke's Hospital Association;**

**Course No. 1: Thence Southwesterly along the Northerly curved line of Shaker Boulevard S.E., being along the arc of a circle deflecting to the left, 353.80 feet to a drill hole and cross set in the concrete walk at the Easterly end of a curved turn-out connecting said Northerly line of Shaker Boulevard S.E. and the Easterly line of Martin Luther King, Jr. Boulevard S.E., 100 feet in width, in said Northerly line of Shaker Boulevard S.E., said curved line having a radius of 5818.65 feet, and a chord which bears South 86 deg. 20' 36" West a distance of 353.75 feet;**

**Course No. 2: Thence Northwesterly along said curved turn-out, being along the arc of a circle deflecting to the right, 33.52 feet to a capped 5/8-inch iron pin set at a point of tangency in the Easterly line of said Martin Luther King, Jr. Boulevard S.E., said curved line having a radius of 20.00 feet, and a chord which bears North 47 deg. 22' 45" West a distance of 29.74 feet;**

**Course No. 3: Thence North 0 deg. 38' 25" East, along said Easterly line of Martin Luther King, Jr. Boulevard S.E., 28.20 feet to a point of curvature therein, from which point a drill hole and cross set in the concrete walk is radially 5.00 feet Westerly therefrom;**

**Course No. 4: Thence continuing Northeasterly along said Easterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 200.51 feet to a drill hole and cross set in the concrete walk at a point of compound curvature therein, said curved line having a radius of 810.00 feet, and a chord which bears North 7 deg. 43' 55" East a distance of 200.00 feet;**

**Course No. 5: Thence continuing Northeasterly along the Southeasterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 316.74 feet to a drill hole and cross set in concrete walk at a point of compound curvature therein, said curved line having a radius of 298.08 feet, and a chord which bears North 45 deg. 15' 40" East a distance of 302.01 feet;**



Course No. 6: Thence continuing Northeasterly along the Southerly curved line of Martin Luther King, Jr. Boulevard S.E., 115.22 feet to the Northeasterly corner of the aforementioned Parcel "A", from which point a drill hole and cross was found 0.39 feet Northerly and 0.69 feet Westerly in the concrete walk from said true corner, said curved line having a radius of 810.00 feet, and a chord which bears North 79 deg. 46' 26" East a distance of 115.13 feet;

Course No. 7: Thence South 1 deg. 16' 18" West, along the Easterly line of said Parcel "A", 406.44 feet to a capped 5/8-inch iron pin found;

Course No. 8: Thence South 88 deg. 43' 42" East, along the Northerly line of said Parcel "A", 30.00 feet to a capped 5/8-inch iron pin set in the Northeasterly corner thereof;

Course No. 9: Thence South 1 deg. 16' 18" West, along an Easterly line of said Parcel "A", 49.97 feet to the place of beginning, containing 137,149 square feet of land (3.1485 acres), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in October, 1996, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used to denote angles.

PPN: 128-08-009

This Legal Description Complies with  
The Cuyahoga County Transfer and  
Conveyance Standards and is approved  
for transfer.

For File: 182837NS

OCT 23 2018



Agent

**EXHIBIT C**  
(To Petition)

**SPECIAL ENERGY IMPROVEMENT PROJECT**

The real property owned by Superior Road Apartments LLC, located at 11201 Shaker Boulevard, Cleveland, Ohio, is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the “Project”). The legal description of the property is set forth on the attached Exhibit B. The property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

Project Description

The project consists of the acquisition, construction, installation, equipping, and improvement of the below listed eligible measures, which each constitute solar photovoltaic project or an “energy efficiency improvement” and all are “special energy improvement projects” pursuant to Ohio Revised Code Section 1710.01(I), to an existing industrial building.

Eligible Measures

The following is a list of eligible measures from the schedule of values.

<b>ECM</b>	<b>Description</b>	<b>Annual Energy Savings</b>	<b>Cost</b>
Solar	247.5 kW roof mount solar photovoltaic array	\$35,000	\$450,897.44
Roof	GAF TPO Roof System	141,000 kWh/\$12,690	\$204,638.56

Total project component costs: \$655,536.00

Total project costs: \$705,000.00

Aggregate assessments: \$927,127.20

Estimated average semi-annual special assessments for 15 years: \$30,904.24

First semi-annual installment due: approximately February 1, 2025

**EXHIBIT D  
(To Petition)**

***SCHEDULE OF ANNUAL ASSESSMENTS***

**SCHEDULE OF SPECIAL ASSESSMENTS  
FOR CUYAHOGA COUNTY PARCEL NO.:**

128-08-009\*

The following schedule of Special Assessment charges shall be certified for collection in 30 semi-annual installments to be collected with first-half real property taxes in calendar years 2025 through 2039:

[See Immediately Following Page]

\* As identified in the records of the Fiscal Officer of Cuyahoga County, Ohio as of September 15, 2023.

<b>Special Assessment Payment Date<sup>1</sup></b>	<b>Special Assessment Installment Amount<sup>2</sup></b>
2/1/2025	\$30,904.24
7/1/2025	30,904.24
2/1/2026	30,904.24
7/1/2026	30,904.24
2/1/2027	30,904.24
7/1/2027	30,904.24
2/1/2028	30,904.24
7/1/2028	30,904.24
2/1/2029	30,904.24
7/1/2029	30,904.24
2/1/2030	30,904.24
7/1/2030	30,904.24
2/1/2031	30,904.24
7/1/2031	30,904.24
2/1/2032	30,904.24
7/1/2032	30,904.24
2/1/2033	30,904.24
7/1/2033	30,904.24
2/1/2034	30,904.24
7/1/2034	30,904.24
2/1/2035	30,904.24
7/1/2035	30,904.24
2/1/2036	30,904.24
7/1/2036	30,904.24
2/1/2037	30,904.24
7/1/2037	30,904.24
2/1/2038	30,904.24
7/1/2038	30,904.24
2/1/2039	30,904.24
7/1/2039	30,904.24

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<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment by the Cuyahoga County Fiscal Officer under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Cuyahoga County Fiscal Officer may charge and collect a fee in addition to the amounts listed in the above schedule.

## **EXHIBIT E**

### **NORTHEAST OHIO ADVANCED ENERGY DISTRICT ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT (ADVANCED ENERGY DISTRICT)**

#### **COMMERCIAL-INDUSTRIAL PROGRAM PROJECT PLAN**

The amended pilot commercial – industrial property assessed clean energy (PACE) program project plan of the Northeast Ohio Advanced Energy District Advanced Energy Special Improvement District (“Advanced Energy District”) provides guidelines to property owners desiring to develop special energy improvement projects as follows:

Thank you for your interest in learning more about the amended pilot commercial – industrial property assessed clean energy (PACE) program of the Northeast Ohio Advanced Energy District Advanced Energy Special Improvement District (“Advanced Energy District”). The Advanced Energy District can provide for financing (“financing” or “funding”) for your special energy improvement project or a mechanism to secure financing obtained elsewhere secured by special assessment proceeds. If you (“the property owner(s)”) wish to apply for financing (“financing” or “funding”) from the Advanced Energy District or utilize the assessment process as part of its amended pilot commercial-industrial PACE program (“Commercial-Industrial Program”), you should read and become familiar with the following terms and conditions for participation:

Participation in the Advanced Energy District’s Commercial Industrial Program is limited to property owners who have agreed to add their real property to the Advanced Energy District and who otherwise meet the terms and conditions of the Advanced Energy District Commercial-Industrial Program. These terms and conditions are addressed in this Project Plan, a Services Plan, a real property and company information verification form, an application or petition (Petition), and the governing documents forming the Advanced Energy District (i.e. articles of incorporation, code of regulations, and resolutions duly adopted by the board of directors of the Advanced Energy District and the applicable resolutions and ordinances of the city where your real property is located, such documents are hereinafter collectively referred to as “Governing Documents”), each of which property owner(s) must have reviewed and as necessary have agreed to or executed prior to participation. The Project Plan, the Services Plan, the Petition, the Governing Documents and an Assessment Schedule to be executed by you to participate in the Commercial-Industrial Program are hereinafter collectively referred to as the “Advanced Energy District Documents.” The Advanced Energy District Documents establish the terms of the Commercial-Industrial Program, including the addition of additional territory to the Advanced Energy District. You should become familiar with and understand the provisions of the Advanced Energy District Documents. By agreeing to or executing the Advanced Energy District Documents, you agree to the terms of the Advanced Energy District’s Commercial-Industrial Program. Each participating political subdivision in the Advanced Energy District and the Board of Directors of the Advanced Energy District reserve the right to amend the Commercial-Industrial Program terms and conditions from time to time as described in “Changes in the Commercial-Industrial Program Terms; Severability” below.

## **I. Purpose of the Commercial-Industrial Program**

The Commercial-Industrial Program is intended to assist property owners who own real property within participating political subdivisions with the financing of the acquisition, installation and improvement of special energy improvement projects, including, without limitation, solar photovoltaic, solar thermal energy, geothermal energy, customer-generated energy, or energy efficiency improvements, whether such real or personal property is publicly or privately owned, and any other “special energy improvement projects” authorized under Ohio Revised Code Chapter 1710, as the same may be amended from time to time (the “Authorized Improvements”), which Authorized Improvement shall be undertaken in accordance with the Act and the Plan, and by carrying out such other improvements and/or services in and for the benefit of the District as the Board (defined below) may determine and funds may allow, all as set forth in the Plan. Each participating political subdivision has approved the creation of the Advanced Energy District to provide the source of financing for the Commercial-Industrial Program. Special Assessment Revenue Bonds will be issued on behalf of Advanced Energy District and proceeds from the sale of the special assessment revenue bonds will be used to finance Authorized Improvements that benefit properties within the District. Debt service on the special assessment revenue bonds and the costs of administering the Commercial-Industrial Program will be paid through special assessments levied by participating political subdivisions on real property in the Advanced Energy District. Special Assessment payments will be due and payable by property owner(s) at the same time real property taxes are due.

**There may be other types of financing available. Each participating political subdivision and the Advanced Energy District do not guarantee that the Commercial-Industrial Program is the best financing option for your situation. Please do your research and select the option that is most appropriate for you.**

## **II. Advanced Energy District’s Commercial-Industrial Program Process; Terms and Conditions; Services Plan; Statutory Requirements**

As discussed in more detail below, in order for you to receive financing and funding from the Advanced Energy District’s Commercial-Industrial Program, the following steps must occur<sup>1</sup>:

First: You must review the eligibility requirements for Advanced Energy District Commercial-Industrial Property Assessed Clean Energy (PACE) program as set forth below. In order to participate in the Commercial-Industrial Program, you must meet the eligibility requirements. See “Eligibility” below.

Second: You must apply for a funding reservation from the Advanced Energy District’s Commercial-Industrial Program as set forth in this Article II. Property owners may apply for the Advanced Energy District’s Commercial-Industrial Program by contacting any one of the seventeen participating political subdivisions in the Advanced Energy District for an application. The list of participating political subdivisions is listed under “Eligibility”

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<sup>1</sup> These steps are not necessary for Owners to secure other financing.

below. You will be required to fill out and complete a real property and company information verification form provided to you by the participating political subdivision. You will also receive a copy of the Advanced Energy District Documents, including this Project Plan, when you receive the real property and company information verification form. Upon submission of the real property and company information verification form, the participating political subdivision will forward your form to the Advanced Energy District for processing.

Third: Upon submission of the real property and company information verification form, the Advanced Energy District will verify your eligibility to participate in the Commercial-Industrial Program and if your property is eligible, the Advanced Energy District will begin working with you and one or more consultants, engineers or qualified installers that you may choose to assist you in planning the development of your Authorized Improvement and an estimated project cost. During this period of time, representatives of the Advanced Energy District will work with you and your consultants, engineers and qualified installers to assess the technical and economic feasibility of the Authorized Improvement project you are considering, including working with Advanced Energy District financial advisors, consultants and developers who will be available to offer guidance regarding special assessment revenue bond financing costs, including expected and maximum interests rates and expected and maximum estimated special assessments which the Advanced Energy District expects to be payable by you as property owner(s) in connection with your participation in the Commercial-Industrial Program. The costs of these services provided by the Advanced Energy District, its advisors and agents in assisting you as well as the costs of your consultants, engineers and qualified installers in determining the technical and economic feasibility of Authorized Improvements on your property may be included as part of the cost of your Authorized Improvements. The costs of Authorized Improvements will be eligible to be financed by special assessments paid by you for up to twenty-five years.

Fourth: Upon your determining to proceed with a particular Authorized Improvement project design and plan, you must request and receive the approval of the Board of Directors of the Advanced Energy District that your project satisfies requirements of the Advanced Energy District Documents and that the territory of the Advanced Energy District should be increased to permit the addition of the territory which will be assessed to pay costs of your Authorized Improvements. Upon receipt of approval of the Board of Directors of the Advanced Energy District, you will then execute and file an application or Petition with Mayor and City Council of the participating political subdivision where the additional territory to the Advanced Energy District is proposed to be added. Advanced Energy District financial advisors, consultants or developers will have provided to you by that time the then currently anticipated interest rates on special assessment revenue bonds or other obligations to be issued to pay costs of your Authorized Improvements as well as the estimated special assessments to be paid by you for the financing of your Authorized Improvements and participation in the Commercial-Industrial Program.

Fifth: With your executing and filing a Petition with the Mayor and City Council of the participating political subdivision where your Project will be located, you as the property

owner have agreed to the levy and collection of special assessments against your real property to be added to the Advanced Energy District in accordance with the Petition and the Advanced Energy District Documents. Special Assessments will be levied and collected in any year however only in accordance with the Petition and only upon the sale of special assessment revenue bonds or other financing, the proceeds of which will be used to pay the costs of the Authorized Improvements. The timing for the sale of special assessment revenue bonds to pay costs of Authorized Improvements under the Commercial-Industrial Program will depend on the number of and size of Authorized Improvements and market conditions.

Sixth: After your filing of the Petition and your compliance with the Advanced Energy District Documents, the Advanced Energy District and its financial advisors, consultants and developers will advise you as an owner of Property in the District of the commencement of marketing of the special assessment revenue bonds, if applicable, or other financing that will determine the actual interest rate(s) to be paid on special assessment revenue bonds to pay costs of your Authorized Improvements. The Special Assessments that will be payable by you annually as a property owner in the Advanced Energy District as part of the Commercial-Industrial Program is calculated based upon (a) the cost of the Authorized Improvement, (b) federal and state subsidies received by you as owner of the Authorized Improvement, (c) the interest rates payable on the special assessment revenue bonds and (d) administrative charges levied by the participating political subdivision to pay administrative costs. See: The “Services Plan.”

No property owner participating in the Commercial-Industrial Program will be obligated to pay any Special Assessments under the Commercial-Industrial Program unless the property owner first executes an Assessment Schedule which will be prepared by the Advanced Energy District or its agents and staff only after the pricing of special assessment revenue bonds for the Commercial-Industrial Program. The Assessment Schedule will include a schedule of your annual or semiannual payments for participating in the Commercial-Industrial Program. Unless you agree with and execute the Assessment Schedule, you will not be responsible to pay Special Assessments under the Commercial-Industrial Program. If you however execute the Assessment Schedule, you are agreeing to the levy and collection of Special Assessments in accordance with the Advanced Energy District Documents. If you do not execute the Assessment Schedule, you may be responsible to pay certain administrative costs of the Advanced Energy District to remove the lien of the Special Assessments from your property.

Seventh: The proceeds of the sale of special assessment revenue bonds will be deposited with a qualified trustee. Disbursement of proceeds from such sale from the trustee held construction fund to pay Authorized Improvement costs will require the signature of an officer of the Advanced Energy District and the signature of an authorized officer of the applicable property owner. A qualified installer must complete the installation of Authorized Improvements on your property. See “Authorized Improvements; Qualified Installers” below.



Eighth: This Plan provides that the participating political subdivision that has approved (i) the addition to the territory of the Advanced Energy District and (ii) the Authorized Improvements to be constructed on the applicable property in the District has done so on behalf of the other participating political subdivisions in the Advanced Energy District. The participating political subdivision where your property within the District is located will be the initial owner of the Authorized Improvements. However, the Advanced Energy District, acting as agent for and on behalf of this participating political subdivision may transfer title to the Authorized Improvements to any taxpayer, including you as the property owner, who may then apply for and receive federal and state grants and other tax benefits associated with the ownership of the Authorized Improvements, including accelerated depreciation. The property owner should consult its own tax advisor as to the merits of owning the Authorized Improvements.

Ninth: As a property owner within the Advanced Energy District, you will be expected to make special assessment payments in amounts and at the times as specified in the Advanced Energy District Documents.

**Submission and approval of a real property and company information verification form or a Petition does not guarantee that you will receive financing or funding under the Commercial-Industrial Program. The ability to proceed with financing or funding will be dependent on the sale of special assessment revenue bonds or other obligations secured by Special Assessments to pay costs of the Authorized Improvements under the Commercial-Industrial Program. The sale of special assessment revenue bonds or other obligations will depend on a number of factors including the number of and size of the Authorized Improvements and market conditions.**

**If you proceed to incur costs with Authorized Improvements prior to executing an Assessment Schedule, you risk incurring costs which may not be able to be financed as part of the Advanced Energy District's Commercial-Industrial Program. In addition, disbursement of proceeds of special assessment revenue bonds or other obligations must be accomplished in accordance with the trust indenture and other documents securing the special assessment revenue bonds as well as the terms and conditions of the Advanced Energy District Documents.**

**Special Assessments. You, as a property owner must pay any special assessments levied against your property and certified for collection once an Assessment Schedule has been executed regardless of personal financial circumstances, the condition of the property, or the performance of the Authorized Improvements. Do not apply for financing if you are not certain you can pay the special assessments. Just as with any property-based debt such as a mortgage, the failure to pay your special assessments — in full or in part — will result in financial repercussions, including penalties, interest and, eventually, foreclosure of your property by Cuyahoga County.**

If you use an escrow account to pay your semi-annual property taxes, you must notify your escrow company of your special assessment payments. You will need to increase your monthly

payments to the escrow account by an amount equivalent to your annual special assessments divided by 12 months.

**Services Plan.** The Board of the Advanced Energy District has also adopted a Services Plan that is part of the Advanced Energy District Documents that property owner(s) must agree to prior to participating in Advanced Energy District's Commercial-Industrial Program. The Services Plan details costs of administration of the Commercial-Industrial Program. The Board of the Advanced Energy District is comprised of the duly appointed and designated persons who hold the office of economic development director in each of the initial participating political subdivisions within the Advanced Energy District. These Board members will approve an annual budget to administer the Commercial-Industrial Program and the annual costs of services will be included in the special assessments levied annually against each parcel of real property included within the Advanced Energy District. The amount levied for Advanced Energy District services rendered in any year as to any parcel of real property in the Advanced Energy District will be in proportion to the cost of the Authorized Improvements financed by special assessments on that parcel of real property to the total cost of all Authorized Improvements financed by special assessments in the Commercial-Industrial Program. The Advanced Energy District may share information with any agents or other third parties as necessary to administer the Commercial-Industrial Program. See "Disclosure of Property Owner Information" below.

### **Renewable Energy Credits**

The Board of the Advanced Energy District may adopt rules governing renewable energy credits associated with Authorized Improvements financed with the proceeds of special assessment revenue bonds.

### **Statutory Requirements**

As provided in the Advanced Energy District Documents:

- (A) Additional territory may be added to the Advanced Energy District. The Advanced Energy District is formed for the purpose of developing the Authorized Improvements. There will be designated at least one Authorized Improvement for each parcel of real property included within such additional territory to be added to the Advanced Energy District. If Additional Territory is to be added to the Advanced Energy District, such addition will be in accordance with the Advanced Energy District Documents and the owner(s) of 100% of the real property to be added to the Advanced Energy District will petition the Mayor and Council of the participating political subdivision where the real property is located for inclusion of such real property in the Advanced Energy District. Prior to submission of the Petition, the Petition shall be approved by the Board of Directors of the Advanced Energy District in accordance with rules established by the Board for such purposes. The Petition necessary to add territory to the Advanced Energy District need not be approved by the Mayor and City Council of other participating political subdivisions in the Advanced Energy District where such real property is not located. Additional territory will be added to the Advanced Energy District with the approval of the Board of Directors of the Advanced Energy District

and the participating political subdivision where the real property is located all in accordance with the Advanced Energy District Documents and the Act.

- (B) The Advanced Energy District Documents may be amended with the majority vote of the board of directors of the Advanced Energy District held at a meeting in accordance with the Advanced Energy District Documents.
- (C) The board of directors of the Advanced Energy District possesses authority to implement plans and amend plans for public improvements, including the Authorized Improvements and public services in accordance with and as provided for in Sections 1710.02(F), 1710.02(G) and 1710.06(A) of the Ohio Revised Code.
- (D) The public improvements to be provided by the Advanced Energy District are the Authorized Improvements included in each Petition; the area where the Authorized Improvements will be developed will be the area identified in each Petition requesting formation of the Advanced Energy District or requesting additional territory be added to the Advanced Energy District and the method of assessment shall be in proportion to the benefits that result from the Authorized Improvements, i.e. in proportion to the cost of each Authorized Improvement financed by special assessments to the cost of all Authorized Improvements financed by special assessments under the Commercial Industrial Program.
- (E) For purpose of levying an assessment, the board of directors of the District may combine levies for public services and Authorized Improvements into one special assessment to be levied against each specially benefited property in the Advanced Energy District.

### **III. Eligibility**

In order to receive financing from the Advanced Energy District's Commercial-Industrial Program or request the levy of special assessments through the Advanced Energy District's Commercial-Industrial Program, a property owner must meet the following requirements, as the same may be modified or amended by the Board of the District in its sole discretion:

- a. **The property to be improved with the Authorized Improvements (the "subject property") must be located within one or more of the following municipal corporations (each as "participating political subdivision"): City of Bedford, City Bedford Heights, City of Berea, City of Brooklyn, City of Brook Park, City of Cleveland, City of Cleveland Heights, City of Euclid, City of Middleburg Heights, City of Garfield Heights, City of Lakewood, City of Maple Heights, City of Parma, City of Parma Heights, City of Shaker Heights, City of South Euclid, City of University Heights, City of Warrensville Heights.**
- b. **The subject property must be used for commercial or industrial purposes, which generally includes all non-residential purposes. A**

**multi-family apartment building will qualify as a commercial building. The aggregate size of each of the Authorized Improvements to be assessed against parcels of real property to be added to the Advanced Energy District must result in energy improvement or efficiency gains satisfactory to the Advanced Energy District**

- c. All owners of the fee simple title to the subject property must review, sign and approve the Advanced Energy District Documents. Therefore, before submitting an initial application, please ensure that all owners of the fee simple title to the subject property wish to participate in the Advanced Energy District Commercial-Industrial Program on the terms set forth in Advanced Energy District Documents.**
- d. The Advanced Energy District recommends that the subject property receive an “energy audit” prior to participation in the Commercial-Industrial Program, but participation in the program will not require fulfillment of any such energy audit.**
- e. The property owner(s) and/or the owners of the Authorized Improvements must apply for the federal grant in lieu of tax credits under the American Recovery and Reinvestment Act of 2009. The federal grant in lieu of tax credit is equal to 30% of the qualified basis of the Authorized Improvements. Property owners must also apply for any available Ohio Energy Office grants. To the extent required by the Advanced Energy District, the property owner must assign each of the grants to the Advanced Energy District or its assigns in order to secure the payment of debt service on special assessment revenue bonds or other obligations issued to finance the property owner’s Authorized Improvements.**
- f. The property owners(s) must agree to participate in surveys and program evaluations directed by the Advanced Energy District.**
- g. The property owner(s) must not have declared bankruptcy in the past 7 years.**
- h. The property owners must be current in the payment of all obligations secured by the subject property, including property taxes, assessments and mortgages, and there must have been no notices of default filed on the subject property within the past 3 years (or since you took title to the subject property if it has been less than 3 years). The Advanced Energy District may review public records, including the County real property records, to verify compliance with this requirement.**
- i. The property owners must not have involuntary liens, defaults or judgments applicable to the subject property in excess of \$1,000. The**

**Advanced Energy District may review public records, including the County real property records and court documents, to verify compliance with this requirement.**

- j. Because the Commercial-Industrial Program may involve issuance of special assessment revenue bonds or other obligations on behalf of the Advanced Energy District, the Advanced Energy District is concerned that property owners who participate in the program will pay their special assessments in full on a timely basis. Therefore, the Advanced Energy District reserves the right to request additional information, including a credit check, in its sole discretion and to deny applications based on any information that reflects on the likelihood that a property owner may not pay special assessments.**

#### **IV. Authorized Improvements; Qualified Installers; Maximum Funding**

Authorized Improvements. At this time, the Commercial-Industrial Program may only be used to finance or secure the financing of Authorized Improvement installations. You are responsible for the Authorized Improvements installed on your property. You will need to address performance and other system-related issues directly with the installer according to the terms of your contract with the installer. **The Advanced Energy District and its Commercial-Industrial Program is a financing program only. Neither the Advanced Energy District nor any of the Advanced Energy District's participating political subdivisions are responsible for the system or its performance.**

Qualified Installers. The Authorized Improvements must be installed by installers that are registered with the State of Ohio. A list of State of Ohio registered installers is located at: <http://www.development.ohio.gov/cms/uploadedfiles/CDD/OEE/NOFA%20Appendix%20F.pdf>. If you choose to work with an installer that is not registered with the State of Ohio, you are not eligible for participation in the Commercial-Industrial Program.

**By requiring that your installer be registered with the State of Ohio, the Advanced Energy District is not recommending a particular installer or warranting the reliability of any such installer. The Advanced Energy District's Commercial-Industrial Program is a financing program only. Neither the Advanced Energy District nor the participating political subdivisions will participate in the resolution of any dispute between you and your installer.**

Maximum Funding. The Advanced Energy District will only approve applications for funding in accordance with the Advanced Energy District Documents. As a general matter, the Commercial Industrial Program will only finance Authorized Improvements that do not exceed 10% of the appraised value of the property to be assessed. **The Advanced Energy District and the Commercial-Industrial Program will not provide financing for any costs in excess of this amount. The Advanced Energy District encourages you to do your research and receive bids from multiple installers before signing a contract. The Advanced Energy District is not responsible for determining the appropriate equipment, price or installer for your property.**

## **V. Compliance with Existing Mortgages**

The filing of the Petition and the adoption by the participating political subdivision of an ordinance to proceed under Ohio Revised Code Section 727.25 will establish a lien on your property as security for your obligation to pay special assessments in accordance with the Petition and the Advanced Energy District Documents. The lien securing the obligation to pay special assessments may be senior to all private liens, including your purchase mortgage(s). Many loan documents limit the ability of a property owner to place liens upon property without the consent of the lender, or authorize the lender to obligate you to prepay obligations. **Please confirm with your lender(s) that participation in the Commercial-Industrial Program will not adversely impact your rights with respect to any existing loan documents, or obligate you to prepay your special assessments.**

## **VI. Transfer or Resale of the Subject Property**

If you sell your property prior to the end of the special assessment period for your Authorized Improvement, the new owner will assume the obligation to pay special assessments. Ownership of any Authorized Improvements on the subject property will transfer to the new owner at the close of the real estate sale.

## **VII. Grants and Tax Benefits**

Please consult with your tax advisors with respect to the state and federal tax consequences of participating in the Commercial-Industrial Program, including whether you will be eligible for federal energy tax credits as a result of your participation in the Commercial-Industrial Program and whether you can deduct the interest component of the special assessments from your state and federal income taxes.

**Neither the Advanced Energy District nor any participating political subdivision is responsible for the state or federal tax consequences of participating in the Commercial-Industrial Program.**

## **VIII. Changes in State and Federal Law**

The ability to issue bonds to finance Commercial-Industrial Program Authorized Improvements is subject to a variety of state and federal laws. If those laws were to change after you have made application to the Advanced Energy District, the issuer of the special assessment revenue bonds or other obligations may be unable to issue the bonds or other obligations and the Advanced Energy District may be unable to fulfill your financing application. **The Advanced Energy District shall have no liability as a result of any such change in law.**

## **IX. Releases and Indemnification**

You acknowledge that the Advanced Energy District has been created with the approval of the participating political subdivisions solely for the purpose of assisting the owners of property within

participating political subdivisions with the financing of Authorized Improvements, and that the Advanced Energy District and any participating political subdivision shall have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or maintenance of the Authorized Improvements. You agree that you and your successors in interest to fee simple title in the subject property shall be solely responsible for the installation, operation, financing, refinancing and maintenance of the Authorized Improvements. Participation in the program does not in any way obligate the Advanced Energy District or any participating political subdivision to protecting access with respect to any proposed developments that may shade the system. You hereby acknowledge that the subject property will be responsible for payment of special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

You agree to release, defend, indemnify, and hold harmless the Advanced Energy District and the participating political subdivisions, including their officers, directors, employees and agents, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with your participation in the Advanced Energy District's Commercial-Industrial Program.

#### **X. Changes in the Advanced Energy District's Commercial-Industrial Program Terms; Severability**

The Advanced Energy District reserves the right to change this Advanced Energy District Commercial-Industrial Program Project Plan and the terms and conditions of the Advanced Energy District Documents at any time without notice; however, no such change will affect your obligation to pay special assessments as set forth in your petition and the Advanced Energy District Documents. Your participation in the Commercial-Industrial Program will be subject to the Advanced Energy District Document terms and conditions in effect from time to time during your participation.

If any provision of the Advanced Energy District Documents is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these Advanced Energy District Documents and the Commercial-Industrial Program and shall not affect the validity and enforceability of any remaining provisions.

#### **XI. Disclosure of Property Owner Information**

You agree that the Advanced Energy District and any participating political subdivision may disclose your personal information to any agent of the Advanced Energy District or that participating political subdivision and that the Advanced Energy District, participating political subdivisions and its agents may disclose your information to third parties when such disclosure is essential to the conduct of the Advanced Energy District's business or to provide services to you, including but not limited to where such disclosure is necessary to (i) comply with the law, legal process or our regulators, (ii) enable the Advanced Energy District and participating political subdivisions and their employees or consultants to provide services to you and to otherwise perform their duties and (iii) obtain and provide credit reporting information. We do not provide your personal information to third parties for telemarketing, e-mail or direct mail solicitation.

In order to receive funding for this program and to enable communication regarding the State of Ohio's energy programs, you consent to the release of your name and contact information to your current electric utility. You further agree to the release of your name and contact information and your property's utility usage data to the Advanced Energy District, its grantors and designated contractors for the purpose of conducting surveys and program evaluation of the Commercial-Industrial Program.



## **EXHIBIT F**

### **NORTHEAST OHIO ADVANCED ENERGY DISTRICT ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT (ADVANCED ENERGY DISTRICT)**

#### **COMMERCIAL-INDUSTRIAL SERVICES PLAN**

The Northeast Ohio Advanced Energy District Advanced Energy Special Improvement District (“Advanced Energy District”) intends to deliver services pursuant to this Commercial-Industrial Services Plan (the "Services Plan"), in such manner as will be determined from time to time by the District's board of directors (the "Board"). This Services Plan is designed to provide ongoing services to the properties in the Advanced Energy District during the years 2010 to 2035. This Services Plan may be amended by the Board. The Services Plan includes all terms and provisions of the Advanced Energy District Documents, which are incorporated herein by reference as if fully written herein. The services to be provided are as follows:

#### **MARKETING AND PROMOTION SERVICES**

Services to market Commercial-Industrial Program and promote the image of the region through the following examples:

- Development of Literature and Brochures
- Sponsored Media campaigns
- Public Relations
- Data collection and information management
- Cooperative programs with members
- Electronic and printed marketing materials
- Special Events

#### **PROGRAM DESIGN SERVICES**

Comprehensive design services to establish and maintain the strongest possible legal and programmatic framework for the Commercial-Industrial PACE program.

#### **PROGRAM ADMINISTRATION SERVICES**

Provide community education, application acceptance, and real-time program tracking. Administrative services include:

- Education & Marketing
- Application Processing
- Property Underwriting
- Project Verification
- Quality Assurance
- Customer Service
- Origination and Closing Process

## **SPECIAL ASSESSMENT ADMINISTRATION SERVICES**

Administrative services related to the Special Assessments are associated with the annual determination of the Special Assessments to be collected from the subject properties of the Advanced Energy District, management of bond funds and accounts relating to Special Assessments, and providing public information. These services will be provided pursuant to a Cooperative Agreement ("Cooperative Agreement") to be executed between each of the participating political subdivisions, the issuer of the special assessment revenue bonds and the District. These bond administration services may also be included as part of a separate Administration Agreement and paid from assessment payments as provided in the Indenture securing Bonds. If so, no separate special assessment for administration services for Bonds will be included as part of the Services Plan, but rather will be included as part of the separate Administration Agreement. Services include:

### **A. Calculate the Reduction of the Special Assessments for the Following Year**

This task involves calculating the amount of the reduction of the Special Assessments to be collected in the following year by each participating political subdivision and includes the following sub-tasks:

- (1) **Determine Annual Bond Payments:** Identify expenses of the special assessment revenue bonds or other obligations secured by the Special Assessments (collectively, "Obligations"), including annual debt service charges, administrative expenses, and other expenses as provided for in the trust agreement securing the Obligations. This determination shall be made using the definitions of "Annual Bond Payments" and other relevant defined terms and including any contingencies permitted by the trust agreement as the same may appear in the trust agreement securing the Obligations, a copy of which will be provided to the District at the closing of the Obligations.
- (2) **Determine Annual Available Amounts:** Prepare reconciliation, on dates as may be required, to determine value of amounts held in funds established under the trust agreement, interest earnings, and other credits which may be applied to pay debt service and other expenses under the trust agreement. This determination shall be made using the definitions of "Annual Available Amounts" and related definitions under the trust agreement.
- (3) **Calculate the Annual Required Assessments:** Based on the estimates of annual expenses and assets of Obligations incurred to pay costs of special energy improvement projects, including annual debt service charges, administrative expenses and other expenses as provided for in the Plan, the Petition and documents securing the Obligations, including any contingency required by any trust agreement securing the Obligations, the District shall calculate the Annual Required Assessments to be collected in the following year through the imposition of the Special Assessments that will be collected by the applicable participating political subdivision levying the Special Assessments. This determination shall be made using the definitions of "Annual Bond Payments," "Annual Available Amounts," "Annual Required Assessments" and related definitions under the trust agreement securing the Obligations.

(4) Determine Special Assessments for the Assessed Properties: Based on the Annual Required Assessment and the provisions of applicable Petitions and the Plan, the District shall determine the Special Assessment to be imposed on each parcel within the District.

### **B. Prepare Certification of Special Assessments to the County Auditor**

This task involves certifying the Special Assessments to be collected from each parcel within the District to the County Auditor no later than the second Monday in September each year. The District shall coordinate with each of the participating political subdivisions and the County Auditor to provide the information required to certify the Special Assessments for inclusion on the general tax list and duplicate and to be collected in semiannual installments.

### **C. Support Services Related to Billing of the Special Assessments**

(1) Present Findings to the Board: The annual report about the Special Assessments prepared by the District will be provided to the Board for its approval, and a copy of such report will be provided to each of the participating political subdivisions.

(2) Approval of Special Assessments by the City Councils of each of the participating political subdivisions: The certification of Special Assessments to be provided to the County Auditor will be submitted to the City Council of each participating political subdivision for its approval prior to its submission to the County Auditor.

(3) Certification to the County Auditor: Once approved by the City Council of each participating political subdivision, the District will be responsible for submitting to the County Auditor the District's annual certification of the total amount of the Special Assessment to be collected each year, and of the Special Assessments to be collected from each parcel in semiannual installments. Such annual certification of Special Assessments shall be provided to the County Auditor no later than the second Monday in September. Assistance will be provided to each participating political subdivision, the County Auditor, County Treasurer, or other officials of the County as is necessary for the levy of Special Assessments.

(4) Supplemental Billing: The District shall assist the County with any supplemental billing that should be necessary. Any Special Assessments rejected by the County Auditor (e.g., the tax parcel number is no longer valid) will be corrected and resubmitted.

### **D. Dispute Resolution; Administrative Review of the Special Assessments and Other Calculations**

An owner of a parcel claiming that a calculation error has been made in the amount of the Special Assessments to be collected from a parcel or in any other calculation required to be made hereunder shall send a written notice describing the error to the Board of the Advanced Energy District (or such other entity as may be designated by the Board of the Advanced Energy District to hear such claims) not later than thirty (30) days after having paid the Special Assessment Installment Payment in accordance with the Assessment Schedule which is alleged to have been calculated incorrectly or within thirty (30) days of receiving notice of any other calculation, prior to seeking

any other remedy. The Board of the Advanced Energy District (or such other entity as may be designated by the Board of the Advanced Energy District to hear such claims) shall promptly review the notice, and if necessary, meet with the property owner, consider written and oral evidence regarding the alleged error and decide whether, in fact, such a calculation error occurred. If the Board of the Advanced Energy District (or other entity designated by the Board) determines that a calculation error did in fact occur that requires the Special Assessments to be modified or changed in favor of the property owner, a cash refund shall not be made (except for the final year during which Special Assessments shall be collected), but an adjustment may be made in the amount of the Special Assessments to be paid in the following year. The decision of the Board of the Advanced Energy District (or other entity designated by the Board) regarding an error in the levy of the Special Assessments or any other calculation shall be conclusive as long as there is a reasonable basis for the determination of the Board (or other entity designated by the Board). Notwithstanding any other provision of the Advanced Energy District Documents to the contrary, the undersigned agrees that it and its successors shall have only the remedies provided for in this paragraph, and shall have no recourse to any participating political subdivision, the Advanced Energy District, issuer of the special assessment revenue bonds for the Project or the Trustee in respect of amounts levied or collected other than in accordance with the Advanced Energy Documents.

## **DELINQUENCY MANAGEMENT**

These services are provided only if the Special Assessments are levied and there are delinquencies in the payment of the Special Assessments.

### **A. Delinquent Special Assessments Report**

After the end of each collection period, the District will prepare for the Board a report which lists each parcel delinquent in the payment of the Special Assessments and the corresponding amount of delinquency, plus penalties. The District will also provide each participating political subdivision with a copy of this report.

### **B. Delinquency Follow-Up**

This task entails the preparation and mailing of demand letters to property owners with a delinquent Special Assessments and is performed if requested by the issuer of the Obligations or a participating political subdivision.

#### **(1) Preparation and Mailing of Delinquency Letters**

The District will assist each participating political subdivision with the collection of Special Assessments. Unless otherwise directed by a participating political subdivision, the issuer of the Obligations, or the trustee for the Obligations, the District will send reminder letters to property owners with delinquent Special Assessments. After thirty days, if the Special Assessments are still delinquent, a payment demand letter will be mailed informing the property owner that the property will be subject to a tax sale if the delinquency is not cured. The District

shall cooperate with and assist the applicable participating political subdivision(s), the issuer of the Obligations, and the County Auditor in their efforts to collect any delinquent Special Assessments.

(2) Coordination with Delinquent Property Owners

The District will coordinate with and answer questions from delinquent property owners to whom demand letters were mailed.

(3) Inform the issuer of Obligations Regarding Special Circumstances

The District will keep the issuer of Obligations informed of special circumstances that come to the attention of the District, such as bankruptcies and foreclosures.

(4) Preparation of Delinquency Report

The District will prepare a delinquency report which identifies all parcels for which demand letters were sent, any payments received, the payment date, and any amounts still delinquent as of January 31. The District will coordinate with the County regarding the procedures related to a tax sale for delinquent Special Assessments.

## **SUPPLEMENTAL SERVICES**

To the extent that the Board may determine and funds may allow, the District may provide supplemental services designed to increase appreciation for the District, strengthen the cohesiveness of the District, and improve communication among members of the District and public agencies, such as providing access to data and information collected by the District, displaying informational banners in participating political subdivisions, and attending City Council meetings of participating political subdivisions when issues are discussed relevant to the District.

## **BUDGET**

The portion of the cost of the Services Plan that will be assessed to property owners which will be determined by the board of the Special Improvement District subject to increase as the number of Authorized Improvements financed with District financing increases. The Board will determine how to allocate funds among the services to be provided.

By March 1st of each year, the Treasurer of the Board, as directed by the Board, will produce or cause to be produced and make available to the members of the District and the Board an annual report describing the services delivered, revenues received, expenditures made, and other information about the activities of the District.

By November 1st of each year or as soon thereafter as possible, the Treasurer of the Board, as directed by the Board, will produce or cause to be produced an annual budget for the following calendar year.

**EXHIBIT G**

**NORTHEAST OHIO ADVANCED ENERGY DISTRICT ADVANCED ENERGY SPECIAL  
IMPROVEMENT DISTRICT  
(ADVANCED ENERGY DISTRICT)**

**ARTICLES OF INCORPORATION**



DATE	DOCUMENT ID	DESCRIPTION	FILING	OVER PAYMENT	EXPED	CERT	COPY
06/09/2017	201715904106	AMENDMENT TO ARTICLES (AMD)	50.00	0.00	0.00	0.00	0.00

**Receipt**

This is not a bill. Please do not remit payment.

BRICKER & ECKLER LLP  
CHRISTINA MILLER  
100 SOUTH THIRD STREET  
COLUMBUS, OH 43215

**STATE OF OHIO  
CERTIFICATE**

**Ohio Secretary of State, Jon Husted  
1985578**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
... CITY OF CLEVELAND, OHIO ... ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT,  
INC. (SEE EXHIBIT A FOR EXACT NAME)  
and, that said business records show the filing and recording of:

Document(s)  
**AMENDMENT TO ARTICLES**

Document No(s):  
**201715904106**

Effective Date: 06/07/2017



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio this  
9th day of June, A.D. 2017.

*Jon Husted*  
Ohio Secretary of State



Form 541 Prescribed by:

**JON HUSTED**  
OHIO SECRETARY OF STATE

Toll Free: (877) SOS-FILE (877-767-3453)  
Central Ohio: (614) 466-3910

www.OhioSecretaryofState.gov  
busserv@OhioSecretaryofState.gov

File online or for more information: www.OHBusinessCentral.com

Mail this form to one of the following:

Regular Filing (non expedite)  
P.O. Box 1329  
Columbus, OH 43216

Expedite Filing (Two business day processing time.  
Requires an additional \$100.00)

P.O. Box 1390  
Columbus, OH 43216

## Certificate of Amendment (Nonprofit, Domestic Corporation) Filing Fee: \$50

Check the appropriate box:

- Amendment to existing Articles of Incorporation by Members pursuant to Ohio Revised Code section 1702.38(C) (128-AMD)
- Amended and Restated Articles by Members pursuant to Ohio Revised Code section 1702.38(D) or by Directors pursuant to Ohio Revised Code section 1702.38(E) (126-AMAN) - The following articles supersede the existing articles and all amendments thereto.

Complete the following information:

Name of Corporation:

Charter Number:

RECEIVED  
JUN -7 PM 3:53  
CENTRAL SERVICE CENTER

A copy of the resolution of amendment must be attached to this document.

Note: If amended and restated articles were adopted, amended articles must set forth all provisions required in original articles other than with respect to the initial directors pursuant to Ohio Revised Code section 1702.38(A). In the case of adoption of the resolution by the directors, a statement of the basis for such adoption shall be provided.





Form 541 Prescribed by:

**JON HUSTED**  
OHIO SECRETARY OF STATE

Toll Free: (877) SOS-FILE (877-767-3453)  
Central Ohio: (614) 466-3910

www.OhioSecretaryofState.gov  
bussov@OhioSecretaryofState.gov

File online or for more information: www.OHBusinessCentral.com

Mail this form to one of the following:

Regular Filing (non expedite)  
P.O. Box 1329  
Columbus, OH 43216

Expedite Filing (Two business day processing time.  
Requires an additional \$100.00)

P.O. Box 1300  
Columbus, OH 43216

## Certificate of Amendment (Nonprofit, Domestic Corporation) Filing Fee: \$50

Check the appropriate box:

- Amendment to existing Articles of Incorporation by Members pursuant to Ohio Revised Code section 1702.38(C) (128-AMD)

Amended and Restated Articles by Members pursuant to Ohio Revised Code section 1702.38(D) or by Directors pursuant to Ohio Revised Code section 1702.38(E) (126-AMAN) - The following articles supersede the existing articles and all amendments thereto.

Complete the following information:

Name of Corporation

Charter Number

RECEIVED  
JUN -7 PM 3:53  
SERVICES CENTER

**A copy of the resolution of amendment must be attached to this document.**

Note: If amended and restated articles were adopted, amended articles must set forth all provisions required in original articles other than with respect to the initial directors pursuant to Ohio Revised Code section 1702.38(A). In the case of adoption of the resolution by the directors, a statement of the basis for such adoption shall be provided.

---

**ACTION BY RESOLUTION**  
**OF THE BOARD OF DIRECTORS OF**  
**CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREА,  
OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF  
CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EUCLID,  
OHIO, CITY OF FAIRVIEW PARK, OHIO, CITY OF GARFIELD HEIGHTS, OHIO,  
CITY OF LAKEWOOD, OHIO, CITY OF PARMA, OHIO, CITY OF SOUTH EUCLID,  
OHIO, CITY OF WARRENSVILLE HEIGHTS, OHIO, CITY OF UNIVERSITY  
HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.**

---

Pursuant to Section 1710.02(D)(3), Ohio Revised Code and Article 6 of the Articles of Incorporation of the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Bereа, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview Park, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Parma, Ohio, City of South Euclid, Ohio, City of Warrensville Heights, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc. (the "Corporation"), the Board of Directors of the Corporation, at a meeting of the Board of Directors at which a quorum was present, took the following actions:

**Approval of Amendment to Articles of Incorporation:**

**RESOLVED**, that Article First of the Articles of Incorporation of the Corporation, attached to these resolutions as Appendix I (the "Articles of Incorporation") is hereby amended to read as follows:

**FIRST** Name of Corporation: The name of the Corporation shall, at any time and from time to time be the unique proper name only of each participating political subdivision, as defined in Ohio Revised Code ("ORC") Section 1710.02(E), of the special improvement district governed by the Board of Directors of the Corporation, in alphabetical order, separated by commas, and followed by the words "Advanced Energy Special Improvement District, Inc." For demonstration purposes, as of the adoption of this Article First, the name of the Corporation shall be "City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Bereа, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview Park, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Parma, Ohio, City of Shaker Heights, Ohio, City of South Euclid, Ohio, City of Warrensville Heights, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District"

---

**FURTHER RESOLVED**, that Article Eighth of the Articles of Incorporation is hereby amended to read as follows:

**EIGHTH** The District and the Corporation are hereby authorized to use the trade name "Northeast Ohio Advanced Energy District."

---

APPENDIX I

ARTICLES OF INCORPORATION

OF

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW PARK, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF PARMA, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF WARRENSVILLE HEIGHTS, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

[See Attached]

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPIED	PENALTY	CERT	COPY
12/29/10	201036300145	DOMESTIC ARTICLES/NON-PROFIT (ANN)	131.00	100.00		50	60

**Receipt**

This is not a bill. Please do not remit payment.

BRICKER & ECKLER ATTORNEYS AT LAW  
ATTN: SALLY W. BLOOMFIELD  
100 SOUTH THIRD STREET  
COLUMBUS, OH 43215

**STATE OF OHIO  
CERTIFICATE**

Ohio Secretary of State, Jennifer Brunner

1985578

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
... CITY OF CLEVELAND, OHIO ... ADVANCED ENERGY SPECIAL IMPROVEMENT  
DISTRICT, INC. (SEE EXHIBIT A FOR EXACT NAME)

Document(s)  
DOMESTIC ARTICLES/NON-PROFIT

Document No(s)  
201036300145



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of  
the Secretary of State at Columbus,  
Ohio this 29th day of December,  
A.D. 2010.

*Jennifer Brunner*  
Ohio Secretary of State



Prescribed by:  
Ohio Secretary of State  
Cordell Rike (614) 964-3910  
Toll Free: 1-877-305-8122 (1-877-747-8455)

www.sos.state.oh.us  
e-mail: issues@sos.state.oh.us

Expedito this Form: <input type="checkbox"/>	
<input checked="" type="radio"/> Yes	PG Rec. 1330 Columbus, OH 43216
<input type="radio"/> No	PG Rec. 612 Columbus, OH 43218

**INITIAL ARTICLES OF INCORPORATION**  
(For Domestic Profit or Nonprofit)  
Filing Fee \$125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

<input type="checkbox"/> <b>ARTICLES OF INCORPORATION (PROFIT)</b>			<input checked="" type="checkbox"/> <b>ARTICLES OF INCORPORATION (NONPROFIT)</b>			<input type="checkbox"/> <b>ARTICLES OF INCORPORATION (PROFESSION)</b>		
Profit			Nonprofit			Profession		
OHIO-ART			OHIO-ART			OHIO-ART		
OHIO-ART			OHIO-ART			OHIO-ART		

Complete the general information in this section for the form checked above.

FIRST: Name of Corporation See attached Exhibit A

SECOND: Location Cleveland His. Cityskoga  
City State

Effective Date (Optional) \_\_\_\_\_ Date specified may be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.  
(month/year)

Check here if additional provisions are attached

Complete the information in this section if box (1) or (2) is checked. Complete that section if optional either (1) is checked.

THIRD: Purpose for which corporation is formed  
See attached Exhibit A

Complete the information in this section if box (1) or (2) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par values if any) \_\_\_\_\_  
(State to instructions if needed)

(No. of Shares) (Type) (Par Value)

Completing the information in this section is optional.

**FFD1:** The following are the names and addresses of the individuals who are to serve as Initial Directors.

Name: \_\_\_\_\_  
 (Last) **NOTE: P.O. Box Addresses are NOT acceptable.**

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

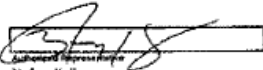
Name: \_\_\_\_\_  
 (Last) **NOTE: P.O. Box Addresses are NOT acceptable.**

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Name: \_\_\_\_\_  
 (Last) **NOTE: P.O. Box Addresses are NOT acceptable.**

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**REQUIRED**  
 Must be authorized  
 (signed) by an authorized  
 representative  
 (See instructions)



11/17/10  
 Date

(print name)  
 Nathan Kelly  
 Dev. Dir. City of Lakewood, Ohio &  
 Chair - First Suburbs Development Council

Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

(print name)  
 \_\_\_\_\_  
 \_\_\_\_\_

Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

(print name)  
 \_\_\_\_\_  
 \_\_\_\_\_


Complete the information in this section if box (1), (2) or (3) is checked.

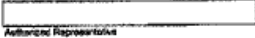
### ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of See attached Exhibit A  
 hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by  
 statute to be served upon the corporation may be served. The complete address of the agent is

Jennifer Kuzma  
 (Name)  
40 Severance Circle  
 (Street)      (City)      (P.O. Box Addresses are NOT accepted)      (Zip Code)  
Cleveland OHs      (State)      44118  
 (City)      (Zip Code)

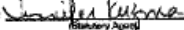
Must be authenticated by an  
 authorized representative:       11/17/10  
 Authorized Representative      Date

      \_\_\_\_\_  
 Authorized Representative      Date

      \_\_\_\_\_  
 Authorized Representative      Date

#### ACCEPTANCE OF APPOINTMENT

The Undersigned, Jennifer Kuzma \_\_\_\_\_, named herein as the  
 Statutory agent for, See attached Exhibit A  
 hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature:  \_\_\_\_\_  
 (Statutory Agent)



Complete the information in this section if box (1), (2) or (3) is checked.

### ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of See attached Exhibit A  
hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by  
statute to be served upon the corporation may be served. The complete address of the agent is

Jennifer Kuzma  
Name  
10 Governance Circle  
Street  
Cleveland Hts. Ohio 44118  
City State ZIP Code

Must be authenticated by an authorized representative

[Signature] Date 11/17/10  
Authorized Representative Date  
  
Authorized Representative Date  
  
Authorized Representative Date

#### ACCEPTANCE OF APPOINTMENT

The Undersigned, Jennifer Kuzma named herein as the  
statutory agent for, See attached Exhibit A  
hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature: Jennifer Kuzma  
Statutory Agent

EXHIBIT A

ARTICLES OF INCORPORATION  
OF

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA,  
OHIO, CITY OF BROOKLYN, OHIO, CITY OF BROOK PARK, OHIO, CITY OF  
CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EUCLID, OHIO,  
CITY OF FAIRVIEW PARK, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF  
LAKEWOOD, OHIO, CITY OF PARMA, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY  
OF UNIVERSITY HEIGHTS, OHIO, CITY OF WARRENSVILLE HEIGHTS, OHIO  
ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

1. The name of the District shall be the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brooklyn, Ohio, City of Brook Park, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of Euclid, Ohio, City of Fairview Park, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Parma, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio, City of Warrensville Heights, Ohio Advanced Energy Special Improvement District (the "District").
2. The principal office of the corporation shall be located in Cleveland Heights, Ohio.
3. The purposes for which the Corporation is formed are:

To govern the District pursuant to Ohio Revised Code ("ORC") Chapter 1710 and in so doing to have and exercise all powers, rights and privileges conferred by the laws of Ohio on nonprofit corporations formed for the purpose of governing a special improvement district, including, but not limited to, buying, leasing or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wherever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board of Directors may, at any time and from time to time, deems advisable.

4. The initial territory within the District shall be the following properties, each of which is within a participating political subdivision and each of which has at least one special energy improvement project designated for the property.

Permanent Parcel No. 812-10-011	(City of Bedford)
Permanent Parcel No. 792-17-004	(City of Bedford Heights)
Permanent Parcel No. 362-13-053	(City of Berea)
Permanent Parcel No. 343-16-001A	(City of Brook Park)
Permanent Parcel No. 431-16-002	(City of Brooklyn)
Permanent Parcel No. 113-18-014	(City of Cleveland)
Permanent Parcel No. 682-19-001	(City of Cleveland Heights)
Permanent Parcel No. 643-05-043	(City of Euclid)

0700304-2  
4193467

Permanent Parcel No. 323-05-001 (City of Fairview Park)  
Permanent Parcel No. 545-14-015 (City of Garfield Heights)  
Permanent Parcel No. 312-14-119 (City of Lakewood)  
Permanent Parcel No. 450-01-001 (City of Parma)  
Permanent Parcel No. 703-03-063 (City of South Euclid)  
Permanent Parcel No. 722-17-051 (City of University Heights)  
Permanent Parcel No. 763-01-007 (City of Warrensville Heights)

5. The reasons for creating the District are:

To enhance the value of properties within the District and improve the environment by developing and assisting in developing within the District special energy improvement projects which will reduce the region's carbon footprint and promote the region as a location for green technology job creation, and to carry out such other limited improvements and/or services in and for the benefit of the District and consistent with the District's purpose and authority as the Board of Directors may determine necessary and funds may allow.

The aforesaid reasons for creating the District will be conducive to the public health, safety, peace, convenience, and welfare of the District by enhancing the value of properties, improving the environment and prompting the creation of jobs.

6. Any provision of these Articles of Incorporation may be amended only upon: (a) the affirmative vote of a majority of the Board of Directors of the Corporation at any meeting at which a quorum is present, and (b) approval of such amendment by resolution of the legislative authority of each participating political subdivision, and (c) filing the approved amendment and resolution with the Ohio Secretary of State.

7. Upon the dissolution of the District, any assets or rights of the District shall be distributed as provided by applicable law.

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**ENERGY PROJECT COOPERATIVE AGREEMENT**

by and among

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BRECKSVILLE, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF MIDDLEBURG HEIGHTS, OHIO, VILLAGE OF MORELAND HILLS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

NORTHEAST OHIO ADVANCED ENERGY DISTRICT;

SUPERIOR ROAD APARTMENTS LLC;

NORTHEAST OHIO PUBLIC ENERGY COUNCIL; and

CITY OF CLEVELAND, OHIO

Dated as of [\_\_\_], 20[\_\_\_]

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BRICKER & ECKLER LLP

## ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the **Agreement**) is made and entered into as of [\_\_\_], 2023 (the **Closing Date**), by and among THE CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BRECKSVILLE, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF MIDDLEBURG HEIGHTS, OHIO, VILLAGE OF MORELAND HILLS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., doing business under the registered trade name NORTHEAST OHIO ADVANCED ENERGY DISTRICT, a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the **State**) (the **ESID**), SUPERIOR ROAD APARTMENTS LLC, a limited liability company duly organized and validly existing under the laws of the State (the **Owner**), NORTHEAST OHIO PUBLIC ENERGY COUNCIL a council of governments duly organized and validly existing under the laws of the State (the **Investor**), and the CITY OF CLEVELAND, 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 a Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects approved by Resolution No. 1078-10 of the City Council of the City (the “City Council”). Pursuant to the same action, the Northeast Ohio Advanced Energy 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 [\_\_\_], [\_\_\_] by its Ordinance No. [\_\_\_], the City Council approved the Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project (the “Petition”) submitted to the City by the Owner.

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 Petition.

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, construction, equipping, improvement, and installation 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 Petition, and making disbursements to the Owner for such projects, (ii) the ESID and the Owner cooperating to acquire, construct, equip, improve, and install special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, (iv) the City agreeing to assign all Special Assessment payments actually received by the City to the Investor in consideration for the Investor making the Project Advance, and the City agreeing to transfer all Special Assessment payments actually received by the City to the Investor to cause the repayment of the Project Advance; and (v) the ESID agreeing to assign 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 Fiscal Officer, 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 and Delinquency Amounts 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, the Owner 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, construction, equipping, improvement, and installation of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(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 the Special Assessments actually received by the City or the ESID, respectively, to the Investor, and the City shall pay the Special Assessments actually received by the City to the Investor; provided, however, that the City, the ESID, and the Investor intend that the City shall receive all Special Assessments and Delinquency Amounts from the County Treasurer and shall transfer, set over, and pay all Special Assessments and Delinquency Amounts received from the County Treasurer directly to the Investor at the times and in the manner provided in this Agreement. The City, the ESID, and the Investor intend and agree that the Investor shall pay (i) to the ESID, out of the Special Assessments received by the Investor, a semi-annual ESID Fee for the ESID's administrative expenses and (ii) to the City, out of the Special Assessments received by the Investor, the semi-

annual City Fee for the City'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, the semi-annual ESID Fee due to the ESID, and the semi-annual City Fee to the City, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, then to the payment of the semi-annual ESID Fee, and then to the payment of the semi-annual City Fee.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments and Delinquency Amounts received by the City to the Investor shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the City's faith and credit or taxing power, and the ESID, the Owner, and the 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 taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Fiscal Officer for collection, and the Parties agree that the County Fiscal Officer 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 Fiscal Officer 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. 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 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 Fiscal Officer, 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 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 immediately 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 or upon a late payment subject to Section 6.2, upon the City's receipt of the express written consent or instruction of the Investor, the City shall certify to the County Fiscal Officer, prior to the last date in the then-current tax year on which municipal corporations may certify special assessments to the County Fiscal Officer, a reduction in the amount of Special Assessments collected such that, following such reduction, the amount of Special Assessments remaining, if any, to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, if any, together with interest at the annual rate of 3.50%, a semi-annual ESID Fee payable to the ESID, a semi-annual City Fee payable to the City, and an administrative fee payable to the Investor for servicing the Project Advance and the collection of Special Assessments collected with each semi-annual installment at an annual rate of 0.125%. The parties acknowledge and agree that County Fiscal Officer may calculate, charge, and collect a collection fee on each installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer, and which the County Fiscal Officer 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 received by the City under this Agreement, (ii) the City's special assessment funds established for the Projects, and (iii) any other property received or to be received from the City

under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts (including any delinquent Special Assessments recovered through any enforcement proceedings as described herein), 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 Fiscal Officer, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.

- (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 Fiscal Officer 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 Fiscal Officer 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. Immediately upon receipt of any moneys received by the City as Special Assessments and Delinquency Amounts, but in any event not later than 21 calendar days after the receipt of such moneys and the corresponding final settlement from the County Fiscal Officer, 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 may from time to time provide written payment instructions to the City for 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 Fiscal Officer 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 Fiscal Officer and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Fiscal Officer 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 shall credit, on the dates shown on the Repayment Schedule (which is attached to, and incorporated into, this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Investor on the dates shown on the Repayment Schedule, further shall be entitled to pay to itself, after the payment of accrued interest on the Project Advance and the repayment of the portion of

principal of the Project Advance scheduled to be repaid on such date an administrative fee for servicing the Project Advance and the collection of Special Assessments collected with each semi-annual installment at an annual rate of 0.125% or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Investor on the dates shown on the Repayment Schedule, further shall be entitled to pay to the ESID, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, and the administrative fee to the Investor, the semi-annual ESID Fee or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance, the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date, and payment of the Investor's administrative fee. The Investor, on the dates shown on the Repayment Schedule, further shall pay to the City, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, the semi-annual ESID Fee, and the Investor's administrative fee, the payment of a semi-annual City Fee or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance, the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date, the semi-annual ESID Fee, and the Investor's administrative fee. The Parties acknowledge and agree that the County Fiscal Officer may calculate, charge, and collect a fee on each installment of the Special Assessments in an amount that the County Fiscal Officer deems necessary to defray the costs 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 Fiscal Officer with the Special Assessments, and that the County Fiscal Officer 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 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 the City's obligation under this Agreement to pay to the Investor all Special Assessments and 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 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 has no obligation 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; provided, however, that nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

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, the ESID hereby assigns 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, and Agreements. The City represents, warrants, and agrees that:

- (a) It is a municipal corporation 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 City 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 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.
- (d) It, by proper action, duly has 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.

- (e) There is no litigation pending, or to its knowledge 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.
- (f) 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.
- (g) It shall, for so long as any portion of the Project Advance remains outstanding, remain a member community of the Investor and of the Investor's energy aggregation programs.
- (h) It shall once annually pay membership dues to the ESID in the amount of \$1,000.00 per year, which amount is payable upon the City's receipt of and pursuant to the directions contained in an invoice from the ESID to the City.

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, which representations and warranties shall be true and correct in all material respects as of the Closing Date, 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 it is the Owner of the Property and the 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 to its knowledge, no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.
- (e) Except for any financing of the Property and the lien related thereto that 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, constructing, equipping, installing, 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 date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.
- (h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Investor in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.
- (i) To its knowledge, 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 required as of the effective date of this Agreement have been obtained. To the extent any permits, licenses, consents, and permissions necessary for the Project have not yet been obtained as of the effective date of this Agreement, Owner has no reason to believe that any such permits, licenses, consents or permissions will not be obtained when and as required in the ordinary course.
- (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.
- (l) The Project and the plans and specifications for the Project have been developed pursuant to (i) an energy analysis prepared by Berry Insulation, which energy audit demonstrates that the roof improvement components of the Project are expected to generate approximately \$12,690 in annual energy savings and (ii) specifications

provided by the Owner for the solar photovoltaic components of the Project, which specifications demonstrate that the solar photovoltaic components of the Project are expected to generate approximately \$35,000 in annual energy savings.

- (m) 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).
- (n) The execution and delivery of this Agreement and the consummation of the transaction described herein does not violate the terms of any documents or arrangements between the Owner and a Lender, if any.

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 interests, or lien interests, 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 substantially 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 of 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 reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner’s obligation to pay the Special 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, construction, equipping, installation, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer or similar authorized 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) It promptly shall notify the Investor of any material damage or destruction to the Project.
- (g) 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.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Fiscal Officer.
- (i) Except in compliance with applicable federal, State and local environment laws and regulations, 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.
- (j) It shall, at all times during the terms of this Agreement, while any principal or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, comply in all material respects with the Special Assessments Act, and shall take any and all action reasonably necessary to remain in compliance with the Special Assessments Act.

- (k) It shall ensure that each of the Property and the Project, 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, are used solely for the commercial purposes disclosed by Owner to the Investor in writing.
- (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 in all material respects as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.
- (m) It will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender, if any, 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 of this Agreement.
- (n) It shall, during the term of this Agreement, provide financial statements in such form as is customarily prepared within 120 days of each fiscal year end to the Investor. Also, it shall, during the term of this Agreement, provide audited financial statements, if any, to the Investor within 120 days of such audited financial statements becoming available to the Owner.
- (o) It shall, for so long as any portion of the Project Advance remains outstanding, establish and maintain all eligible gas utility and electric utility service accounts for the Project and the Project Site with the Investor's aggregation programs.

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

Section 4.1. Project Advance. The Investor has made available to the Owner the Project Advance in the amount of \$705,000.00, of which \$655,536.00 will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2 below, and capitalized interest in the amount of \$26,550.11, and closing costs and fees in the amount of \$22,913.89 will be retained for the account of the Investor for the further payment to itself and the entities to be paid on the Closing Date in accordance with this Agreement.. The Investor shall receive the Project Advance from the Investor and shall hold the Project Advance in a segregated account established in the custody of the Investor, which account shall be referred to as the "Project Account." 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, construction, equipping,

installation, 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.

Any interest earned on moneys held in the Project Account shall belong solely to the Investor, and the Investor shall be entitled to withdraw any such interest from the Project Account at any time without the consent or direction of the Owner; provided, however, that in no case shall the aggregate principal amount of the Project Advance of \$705,000.00 available to be disbursed in accordance with this Agreement be diminished by any such action.

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

- (a) With each Disbursement Request Form:
  - (i) The Owner shall deliver to the Investor copies of all related receipts and invoices; and
  - (ii) The Owner shall deliver to the Investor, as necessary, bank information for wiring the amounts requested for disbursement.
  
- (b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):
  - (i) The Owner shall deliver to the Investor an executed guaranteed maximum price construction contract, or similar type of contract reasonably acceptable to Investor, for the construction of the Project;
  - (ii) The Owner shall deliver to the Investor copies of all construction permits required for the construction of the Project;
  - (iii) The Owner shall deliver to the Investor copies of all agreements with all subcontractors performing work or furnishing materials for the Project;
  - (iv) The Owner shall deliver to the Investor a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project;
  - (v) The Owner shall deliver to the Investor copies of all current policies of the Required Insurance Coverage;
  - (vi) The construction plans and specifications shall have been approved in all respects by the Investor in its sole, but reasonable discretion;
  - (vii) The budget shall have been approved by the Investor in its sole discretion;
  - (viii) The Owner shall deliver to Investor the written consent of its existing mortgage lender, if any, to the levying, assessment, and collection of the

Special Assessments, substantially in the form attached to this Agreement as **Exhibit F**;

- (ix) The Owner shall provide to the Investor evidence acceptable to the Investor, in its sole discretion, that the City Council and the ESID have approved the Project;
  - (x) The Investor shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the Owner Consent has been recorded in the records of the County Fiscal Officer with respect to the Property;
  - (xi) The Owner shall deliver to the Investor an executed Guaranty; and
  - (xii) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates.
- (c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Investor the executed certificate in the form attached as **Exhibit D** to this Agreement; and
  - (ii) The Owner shall deliver to the Investor copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, and satisfaction of the conditions to disbursement set forth above, the Investor shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Investor approves the payment or reimbursements requested to be disbursed from the Project Account, the Investor shall pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which has been approved by the Investor. To the extent the Investor disapproves all or any part of payments or reimbursements requested to be disbursed pursuant to a Disbursement Request Form, the Investor shall provide the Owner with an explanation and basis for such disapproval.

Additionally, on the date this Agreement becomes effective, the Investor shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed \$22,913.89, as detailed in **Exhibit E** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Investor, fees to the ESID, legal fees, and other closing costs or contingencies. The Investor shall further retain and disburse to itself on the Closing Date capitalized interest in an amount not to exceed \$26,550.11 to be applied in accordance with **Exhibit B**.

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 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. In either 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 reasonable judgment of the Investor said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the reasonable judgment of the Investor 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 obligation of the Investor 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 reasonable judgment of the Investor 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 reasonable judgment of the Investor to complete the restoration in accordance with the plans and specifications.

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

- (a) costs incurred directly or indirectly for or in connection with the acquisition, construction, equipping, installation, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;
- (c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;
- (d) taxes, assessments, including but not limited to the Special Assessments, and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;
- (e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and
- (f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Investor, which approval shall not be unreasonably withheld, shall acquire, construct, equip, install, and improve its Project with Project Advance proceeds with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, construction, equipment, installation, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, equipping, installation, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of construction, acquisition, equipping, installation, and improvement of the Project, the ESID, 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, 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, in the Investor's reasonable discretion, construction of the Project is not proceeding with reasonable dispatch. If, in the opinion of the Investor, after 30 days' written notice to the Owner, the construction of the Project is not proceeding with reasonable dispatch, the Investor may (i) request that the Owner remove and replace the general contractor of the Project 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 certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, construction, equipping, installation, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner

any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the 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 Fiscal Officer in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of 3.50%, a semi-annual ESID Fee, a semi-annual City Fee, and an administrative fee payable to the Investor for servicing the Project Advance collected with each semi-annual installment at an annual rate of 0.125% over 30 semi-annual payments to be collected beginning approximately on or before February 1, 2025 and continuing through approximately July 1, 2039. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Fiscal Officer may charge and collect a County Fiscal Officer collection fee on each installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Fiscal Officer 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 date of this Agreement; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the 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 the Owner may prepay the then outstanding Project Advance to the Investor by paying, in immediately available funds, an amount equal to the aggregate amount of all Special Assessments (including all scheduled interest, all scheduled principal, and all scheduled administrative fees included within the Special Assessments) not yet paid.

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

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the 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 reasonably 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 (5) business 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 material 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 Owner's receipt of written notice of such defect.

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, the Investor, and the Owner and dated as of the date of this Agreement (the **Special Assessment Agreement**), the County Treasurer has

agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the 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 prior written direction of the Investor.

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.

## 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 and the 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 Energy Project. The

Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the ordinances in effect within the City.

Section 6.2. Late Payment. Under Section 2.9 of the Special Assessment Agreement, the Parties have agreed to cause any installment of the Special Assessments paid after the date on which it is due and before the expiration of the time period specified under Ohio Revised Code Section 323.121(C) to be reduced to \$0.00 and refunded directly to the Investor, as a surplus real property tax payment. Promptly upon receipt of notice or the Investor or the Owner's actual knowledge of any payment to which Section 2.9 of the Special Assessment Agreement would apply, the Owner shall be obligated to pay the installment of the Special Assessments to the Investor and to pay any and all reasonable fees and expenses of PACE Counsel in documenting and executing the payment of the installment. In the event the installment of the Special Assessments is remitted to the Investor, as provided in Section 2.9 of the Special Assessment Agreement, the Owner's obligation to pay the installment under this section shall be deemed satisfied. In the event that the installment of the Special Assessments is reduced to \$0.00 and not remitted to the Investor for any reason, the Owner shall be obligated to pay to the Investor, the entire amount of such installment of the Special Assessments, together with interest on such amount from the date on which the Investor expected to receive such payment under the Energy Project Cooperative Agreement at an annual interest rate equal to the lesser of the 8% or the maximum amount allowed by law.

Section 6.3. 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 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 6.4. Litigation Notice. Each Party shall give all other Parties prompt notice of any action, suit, or proceeding by or against the notifying Party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying Party has notice and which, if adversely determined would impair materially the right or ability of the Parties to perform its obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.5. 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) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (ii) 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, (iii) (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, or (iv) the levy and collection of the Special Assessments pursuant to this Agreement.

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 inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, by the Investor 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 6.6. 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.

Section 6.7. 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 6.8. 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 any 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) if such transfer occurs prior to completion of the Project, the execution and delivery to the Investor of an assignment of all construction contracts for the Project; and (iii) the payment by 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 the 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, 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, as the case

may be, in connection with the rights and obligations of the Investor, as the case may be, under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to any 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 or Lender of the Owner or any prospective Investor Assignee.

Section 6.9. 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 6.10. 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 6.11. 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 6.12. 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.

[Balance of page intentionally left blank.]

[Signature pages follow.]



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.

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BRECKSVILLE, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF MIDDLEBURG HEIGHTS, OHIO, VILLAGE OF MORELAND HILLS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.. D/B/A:

NORTHEAST OHIO ADVANCED ENERGY DISTRICT, as the ESID

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

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

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

SUPERIOR ROAD APARTMENTS LLC, as  
the Owner

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

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

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

NORTHEAST OHIO PUBLIC ENERGY  
COUNCIL, as the Investor

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

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

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

CITY OF CLEVELAND, OHIO, as the City

Approved as to form and correctness:

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

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

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

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

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

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

CITY FISCAL OFFICER CERTIFICATE

The undersigned, fiscal officer of the City of Cleveland, Ohio, hereby certifies that the City has established or will establish 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 encumbrances. The Special Assessments represent other revenues in process of collection to the credit of the appropriate fund. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

---

Fiscal Officer  
City of Cleveland, Ohio

Dated: \_\_\_\_\_, 20\_\_

**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 [\_\_\_], 2023, by and between 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.

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

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

“*City Fee*” means the semi-annual fee due to the City from the Investor upon receipt of each installment of the Special Assessments from the City in the amount provided for as the “City of Cleveland Admin Fee” in **Exhibit B**.

“*Closing Date*” means the date set forth in the preamble of this Agreement.

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

“*County*” means the County of Cuyahoga, Ohio.

“*County Fiscal Officer*” means the Fiscal Officer 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 this Agreement.

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

“*ESID*” means the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brecksville, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Middleburg Heights, Ohio, Village of Moreland Hills, Ohio, City of

Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State.

“*ESID Fee*” means the semi-annual fee due to the ESID from the Investor upon receipt of each installment of the Special Assessments from the City in the amount provided as the “NEO-AED ESID Fee 0.500%” for each installment in **Exhibit B**.

“*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.

“*Guaranty*” means the PACE Guaranty dated as of the Effective Date, from the Owner to the Investor, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*Investor*” means Northeast Ohio Public Energy Council, a council of governments duly organized and validly existing under the laws of the State, 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 Cleveland<br>601 Lakeside Avenue, Room 210<br>Cleveland, Ohio 44114<br>Attention: Director of Economic<br>Development |
| (b) | As to the ESID: | Northeast Ohio Advanced Energy District<br>165 Center Road<br>Bedford, Ohio 44146<br>Attention: Jennifer Kuzma                |
|     | With a Copy To: | J. Caleb Bell, Esq.<br>Bricker Graydon LLP<br>100 S. Third Street<br>Columbus, Ohio 43215                                     |
| (c) | As to the Owner | Superior Road Apartments LLC<br>11201 Shaker Boulevard<br>Suite 203   |

Cleveland, Ohio 44104  
Attn: Amanda Mayan

(d) As to the Investor

Northeast Ohio Public Energy Council  
31360 Solon Road, Suite 33  
Solon, Ohio 44139  
Attention: Executive Director

“*Owner*” means Superior Road Apartments LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio, and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated as of [\_\_\_], 20[\_\_\_] by the Owner and recorded in the records of the County Fiscal Officer with respect to the Property.

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

“*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.

“*Plan*” means the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Project Plan and the Northeast Ohio Advanced Energy Special Improvement District Commercial-Industrial Program Services Plan adopted by the City, and any and all future supplemental plans approved by the ESID and the City.

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

“*Project Account*” means the segregated account maintained 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 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 Builder’s Risk Insurance Coverage”* means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount reasonably acceptable to the Investor insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed such amount as shall be reasonably determined by the Investor which insurance coverage shall name the Investor as lender loss payee.

*“Required Business Interruption Insurance Coverage”* means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount reasonably acceptable to the Investor, which insurance coverage shall name the Investor as lender loss payee.

*“Required Flood Insurance Coverage”* means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b) such lesser amount as may be required by the Investor and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Investor in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

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

*“Required Property Insurance Coverage”* means at any time insurance coverage evidenced on Acord 27 and maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of (i) the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as loss payee/mortgagee.

*“Required Public Liability Insurance Coverage”* means at any time commercial general accident and public liability insurance coverage evidenced on Acord 25 and maintained with generally recognized, responsible insurance companies qualified to do business in the State with coverage limits in the maximum amount of \$2,000,000 per occurrence for death or bodily injury

and property damage liability combined, with loss deductible provisions of not to exceed such amount as shall be reasonably determined by the Investor, which insurance coverage shall name the Investor as additional insureds.

“*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, and Ordinance No. [\_\_\_\_] approving the Petition and Plan and declaring the necessity of the Project, determining to proceed with the Project and levying the Special Assessments adopted on [\_\_\_\_], 20[\_\_\_\_].

“*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.

**EXHIBIT B**

**REPAYMENT SCHEDULE**

Payment Date	Principal Outstanding	Principal	Interest Rate	Interest	Total Debt Service	Loan Servicing 0.125%	NEO-AED ESID Fee 0.500%	City of Cleveland Admin Fee 0.250%	Capitalized Interest	Semiannual Net Debt Service (1)
11/01/23	\$705,000.00									
11/15/23	705,000.00	\$0.00	3.500%	\$959.58	\$959.58	\$34.27	\$0.00	\$0.00	(\$993.85)	\$0.00
05/15/24	705,000.00	0.00	3.500%	12,337.50	12,337.50	440.63	0.00	0.00	(12,778.13)	0.00
11/15/24	705,000.00	0.00	3.500%	12,337.50	12,337.50	440.63	0.00	0.00	(12,778.13)	0.00
05/15/25	705,000.00	17,894.33	3.500%	12,337.50	30,231.83	440.63	154.52	77.26	0.00	30,904.24
11/15/25	687,105.67	18,218.67	3.500%	12,024.35	30,243.02	429.44	154.52	77.26	0.00	30,904.24
05/15/26	668,887.00	18,548.89	3.500%	11,705.52	30,254.41	418.05	154.52	77.26	0.00	30,904.24
11/15/26	650,338.11	18,885.08	3.500%	11,380.92	30,266.00	406.46	154.52	77.26	0.00	30,904.24
05/15/27	631,453.03	19,227.37	3.500%	11,050.43	30,277.80	394.66	154.52	77.26	0.00	30,904.24
11/15/27	612,225.66	19,575.87	3.500%	10,713.95	30,289.82	382.64	154.52	77.26	0.00	30,904.24
05/15/28	592,649.79	19,930.68	3.500%	10,371.37	30,302.05	370.41	154.52	77.26	0.00	30,904.24
11/15/28	572,719.11	20,291.93	3.500%	10,022.58	30,314.51	357.95	154.52	77.26	0.00	30,904.24
05/15/29	552,427.18	20,659.71	3.500%	9,667.48	30,327.19	345.27	154.52	77.26	0.00	30,904.24
11/15/29	531,767.47	21,034.18	3.500%	9,305.93	30,340.11	332.35	154.52	77.26	0.00	30,904.24
05/15/30	510,733.29	21,415.42	3.500%	8,937.83	30,353.25	319.21	154.52	77.26	0.00	30,904.24
11/15/30	489,317.87	21,803.58	3.500%	8,563.06	30,366.64	305.82	154.52	77.26	0.00	30,904.24
05/15/31	467,514.29	22,198.76	3.500%	8,181.50	30,380.26	292.20	154.52	77.26	0.00	30,904.24
11/15/31	445,315.53	22,601.12	3.500%	7,793.02	30,394.14	278.32	154.52	77.26	0.00	30,904.24
05/15/32	422,714.41	23,010.76	3.500%	7,397.50	30,408.26	264.20	154.52	77.26	0.00	30,904.24
11/15/32	399,703.65	23,427.84	3.500%	6,994.81	30,422.65	249.81	154.52	77.26	0.00	30,904.24
05/15/33	376,275.81	23,852.46	3.500%	6,584.83	30,437.29	235.17	154.52	77.26	0.00	30,904.24
11/15/33	352,423.35	24,284.79	3.500%	6,167.41	30,452.20	220.26	154.52	77.26	0.00	30,904.24
05/15/34	328,138.56	24,724.95	3.500%	5,742.42	30,467.37	205.09	154.52	77.26	0.00	30,904.24
11/15/34	303,413.61	25,173.09	3.500%	5,309.74	30,482.83	189.63	154.52	77.26	0.00	30,904.24
05/15/35	278,240.52	25,629.35	3.500%	4,869.21	30,498.56	173.90	154.52	77.26	0.00	30,904.24
11/15/35	252,611.17	26,093.88	3.500%	4,420.70	30,514.58	157.88	154.52	77.26	0.00	30,904.24
05/15/36	226,517.29	26,566.84	3.500%	3,964.05	30,530.89	141.57	154.52	77.26	0.00	30,904.24
11/15/36	199,950.45	27,048.36	3.500%	3,499.13	30,547.49	124.97	154.52	77.26	0.00	30,904.24
05/15/37	172,902.09	27,538.61	3.500%	3,025.79	30,564.40	108.06	154.52	77.26	0.00	30,904.24
11/15/37	145,363.48	28,037.75	3.500%	2,543.86	30,581.61	90.85	154.52	77.26	0.00	30,904.24
05/15/38	117,325.73	28,545.93	3.500%	2,053.20	30,599.13	73.33	154.52	77.26	0.00	30,904.24
11/15/38	88,779.80	29,063.32	3.500%	1,553.65	30,616.97	55.49	154.52	77.26	0.00	30,904.24
05/15/39	59,716.48	29,590.10	3.500%	1,045.04	30,635.14	37.32	154.52	77.26	0.00	30,904.24
11/15/39	30,126.38	30,126.38	3.500%	527.21	30,653.59	18.83	154.52	77.26	0.00	30,904.24
<b>Totals</b>		<b>\$705,000.00</b>		<b>\$233,388.57</b>	<b>\$938,388.57</b>	<b>\$8,335.30</b>	<b>\$4,635.60</b>	<b>\$2,317.80</b>	<b>(\$26,550.11)</b>	<b>\$927,127.20</b>

(1) Does not include County Auditor Special Assessment Collection Fees.

**EXHIBIT C**

**DISBURSEMENT REQUEST FORM**

**STATEMENT NO. [ ] REQUESTING AND  
AUTHORIZING DISBURSEMENT OF FUNDS PURSUANT  
TO SECTION 4.2 OF THE ENERGY PROJECT  
COOPERATIVE AGREEMENT DATED AS OF [ ], 20[ ]**

Pursuant to Section 4.2 of the Energy Project Cooperative Agreement dated as of [ ], 20[ ] (the **Agreement**) among the ESID, the City, the Owner, and the Investor, the undersigned authorized representative of the Owner under the Agreement, hereby requests the Investor, having custody of the Project Account, to pay to the Owner or the other person(s) listed on the disbursement schedule attached hereto as Appendix I (the **Disbursement Schedule**), the respective amounts specified in the Disbursement Schedule out of the moneys on deposit in the Project Account for the advances, payments and expenditures made in connection with the costs of the Project described in the Disbursement Schedule, all in accordance with Section 4.2 of the Agreement (capitalized words and terms not otherwise defined herein having the meanings assigned to them in the Agreement).

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

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

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

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

Approved in accordance with the Agreement:

Northeast Ohio Public Energy Council, as the Investor:

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

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

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

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

Appendix I

Disbursement Request Schedule

<b>Payee</b>	<b>Reason</b>	<b>Amount</b>
		\$
	<b>TOTAL:</b>	\$

**EXHIBIT D**

**COMPLETION CERTIFICATE**

Superior Road Apartments LLC (the **Owner**) hereby certifies that the Project, as such term is defined in the Energy Project Cooperative Agreement entered into by and between the Owner, the Northeast Ohio Advanced Energy District, the City of Cleveland Ohio, and the Northeast Ohio Public Energy Council (the **Investor**) dated as of [\_\_\_], 20[\_\_\_] (the **Energy Project Cooperative Agreement**) has been completed at 11201 Shaker Boulevard, Cleveland, Ohio (the **Property**) in strict compliance with the requirements of the Energy Project Cooperative Agreement and the agreement entered into by and between the Owner and \_\_\_\_\_ (the **Contractor**) dated \_\_\_\_\_, 20\_\_ (the **Construction Contract**).

**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 Contractor has completed the work in accordance with the terms of the Construction Contract. The Owner has no service requests and no unresolved complaints regarding the work performed. Such 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, and budget approved by the Investor.
3. The Owner has 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 Project was completed.
5. The Contractor 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 this Project have been used in accordance with the Energy Project Cooperative Agreement are correct.

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

SUPERIOR ROAD APARTMENTS LLC

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 respective payee set forth below, the following closing costs:

<b>Costs of Issuance</b>	
NOPEC Closing Fee	\$ 7,050.00
ESID Closing Fee	1,762.50
ESID Documentation	10,000.00
Contingency	<u>4,101.39</u>
Subtotal	\$22,913.89
Capitalized Interest	<u>26,550.11</u>
<b>Total</b>	<b>\$49,464.00</b>

**EXHIBIT F**

**CONSENT OF MORTGAGEE**

[Reserved.]

**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 [\_\_\_], 2023 between the Northeast Ohio Advanced Energy District, Assignor, Northeast Ohio Public Energy Council, and the City of Cleveland, 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 Cuyahoga County Treasurer, the City of Cleveland, Ohio, the Northeast Ohio Advanced Energy District, Superior Road Apartments LLC, and the Northeast Ohio Public Energy Council (the **Special Assessment Agreement**) and to the “Owner Consent” dated as of [\_\_\_], 20[\_\_\_] by Superior Road Apartments LLC and recorded in the records of the County Fiscal Officer 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: \_\_\_\_\_

SPECIAL ASSESSMENT AGREEMENT  
(ORC Sections 5721.33 and 9.482)

by and among

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

And

CITY OF CLEVELAND, OHIO  
("City"),

And

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF  
BEREA, OHIO, CITY OF BRECKSVILLE, OHIO, CITY OF BROOK PARK,  
OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY  
OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO,  
CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD  
HEIGHTS, OHIO, CITY OF INDEPENDENCE, OHIO, CITY OF  
LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF  
MIDDLEBURG HEIGHTS, OHIO, VILLAGE OF MORELAND HILLS, OHIO,  
CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF  
SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH  
EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED  
ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

NORTHEAST OHIO ADVANCED ENERGY DISTRICT;  
("District"),

And

SUPERIOR ROAD APARTMENTS LLC  
("Owner")

And

NORTHEAST OHIO PUBLIC ENERGY COUNCIL  
("Investor"),

Dated as of [\_\_\_], 20[\_\_\_]

## SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [\_\_\_\_], 20[\_\_\_\_], by and among the County Treasurer of Cuyahoga County, Ohio (the “Treasurer”), the City of Cleveland, Ohio (the “City”), the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brecksville, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Independence, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Middleburg Heights, Ohio, Village of Moreland Hills, Ohio, City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy District (“District”), Superior Road Apartments LLC (the “Owner”), and the Northeast Ohio Public Energy Council (together with its permitted successors and assigns, the “Investor”) (the Treasurer, the District, the City, the Owner, 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 Ordinance 1078-10 of the City Council of the City (the “Council”) on September 20, 2010; and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy improvement projects including solar photovoltaic projects and efficiency improvements, including, without limitation, roof systems and related improvements (collectively, the “Project”) on the real property located within Cuyahoga County, Ohio (the “County”) and the City, and as more fully described in **Exhibit A** to this Agreement (the “Assessed Lands”); and

WHEREAS, pursuant to Ordinance [\_\_\_\_] of the Council, approved on [\_\_\_\_], 20[\_\_\_\_], the Assessed Lands was added to the territory of the District; and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of \$705,000.00 (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [\_\_\_\_], 20[\_\_\_\_] (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, 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 Council a Petition to Add Territory to the Northeast Ohio Advanced Energy District and for Special Energy Improvement Project (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 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 Fiscal Officer of Cuyahoga County, Ohio (the “County Fiscal Officer”) 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 its 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 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 its 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 Investor, in the event of a default under the Energy Project Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the 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 the 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 its 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 shall take all necessary actions required by Ohio Revised Code Chapter 727 to levy and collect the Special Assessments on the Assessed Lands. On [\_\_\_], 20[\_\_\_], the Council adopted Ordinance No. [\_\_\_], pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (together, the "Assessing Ordinance"). The Clerk of the Council certified (or caused to be certified) the Assessing Ordinance to the County Fiscal Officer 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 Fiscal Officer on or before the last

date for the certification of special assessments to the County Fiscal Officer of each year during which the Special Assessments are to be levied pursuant to the Assessment Schedule. 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.

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 secure payments made on the Project Advance, the City, pursuant to Section 2.2 of the Energy Project Cooperative Agreement, has assigned to the Investor all of its right, title, and interest in and to the Special Assessments, the funds of the City established to collect and hold the Special Assessment, and any other property received or to be received by 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.

1.6 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 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 (solely as described under Section 5.1(a) of the Energy Project Cooperative Agreement) has occurred and is continuing and which notice directs Treasurer to foreclose on the lien of the Special Assessments, the Treasurer will, not later than 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 in any such actions or proceedings 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 Project Costs 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 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 County, the Treasurer, the Investor, and their respective officers, directors, and employees (the "Indemnified Parties"), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on

account of: (i) any loss or damage to the Assessed Lands or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipping, improvement, maintenance, operation, and use of the Owner's Project; (ii) 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; (iii) the Owner's failure to comply with any requirement of this Agreement; (iv) the efforts of the City and the Treasurer to levy and collect Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Energy Project Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the willful misconduct or breach of this Agreement or the Energy Project Cooperative Agreement of the Indemnified Parties.

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

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

4.1 The agreements of the Parties hereafter with respect to the foreclosure process shall be a covenant running with the 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 County Fiscal Officer's Office, so that the agreements of the Parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the 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, or such other address as may be provided by a Party by notice to the other Parties:

If to City:	City of Cleveland 601 Lakeside Avenue, Room 210 Cleveland, Ohio 44114 Attention: Director of Economic Development
If to Treasurer:	County Treasurer Cuyahoga County, Ohio 2079 East Ninth Street Cleveland, OH 44115
If to the District:	Northeast Ohio Advanced Energy District 165 Center Road Bedford, OH 441146 Attention: Jennifer Kuzma
With a copy to:	J. Caleb Bell, Esq. Bricker Graydon LLP 100 S. Third Street Columbus, Ohio 43215 Phone: (614) 227-2300 Email: pace@brickergraydon.com
If to the Owner:	Superior Road Apartments LLC 11201 Shaker Boulevard Suite 203 Cleveland, Ohio 44104 Attn: Amanda Mayan
If to the Investor	Northeast Ohio Public Energy Council 31360 Solon Road, Suite 33 Solon, Ohio 44139 Attention: Executive Director

4.4 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the consent of the Treasurer, the City, the District, or the Owner, 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. 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 in its possession from time to time to prospective Investor Assignees and prospective Participants.

4.5 This Agreement shall be construed in accordance with the laws of the State of Ohio. The venue for any disputes arising under this Agreement will be the court of competent jurisdiction located in the City of Cleveland, 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”

Approved as to form on behalf of  
Cuyahoga County, Ohio:

COUNTY TREASURER OF CUYAHOGA  
COUNTY, OHIO

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Department of Law  
County of Cuyahoga, Ohio

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Treasurer  
County of Cuyahoga, Ohio

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Matt Carroll, Chief Economic Growth and  
Opportunity Officer, on behalf of the County  
Executive, County of Cuyahoga, Ohio



“CITY”  
CITY OF CLEVELAND, OHIO

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

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

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

Approved as to form and correctness:

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

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

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

“DISTRICT”

CITY OF BEDFORD, OHIO, CITY OF BEDFORD HEIGHTS, OHIO, CITY OF BEREA, OHIO, CITY OF BRECKSVILLE, OHIO, CITY OF BROOK PARK, OHIO, CITY OF BROOKLYN, OHIO, CITY OF CLEVELAND, OHIO, CITY OF CLEVELAND HEIGHTS, OHIO, CITY OF EAST CLEVELAND, OHIO, CITY OF EUCLID, OHIO, CITY OF FAIRVIEW, OHIO, CITY OF GARFIELD HEIGHTS, OHIO, CITY OF INDEPENDENCE, OHIO, CITY OF LAKEWOOD, OHIO, CITY OF MAPLE HEIGHTS, OHIO, CITY OF MIDDLEBURG HEIGHTS, OHIO, VILLAGE OF MORELAND HILLS, OHIO, CITY OF PARMA, OHIO, CITY OF PARMA HEIGHTS, OHIO, CITY OF SHAKER HEIGHTS, OHIO, CITY OF SOLON, OHIO, CITY OF SOUTH EUCLID, OHIO, CITY OF UNIVERSITY HEIGHTS, OHIO ADVANCED ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.. d/b/a:

NORTHEAST OHIO ADVANCED ENERGY DISTRICT

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

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

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

“OWNER”

SUPRIOR ROAD APARTMENTS LLC

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

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

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

“INVESTOR”  
NORTHEAST OHIO PUBLIC ENERGY  
COUNCIL

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

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

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

CITY FISCAL OFFICER CERTIFICATE

The undersigned, fiscal officer of the City of Cleveland, Ohio, hereby certifies that the City has established or will establish 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 encumbrances. The Special Assessments represent other revenues in process of collection to the credit of the appropriate fund. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

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Fiscal Officer  
City of Cleveland, Ohio

Dated: \_\_\_\_\_, 20\_\_

## EXHIBIT A

### DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Superior Road Apartments LLC is located at 11201 Shaker Blvd., Cleveland, Ohio 44104 with Cuyahoga County Permanent Parcel ID Number 128-08-009, and is described as follows:

**Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio and known as being Parcel "A" in the Lot Split for St. Luke's Hospital Association of a part of Original 100 Acre Lot No. 427 as shown by the recorded plat in Volume 232 of Maps, Page 13 of Cuyahoga County Records, bounded and described as follows:**

**Beginning at a drill hole and cross set in the concrete walk, in the Northerly curved line of Shaker Boulevard S.E., 176 feet in width, at the most Southeasterly corner of Parcel "A" in said Lot Split for St. Luke's Hospital Association;**

**Course No. 1: Thence Southwesterly along the Northerly curved line of Shaker Boulevard S.E., being along the arc of a circle deflecting to the left, 353.80 feet to a drill hole and cross set in the concrete walk at the Easterly end of a curved turn-out connecting said Northerly line of Shaker Boulevard S.E. and the Easterly line of Martin Luther King, Jr. Boulevard S.E., 100 feet in width, in said Northerly line of Shaker Boulevard S.E., said curved line having a radius of 5818.65 feet, and a chord which bears South 86 deg. 20' 36" West a distance of 353.75 feet;**

**Course No. 2: Thence Northwesterly along said curved turn-out, being along the arc of a circle deflecting to the right, 33.52 feet to a capped 5/8-inch iron pin set at a point of tangency in the Easterly line of said Martin Luther King, Jr. Boulevard S.E., said curved line having a radius of 20.00 feet, and a chord which bears North 47 deg. 22' 45" West a distance of 29.74 feet;**

**Course No. 3: Thence North 0 deg. 38' 25" East, along said Easterly line of Martin Luther King, Jr. Boulevard S.E., 28.20 feet to a point of curvature therein, from which point a drill hole and cross set in the concrete walk is radially 5.00 feet Westerly therefrom;**

**Course No. 4: Thence continuing Northeasterly along said Easterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 200.51 feet to a drill hole and cross set in the concrete walk at a point of compound curvature therein, said curved line having a radius of 810.00 feet, and a chord which bears North 7 deg. 43' 55" East a distance of 200.00 feet;**

**Course No. 5: Thence continuing Northeasterly along the Southeasterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 316.74 feet to a drill hole and cross set in concrete walk at a point of compound curvature therein, said curved line having a radius of 298.08 feet, and a chord which bears North 45 deg. 15' 40" East a distance of 302.01 feet;**

**Course No. 6:** Thence continuing Northeasterly along the Southerly curved line of Martin Luther King, Jr. Boulevard S.E., 115.22 feet to the Northeasterly corner of the aforementioned Parcel "A", from which point a drill hole and cross was found 0.39 feet Northerly and 0.69 feet Westerly in the concrete walk from said true corner, said curved line having a radius of 810.00 feet, and a chord which bears North 79 deg. 46' 26" East a distance of 115.13 feet;

**Course No. 7:** Thence South 1 deg. 16' 18" West, along the Easterly line of said Parcel "A", 406.44 feet to a capped 5/8-inch iron pin found;

**Course No. 8:** Thence South 88 deg. 43' 42" East, along the Northerly line of said Parcel "A", 30.00 feet to a capped 5/8-inch iron pin set in the Northeasterly corner thereof;

**Course No. 9:** Thence South 1 deg. 16' 18" West, along an Easterly line of said Parcel "A", 49.97 feet to the place of beginning, containing 137,149 square feet of land (3.1485 acres), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in October, 1996, be the same more or less, but subject to all legal highways.

The bearings used herein are based on an assumed meridian and are used to denote angles.

PPN: 128-08-009

This Legal Description Complies with  
The Cuyahoga County Transfer and  
Conveyance Standards and is approved  
for transfer.

For File: 182837NS

OCT 23 2018



Agent

## **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 Superior Road Apartments LLC, an Ohio limited liability company (the “Owner”).

This Owner Consent, dated as of [\_\_\_\_], 20[\_\_\_\_], is given by the Owner pursuant to the Special Assessment Agreement dated as of [\_\_\_\_], 20[\_\_\_\_] (the “Agreement”) by and among the County Treasurer of Cuyahoga County, Ohio (the “Treasurer”), the City of Cleveland, Ohio (the “City”), the City of Bedford, Ohio, City of Bedford Heights, Ohio, City of Berea, Ohio, City of Brecksville, Ohio, City of Brook Park, Ohio, City of Brooklyn, Ohio, City of Cleveland, Ohio, City of Cleveland Heights, Ohio, City of East Cleveland, Ohio, City of Euclid, Ohio, City of Fairview, Ohio, City of Garfield Heights, Ohio, City of Lakewood, Ohio, City of Maple Heights, Ohio, City of Middleburg Heights, Ohio, Village of Moreland Hills, Ohio City of Parma, Ohio, City of Parma Heights, Ohio, City of Shaker Heights, Ohio, City of Solon, Ohio, City of South Euclid, Ohio, City of University Heights, Ohio Advanced Energy Special Improvement District, Inc., doing business under the registered trade name Northeast Ohio Advanced Energy District (the “District”), the Northeast Ohio Public Energy Council, (together with its permitted successors and assigns under the Agreement, the “Investor”) and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an accelerated foreclosure process with respect to 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 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) under the Energy Project Cooperative Agreement occurs and is continuing, the Treasurer will pursue an accelerated foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the accelerated foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the 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, the City, and the Investor, as applicable, in writing, the accelerated foreclosure process



established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the 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, the City, or the Investor, as applicable, shall be filed of record with the Cuyahoga County, Ohio Fiscal Officer's Office. The Owner agrees that this Owner Consent shall be recorded with the Cuyahoga County, Ohio Fiscal Officer's Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the accelerated foreclosure process with respect to the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Fiscal Officer 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, 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)



EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Owner Consent and owned by Superior Road Apartments LLC is located at 11201 Shaker Blvd., Cleveland, Ohio 44104 with Cuyahoga County Permanent Parcel ID Number 128-08-009, and is described as follows:

**Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio and known as being Parcel "A" in the Lot Split for St. Luke's Hospital Association of a part of Original 100 Acre Lot No. 427 as shown by the recorded plat in Volume 232 of Maps, Page 13 of Cuyahoga County Records, bounded and described as follows:**

**Beginning at a drill hole and cross set in the concrete walk, in the Northerly curved line of Shaker Boulevard S.E., 176 feet in width, at the most Southeasterly corner of Parcel "A" in said Lot Split for St. Luke's Hospital Association;**

**Course No. 1: Thence Southwesterly along the Northerly curved line of Shaker Boulevard S.E., being along the arc of a circle deflecting to the left, 353.80 feet to a drill hole and cross set in the concrete walk at the Easterly end of a curved turn-out connecting said Northerly line of Shaker Boulevard S.E. and the Easterly line of Martin Luther King, Jr. Boulevard S.E., 100 feet in width, in said Northerly line of Shaker Boulevard S.E., said curved line having a radius of 5818.65 feet, and a chord which bears South 86 deg. 20' 36" West a distance of 353.75 feet;**

**Course No. 2: Thence Northwesterly along said curved turn-out, being along the arc of a circle deflecting to the right, 33.52 feet to a capped 5/8-inch iron pin set at a point of tangency in the Easterly line of said Martin Luther King, Jr. Boulevard S.E., said curved line having a radius of 20.00 feet, and a chord which bears North 47 deg. 22' 45" West a distance of 29.74 feet;**

**Course No. 3: Thence North 0 deg. 38' 25" East, along said Easterly line of Martin Luther King, Jr. Boulevard S.E., 28.20 feet to a point of curvature therein, from which point a drill hole and cross set in the concrete walk is radially 5.00 feet Westerly therefrom;**

**Course No. 4: Thence continuing Northeasterly along said Easterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 200.51 feet to a drill hole and cross set in the concrete walk at a point of compound curvature therein, said curved line having a radius of 810.00 feet, and a chord which bears North 7 deg. 43' 55" East a distance of 200.00 feet;**

**Course No. 5: Thence continuing Northeasterly along the Southeasterly curved line of Martin Luther King, Jr. Boulevard S.E., being along the arc of a circle deflecting to the right, 316.74 feet to a drill hole and cross set in concrete walk at a point of compound curvature therein, said curved line having a radius of 298.08 feet, and a chord which bears North 45 deg. 15' 40" East a distance of 302.01 feet;**

Course No. 6: Thence continuing Northeasterly along the Southerly curved line of Martin Luther King, Jr. Boulevard S.E., 115.22 feet to the Northeasterly corner of the aforementioned Parcel "A", from which point a drill hole and cross was found 0.39 feet Northerly and 0.69 feet Westerly in the concrete walk from said true corner, said curved line having a radius of 810.00 feet, and a chord which bears North 79 deg. 46' 26" East a distance of 115.13 feet;

Course No. 7: Thence South 1 deg. 16' 18" West, along the Easterly line of said Parcel "A", 406.44 feet to a capped 5/8-inch iron pin found;

Course No. 8: Thence South 88 deg. 43' 42" East, along the Northerly line of said Parcel "A", 30.00 feet to a capped 5/8-inch iron pin set in the Northeasterly corner thereof;

Course No. 9: Thence South 1 deg. 16' 18" West, along an Easterly line of said Parcel "A", 49.97 feet to the place of beginning, containing 137,149 square feet of land (3.1485 acres), according to a survey by Garrett & Associates, Inc., Registered Engineers and Surveyors, made in October, 1996, be the same more or less, but subject to all legal highways.

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\_\_\_\_\_  
Agent

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

<b>Special Assessment Payment Date<sup>1</sup></b>	<b>Special Assessment Installment Amount<sup>2</sup></b>
2/1/2025	\$30,904.24
7/1/2025	30,904.24
2/1/2026	30,904.24
7/1/2026	30,904.24
2/1/2027	30,904.24
7/1/2027	30,904.24
2/1/2028	30,904.24
7/1/2028	30,904.24
2/1/2029	30,904.24
7/1/2029	30,904.24
2/1/2030	30,904.24
7/1/2030	30,904.24
2/1/2031	30,904.24
7/1/2031	30,904.24
2/1/2032	30,904.24
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2/1/2037	30,904.24
7/1/2037	30,904.24
2/1/2038	30,904.24
7/1/2038	30,904.24
2/1/2039	30,904.24
7/1/2039	30,904.24

<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified above are subject to adjustment by the Cuyahoga County Fiscal Officer under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Cuyahoga County Fiscal Officer may charge and collect a fee in addition to the amounts listed in the this Exhibit 2.