



AGENDA
ATHENS CITY COUNCIL
MONDAY, AUGUST 12, 2024
7:00 PM
e-mail: dwalker@ci.athens.oh.us
Streaming is available at www.ci.athens.oh.us/video

PLANNING & DEVELOPMENT COMMITTEE:

- Energy Special Improvement District (Lostro Ventures, LLC)
- Proposed Annexation (Cable Lane)
- University Estates TIF Agreement
- Title 49, Special Use of the Right-of-Way Permit (49 Central Avenue)

CITY & SAFETY SERVICES:

- Easements with State of Ohio (City Sewer System Improvements, Project #330)
- Title 25, Flood Damage Prevention (amendments to tabled 0-48-24)

FINANCE & PERSONNEL COMMITTEE:

- Appropriations
 - (\$15,400) to General Fund, Municipal Court, for balance of payment on the 2024 Public Defender Agreement
 - (6,330) to General Fund, Police, to replace a cruiser mount and tablet, and provide infrastructure for an EV charger for a new cruiser
 - (\$12,000) to General Fund, Other Administrative, for City disbursement of reimbursed NOPEC grant funds

- (\$7,000) to Garbage Fund, to cover internal service fee
- (\$74,500) to East State TIF Fund and transfer to Street Fund, for repaving the East State Street area bikeway

- Then and Now Certificate (payment approval)

- AFSCME Local 2403(1) Contract

TRANSPORTATION COMMITTEE:

- Ohio Public Works Commission (OPWC) Issue I Funds (application)
- Dump Truck (amend 0-51-23)

5. COMMITTEE OF THE WHOLE:

- Ukraine Independence Day (resolution)

Sam Crowl
President of Council

The City of Athens supports the Americans with Disabilities Act. Requests for reasonable accommodation may be made with the ADA Coordinator in the City Building or by calling 592-3367.



PACE Financing in Ohio



PACE

- **PACE**

- Property, meaning that the financing mechanism improves real property and is secured with an interest in real property
- Assessed, meaning that the financing mechanism is paid for with special assessments
- Clean Energy, meaning energy efficiency and alternative energy improvements are eligible for financing



What Is PACE Financing?

- Special assessment financing for energy efficient and renewable energy building improvements that are repaid via a special assessment added to the property's tax bill.
- Private financing available to commercial property owners to finance up to 100% of energy and water saving improvements.
- Public-Private Partnership + Local Job Creator
 - (15 jobs per \$1m of PACE financing – PACE Nation)

What Is PACE Financing?

- Long-term loans (10 – 30 years)
- Fixed-interest rates/ Fixed payment
- 100% financing, no down payment
- Non-recourse loans (no personal guarantee)
- Payments can be passed through to tenants
- Loan transfers with the property

Who Can Use PACE?

- **Commercial Property Owners**
 - o Both existing properties and new construction
 - o Includes hotels, hospitals, restaurants, office buildings, etc.
 - o Includes multi-family housing, with 4+ units
- **Industrial Property Owners**
- **Agricultural Property Owners**
 - o Farms, wineries, etc.
- **Nonprofits**
 - o Churches, childcare facilities, private schools, etc.
- **Local Governments**
- Does not include residential property

How Can PACE Be Used?

1. Existing buildings for retrofits and upgrades
2. New construction and “gut rehabs”
3. “Retroactive PACE”: refinancing eligible improvements

Refinancing With PACE

- Refinancing creates liquidity and flexibility for borrowers
- Existing PACE-eligible assets can be refinanced
- Existing PACE-eligible assets must be initially financed with “debt” or PACE
- Subject to state laws
- Subject to administrative rules

Layering Incentives

PACE can be combined with other types of financing and incentives

Abatements

- Community reinvestment area (CRA) abatements
- Sales tax abatements
- Ohio Air Quality Development Authority (OAQDA) program

Credit enhanced financing

- Bond fund credit enhancement
- State loan loss reserve
- State energy loan program

Other

- Tax increment financing (TIF)
- Historic tax credits (HTC)
- New market tax credits (NMTC)
- Alternative energy tax credits
- Utility rebate programs

Ohio C-PACE Investment Through May, 2024

Total C-PACE Investment:
\$806,873,273.46

2024 C-PACE Investment:
\$45,993,375.39



Ohio's PACE Law



Ohio Revised Code Chapter 1710

- Municipal corporations and townships may work with property owners to provide up-front, assessment-backed financing to pay the costs of **private** energy efficiency and alternative energy improvements.
- Accomplished by adding the property to a new or existing “energy special improvement district” or ESID.

Eligible Improvements

ORC 1710.01

Energy efficiency improvements

- HVAC

- Lighting

- Roofs, windows, insulation

Alternative energy improvements

- Solar PV and solar thermal

- Micro wind

- Geothermal

- Biomass



Local Process – Project Identification

- Property owner submits petition to local government identifying the project, the assessments, and other aspects of the project

Local Process - Legislation

- Local government adopts several pieces of legislation (can be all at once)
- Typically adopted as emergency measures

Local Process – Closing and Afterward

- Local government enters into two agreements for each transaction.

County Involvement



Billing, collection, and enforcement

County collects special assessments with real property tax bills. In the event of delinquency, County Treasurer enforces state's lien for taxes. In PACE a Special Assessment Agreement is typically used to address enforcement matters.

Case Study

Delco Lofts Project – Dayton, Ohio

- Urban redevelopment project in Dayton
- Historic industrial manufacturing building
- Redeveloped by Crawford Hoying Development Partners
- 134 market rate apartments, parking, amenities, and first-floor retail



Case Study

Delco Lofts Project – Dayton, Ohio



- \$17.6M Senior/Bridge Financing
 - Federal Historic Tax Credits (+/- 90% face value)
 - State Historic Tax Credits (+/-75% face value)
- \$3.8M Dayton Port Bonds
 - BBB+ rated
 - 4.05% (July 26, 2016)
 - 17-year term
 - 0.56% annual port authority credit enhancement, servicing, and trustee fee
- \$650,000 Dayton Port Sales Tax Savings

Developing Area

Tax-Exempt PACE Financing



- Alvis House Transaction
- August 24, 2021
- 501(c)(3) bonds
- Columbus-Franklin County Finance Authority
- Columbus Regional ESID
- Franklin County

Inflation Reduction Act Focus:

Section 6417 Direct Pay
Option

Section 6418 Transfer of
Credits



PACE Resources



Visit Our Resource Center



www.brickergraydon.com/pace

Resource Centers

PACE Financing

Overview

Property owners throughout the Midwest are using PACE financing to unlock energy saving and renewable energy opportunities. PACE allows them to pay for energy efficiency and renewable energy technologies through special assessments paid with their property taxes. The mechanism provides access to long-term, fixed-rate financing. In well-structured transactions, PACE allows property owners to avoid up-front cash outlays, and the savings realized from the project can equal or exceed the special assessment costs.

Bricker's Economic Development team has been at the forefront of the burgeoning PACE market. Our attorneys have unmatched experience guiding clients through all phases and types of PACE transactions. Advising on PACE laws, PACE program structure and PACE projects throughout the region, we have gained national notoriety for our knowledge and experience within this specific area of law. Specifically, we are partners with [C-PACE Alliance](#) and [PACENation](#), we have been selected as a Commercial PACE Working Group C-PACE Advisor by the [United States Department of Energy](#) and we are regular speakers at national events.



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Introduced by Council Member Swank
Planning & Development Committee

A RESOLUTION APPROVING THE PETITION, PLAN, AND ARTICLES OF INCORPORATION OF THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC. AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within Energy Special Improvement Districts ("ESIDs") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments;

WHEREAS, pursuant to the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the "Petition"), including an initial plan entitled Athens Regional Energy Special Improvement District Program Plan (the "Program Plan") and Articles of Incorporation, as validly amended from time to time (the "Articles"), Lostro Ventures, LLC (the "Owner"), as the owner of 100% of the real property subject to the Petition, has requested the formation of the Athens Regional Energy Special Improvement District, Inc., an energy special improvement district and nonprofit corporation organized under the laws of the State of Ohio, (the "District"), and its Board of Directors (the "Board") in accordance with Ohio Revised Code Chapters 1702 and 1710;

WHEREAS, the Owner, has identified certain real property located at the commonly used mailing address 63 S. Court Street, Athens, Ohio, and having Athens County Auditor Permanent Parcel Identification Number A027050001400 (the "Property"), as an appropriate property for a Special Energy Improvement Project pursuant to Ohio Revised Code Chapter 1710;

WHEREAS, on or before [REDACTED], 2024 pursuant to Ohio Revised Code Chapter 1710, the Owner submitted the Petition to this City Council (the "Council"), and the Petition is on file with the Council and the City Auditor;

WHEREAS, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, a special energy improvement project to be provided on the Property, as described more particularly in the Petition (the "Project");

WHEREAS, following the approval of the Petition by this Council, the Owner intends to submit to the District, and the Board, as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, intends to approve the Petition, which Petition requests the formation of the District, that the Property be added to the District, and that the City levy special assessments on the Property (the "Special Assessments") in an amount and for a length sufficient to pay the costs of the Project, which is estimated to be \$[REDACTED], including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate to pay the costs of the Project; and

WHEREAS, this Council, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Petition within sixty (60) days of the submission of the Petition;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Athens, Ohio, as follows:

SECTION I: This Council hereby approves the Petition, the Program Plan, and the Articles, in substantially the form now on file with the Council and the City Auditor. Pursuant to the Petition, the Program Plan, and the Articles, the District is hereby created.

SECTION II: This Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize or effect such addition.

SECTION III: Pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or

mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the Board to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Property is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00).

SECTION IV: This Council determines and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(l); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for (i) the acquisition, construction, and improvement of the Project by Lostro Ventures, LLC, as set forth in the Petition and the Plan, and (ii) the payment of the costs of the Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the reasonable costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; reasonable expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to Lostro Ventures, LLC or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other reasonable obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and reasonable District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Project; together with all other necessary expenditures, all as more fully described in the Petition, the Plan, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Clerk of Council and open to the inspection of all persons interested. This Council further determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

SECTION V: This Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition, construction, and improvement of the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of

materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

SECTION VI: Pursuant to and subject to the provisions of a valid Petition signed by the Owner, which is the owner of one hundred percent (100%) of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The City does not intend to issue securities in anticipation of either the levy of the Special Assessments or the collection of the Special Assessments.

SECTION VII: The method of levying the Special Assessments shall be in proportion to the benefits received from the financing of the Project, allocated among the parcels constituting the Property as set forth in the Petition.

SECTION VIII: The lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

SECTION IX: The Special Assessments shall be levied and paid in [fifty-eight] ([58]) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing Resolution. The aggregate maximum amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$[____]. Each semi-annual Special Assessment payment represents payment of a portion of any principal repayment, interest, and administrative fees payable with respect to the Project. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be 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 addition to the Special Assessments, the County Auditor of Athens County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor of Athens County, Ohio.

SECTION X: The Council and the City Auditor, or their designee, are authorized and directed to prepare and file in the office of the Council and the City Auditor the estimated Special Assessments for the costs of the Project in accordance with the method of assessment set forth in the Petition and this Resolution, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION XI: Upon the filing of the estimated Special Assessments with the Council and the City Auditor, notice of the adoption of this Resolution and the filing of the estimated Special Assessments shall be served upon the Owner of the Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

SECTION XII: The Council and the City Auditor, or their designee, is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

SECTION XIII: The Special Assessments will be used by the City to provide the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION XIV: This Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by the Petition within the limitations contained in Ohio Revised Code Section;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Resolution under Ohio Revised Code Section 727.26; and

(ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION XV: The Council is authorized to enter into agreements by and among the City, the District, and such other parties as the City may deem necessary or appropriate in order to provide the Project, and that the Mayor and the Council, the President of the Council, or any of them, is authorized to execute, on the City's behalf, such agreements.

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

SECTION XVII: This Resolution shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Resolution No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024.

Clerk of Council
City of Athens, Ohio

**PETITION FOR CREATION OF ENERGY SPECIAL IMPROVEMENT DISTRICT
AND FOR SPECIAL ASSESSMENTS FOR
SPECIAL ENERGY IMPROVEMENT PROJECTS AND AFFIDAVIT**

A PETITION TO THE CITY OF ATHENS, OHIO REQUESTING THE CREATION OF THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT AND SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS AGAINST REAL PROPERTY OWNED BY THE PETITIONER TO PAY CERTAIN COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS, THE FINANCING OF WHICH WILL SPECIALLY BENEFIT SUCH REAL PROPERTY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS, AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS

To: The Mayor and the Council (the “**Council**”) of the City of Athens, Ohio (the “**City**”)

Lostro Ventures, LLC, an Ohio limited liability company (the “**Petitioner**”), is the owner of 100% of the property described on **Exhibit A** attached hereto (the “**Property**”) and has identified the Property as appropriate property for special energy improvement projects pursuant to Ohio Revised Code Chapter 1710.

The Petitioner respectfully petitions the Council of the City for the creation of an energy special improvement district initially to be named the Athens Regional Energy Special Improvement District, Inc. (the “**Corporation**”), an Ohio nonprofit corporation formed to govern the Athens Regional Energy Special Improvement District (the “**District**”), initially created within the boundaries of the City of Athens, Ohio. The Corporation will approve (i) a plan (the “**Program Plan**”) for the purpose of developing and implementing special energy improvement projects as defined in Ohio Revised Code Section 1710.01(I) (“**Special Energy Improvement Projects**”) and (ii) the articles of incorporation (the “**Articles of Incorporation**”) in accordance with Ohio Revised Code Sections 1710.01(D) and (E). The Program Plan is attached to this Petition as **Exhibit C**. The Corporation’s Articles of Incorporation are attached to this Petition as **Exhibit D**. The District is hereby authorized to use the registered trade name the Athens Regional Energy Special Improvement District, Inc., or any other such similar trade name as the Board of Directors of the Corporation (the “**Board**”) may duly determine from time to time.

Pursuant to the Program Plan, the Corporation will cause Special Energy Improvement Projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (each a “**Supplemental Plan**” and collectively, the “**Supplemental Plans**”) (the Program Plan and every Supplemental Plan together constituting the “**Plan**”) to provide for additional Special Energy Improvement Projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board has received or will receive the Program Plan attached to this Petition as **Exhibit C**, including the description of the Special Energy Improvement Projects proposed to be

constructed or installed on the Property (the “**Authorized Improvements**”), and related materials in support of the establishment and expansion of the District to include the Property.

The District’s purpose will be to develop and assist in the development of Special Energy Improvement Projects. The District will be authorized to provide Special Energy Improvement Projects pursuant to Ohio Revised Code Chapter 1710 and any and all future amendments to the energy special improvement district provisions of Ohio Revised Code Chapter 1710 (collectively, the “**Act**”). The District further will be authorized to take any other actions pursuant to the Act that may be taken by special improvement districts organized for the purpose of developing and implementing plans for Special Energy Improvement Projects.

In addition to the foregoing and as authorized by Ohio Revised Code Section 1710.02(F), the Petitioner, as the owner of the Property, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Authorized Improvements, hereby respectfully petitions the Council of the City (a) to approve the Program Plan, which includes a description of the Authorized Improvements to be undertaken on the Property, (b) for the construction of the Authorized Improvements, and (c) to assess on the Property the total cost of those Authorized Improvements in proportion to the special benefits that will result from the financing of the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioner acknowledges that it has reviewed or caused to be reviewed (i) the Program Plan, (ii) the plans, specifications, and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in the Program Plan and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in the Program Plan. The Petitioner acknowledges that the estimated special assessments are in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioner hereby petitions for the approval of the Authorized Improvements identified in this Petition and the Program Plan attached to this Petition as **Exhibit C**, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the “**Special Assessments**”) to pay the costs of the Authorized Improvements, in the amount set forth on **Exhibit C**. The Petitioner hereby certifies, represents, and warrants to the District and the City that the actual hard costs of the Authorized Improvements to be financed with the special assessments have been ascertained to be \$[_____]. The Petitioner further agrees that it will be solely responsible for any costs of the Authorized Improvements in excess of the amount set forth on **Exhibit C**.

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 County Auditor of Athens County, Ohio then the Petitioner hereby requests that the Special Assessments be allocated among the resulting parcels as agreed by the Petitioner, the District, and the City, and which shall result in the Special Assessments being allocated to each resulting parcel in proportion to, and not in excess of, the special benefits conferred on the resulting parcel, or resulting parcels, by the Authorized Improvements identified in this Petition.

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in **Exhibit A** shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; costs of labor and material; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the cost of purchasing and otherwise acquiring any real estate or interests in real estate necessary for the construction and installation of the Authorized Improvements; the costs incurred in connection with the preparation, levy, and collection of the Special Assessments; expenses of legal services; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the Petitioner or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Authorized Improvements for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Authorized Improvements; together with all other necessary expenditures.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by the Council of the Special Assessments in accordance with the terms hereof will be final, conclusive, and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in **Exhibit B**, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessments for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessments and the transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further acknowledges and confirms that the Special Assessments set forth in this Petition and in the Program Plan attached as **Exhibit C** are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the Authorized Improvements identified in this Petition. The Petitioner hereby acknowledges and agrees that the special benefit to be provided to the Property under this Petition and the Program Plan is the consummation of the financing to pay the costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of such financing. The Petitioner further consents to the levying of the Special Assessments against the Property by the City. The Petitioner acknowledges that these Special Assessments are fair, just, and equitable and being imposed at the Petitioner's specific request.

The Petitioner hereby waives notice and publication of all resolutions, legal notices, and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710 and consents to proceeding with the Authorized Improvements. Without limiting the foregoing, the Petitioner specifically waives any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, 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;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioner, 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 Petitioner 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 Petitioner, in accordance with Ohio Revised Code Section 929.03, hereby grants permission to collect any Special Assessments levied against such Property.

The Petitioner further agrees and consents to the 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 Petitioner acknowledges that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City and regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioner further acknowledges that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance or resolution confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the County Auditor of Athens County, Ohio, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner hereby waives the right to pay the final assessments for the Authorized Improvements in cash within thirty (30) days from the passage of the ordinance or resolution confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in [] semi-annual installments, together with interest at the maximum rate of []%. The Petitioner hereby consents and agrees that the maximum schedule of Special Assessments represents the final hard costs of the Authorized Improvements, together with an assumed rate of interest on those costs in excess of the rate of interest expected to be available for financing the costs of the Authorized Improvements. The Petition hereby consents and agrees that the final rate of interest will be determined after the City approves the levy of the maximum Special Assessments. The Petitioner hereby authorizes and requests the City to certify the Special Assessments to the County Auditor of Athens County, Ohio for collection, as provided in this Petition, in amounts which, in aggregate, are less than or equal to the aggregate amount of the maximum Special Assessments shown on Exhibit C and are in the amounts necessary to pay the costs of financing the Authorized Improvements, as certified to the City by the Petitioner and the provider of financing for the Authorized Improvements.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioner hereby appoints as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 such representative as may be duly appointed by the Petitioner from time to time, which designation shall not expire unless and until the Petitioner shall notify the Secretary of the District that said designation is no longer in effect or that Petitioner has made a new designation to replace said designation.

The Petitioner further waives any and all questions as to the constitutionality of the laws under which Authorized Improvements shall be acquired, installed, equipped, and improved or the proceedings relating to the acquisition, installation, equipment, and improvement of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio. The Petitioner represents that it will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioner acknowledges and understands that the City and the Corporation, once formed, will rely 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 or assigns of the Petitioner, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

The Petitioner acknowledges that the District is being created using a single petition under the Act and that no further authorization by the Petitioner may be required prior to the implementation of the Program Plan and the levying of the Special Assessments.

The Petitioner further deposes and states that this Petition and actions provided for in this Petition 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 to be made available by the City for inspection at the office of the Finance Department of the City.

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EXHIBIT A

DESCRIPTION OF PROPERTY

The Property subject to this Petition and owned by the Petitioner is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number A027050001400 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

EXHIBIT B

SPECIAL ENERGY IMPROVEMENT PROJECT DESCRIPTION

The real property owned by Lostro Ventures, LLC at 63 S. Court Street, Athens, Ohio (the “Property”) is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the “Project”). The Property is further described on **Exhibit A** of this Petition. The Property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

[To Be Added]

EXHIBIT C

ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT PROGRAM PLAN

The Athens Regional Energy Special Improvement District (the “**District**”) will administer a property assessed clean energy (PACE) program (the “**Program**”). The Program will provide financing secured by special assessments on real property for special energy improvement projects. Pursuant to Section 1710.02 of the Ohio Revised Code, Lostro Ventures, LLC, as the initial owner of real property within the District (the “**Owner**”) authorizes, consents to, and submits to the City of Athens, Ohio for approval this Program Plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the “**Program Plan**”) to provide for the Program’s administration and to set forth the terms and conditions of participation in the Program.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Program Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the “Act.” Any specific statutory reference contained in this Program Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District’s Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program’s terms and conditions. These terms and conditions are addressed in this Program Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property (“**Assessment Schedule**”), and the governing documents forming the District. The District’s governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the “**Governing Documents**”). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Program Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Program Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the “**District Documents**.” In addition to the District Documents, property owners may be required to agree to and execute an agreement to impose special assessments as a condition to receiving financing of special energy improvement projects from the District.

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Program Plan. **By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.**

I. Purpose of the Program

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects, as that term is defined in the Act (the “**Authorized Improvements**”). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, and nonprofit corporation securities (collectively, the “**Program Obligations**”) may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, however, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

Nothing in this Program Plan shall be construed as a representation on the part of any participating political subdivision, the District, the board of directors of the District, or any of the directors, officers, agents, members, independent contractors, or employees of the District or board of directors that the Program is the best financing option available. Property owners are advised to conduct independent research to determine the best course of action.

II. The District’s Governance and Program Administrator

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors (“**Board**”) of the Athens Regional Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the “**Corporation**”) to govern the District.

Pursuant to the Act, other Ohio law, and any Code of Regulations adopted for the governance of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Program Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Program Plan specifically contemplates that, as authorized in the Act, the District may contract for the services of a “**Program Administrator**.”

The Program Administrator may provide, without limitation, the following services: (i) pursuant to Part III of this Program Plan, developing and administering eligibility guidelines, creating and administering an application, setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals; (ii) pursuant to Part IV of this Program Plan, marketing, program design, cooperating

with property owners to implement Authorized Improvements, and other administrative services; and (iii) establishing and administering a revolving loan facility providing financing for certain special energy improvement projects.

III. Program Eligibility, Approvals, Financing, and Procurement

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

- (A) Eligibility. The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board or the legislative authority of the political subdivision in which the property is located requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Program Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Program Plan. The Program Plan for the District may be amended and supplemented from time to time in accordance with its terms, including, specifically, by supplements to the Program Plan which identify additional Authorized Improvements within the District to be subject to the Program Plan or add property to the District and subject such additional property to the Program Plan. To be eligible for participation in the Program, each property owner, with the exception of the Owner, must file a supplement to this Program Plan (the “**Supplemental Plan**”) with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Program Plan applicable to real property within the District or to be added to the district. Supplemental Plans shall include such other information as may be required by the Board. Supplemental Plans shall conform to the requirements of Ohio Revised

Code Chapter 1710 and any requirements of the Board. No special assessments authorized, levied, assessed, or collected with respect to the Authorized Improvements described in this Program Plan or in any Supplemental Plan shall ever be used to pay the costs of any Authorized Improvements described in any other Program Plan or Supplemental Plan.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to utilize pre-approved contractors to complete the Authorized Improvements. The Board is further authorized to create criteria for the approval of contractors and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

Nothing in this Program Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

- (D) Procurement and Referrals. The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to ORC Section 1710.11, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the participating political subdivision and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Program Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to a participating political subdivision due to its status as a participating political subdivision.

- (E) Financing. The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

IV. Program Services

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Program Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Program Plan. Such services, without limitation, may include the following:

- (A) Program Design. The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.
- (B) Program Administration. The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.
- (C) Marketing. The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.
- (D) Authorized Improvement Implementation. The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Supplemental Plans by participating political subdivisions and the Board.
- (E) Tracking and Administration of Program Obligations. The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
- (F) Administering Special Assessments. The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners' claims regarding

the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.

- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Annual Report. In accordance with Section 1710.04(D), the Board is hereby authorized, by the first day of March of each year, to submit to each member of the District and to the municipal executive, chief fiscal officer, and legislative authority of each municipal corporation with territory within the boundaries of the District and to the board of township trustees of each township with territory within the boundaries of the District a report of the District's activities and financial condition for the previous year.
- (J) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

V. Fees

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating the Corporation, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, reviewing, facilitating the implementation of, and implementing Authorized Improvements or services under this Program Plan or any Supplemental Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Program Plan or any Supplemental Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any costs of litigation, including but not limited to court costs, attorneys' fees, and expert witness fees, incurred by the District in implementing this Program Plan or any Supplemental Plans;

- (D) Any damages resulting from implementing this Program Plan or any Supplemental Plan;
- (E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Program Plan or any Supplemental Plan;
- (F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District's territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved; and
- (G) In accordance with Section 727.08(I) of the Ohio Revised Code, the costs incurred in connection with the preparation, levy, and collection of the special assessments, including legal expenses incurred by reason of the improvement.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

Application Fee. The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

VI. Energy Efficiency and Renewable Energy Regulations and Requirements

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility (“EDU”) with an Authorized Improvement approved by the Board that is within the EDU’s certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing Authorized Improvement approved by the Board that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations

or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

VII. Statutory Requirements

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Program Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Program Plan, the Board is authorized to implement and amend this Program Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in the petition and Supplemental Plan. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or in any petition requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.
- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

VIII. Changes in State and Federal Law

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of laws, regulations, rules, and guidelines including, but not limited to state and federal laws, the Internal Revenue Code, Governmental Accounting Standards Board pronouncements, and Financial Accounting Standards Board standards. If these laws, regulations, rules, and guidelines change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Program Plan. **The District, or any participating political subdivision, shall not be obligated to implement any provision of this Program Plan which is contrary to state or federal law. The District or any participating political subdivision shall not be liable for any inability to finance Authorized Improvements as a result of any applicable laws, regulations, rules or guidelines or any changes in applicable laws, regulations, rules or guidelines which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.**

IX. Releases and Indemnification

The District has been created with the approval of the City of Athens, Ohio, as a participating political subdivision, for the purposes of implementing this Program Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, maintenance, removal, remediation, warranting, or other guaranteeing of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, maintenance, removal, remediation, warranting, or other guaranteeing of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

By agreeing to and executing this Program Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program, except as may arise from the acts or omissions of the District in breach of the Governing Documents, the Petition, or the Program Plan or the gross negligence of the District. Any political subdivision that owns real property included in the District agrees to release the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision's participation in the Program in its capacity as a property owner.

X. Changes in the Program Terms; Severability

Participation in the Program is subject to the District Documents' terms and conditions in effect from time to time during participation. The District reserves the right to change this New Program Plan and the terms and conditions of the District Documents at any time upon not less than five (5) days' prior written notice. No such change will affect a property owner's rights or obligations under this Program Plan, including, without limitation, the payment of special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

XI. Disclosure of Property Owner Information

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with any applicable law, (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owner's names and contact information may be disclosed to their current electric utilities. Property owner's name, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

Each owner of real property located within the District acknowledges that the District and any participating political subdivision is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Program Plan agrees, on behalf of itself as an owner, and any and all agents, employees, contractors, or other parties who submit plans, proposals, drawings, trade secrets, copyrighted material, or other work products related to proposed or authorized improvements, to the disclosure of certain information as stated in this Part, and will indemnify and hold harmless the District and any participating political subdivision from liability for compliance with said laws.

XII. Initial Authorized Improvements

The Owner has requested and consented to certain special assessments to be levied by the City with respect to certain real property owned by the Owner (the "**Property**") and located on Athens County Auditor Parcel ID Number 3400700036406028 which Property is described more specifically in **Exhibit 1** attached to this Program Plan.

A proposed maximum schedule of special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as **Exhibit 2**. The Owner hereby consents and agrees that the maximum schedule of special assessments represents the final hard

costs of the Authorized Improvements described below, together with an assumed rate of interest on those costs in excess of the rate of interest expected to be available for financing the costs of the Authorized Improvements. The Owner hereby consents and agrees that the final rate of interest will be determined before the City levies the special assessments, and hereby authorizes the City to levy the special assessments in amounts which, in aggregate, are less than or equal to the aggregate amount of the special assessments shown on **Exhibit 2**, and are in the amounts necessary to pay the costs of financing the Authorized Improvements, as certified to the City by the Petition and the provider of financing for the Authorized Improvements. The Owner hereby certifies, represents, and warrants to the City and the District that the actual hard costs of the Authorized Improvements to be financed with the special assessments have been ascertained to be not less than \$[_____].

In the event that at any time following the date of this Program Plan the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Athens County, Ohio, then the Owner requested in the Petition that the Special Assessments be allocated among the resulting parcels as agreed by the Owner, the District, and the City, and which shall result in the Special Assessments being allocated to each resulting parcel in proportion to, and not in excess of, the special benefits conferred on the resulting parcel, or resulting parcels, by the Authorized Improvements identified in the Petition.

The Authorized Improvements applicable to the Property will include the acquisition, construction, installation, improvement, and equipping of [_____], and related improvements. As required by Ohio Revised Code Sections 1710.01(I) and (K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Program Plan as **Exhibit 3**. The Owner hereby acknowledges and agrees that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of financing to pay the costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the special assessments to be levied to pay the costs of the financing.

The Owner will cause this Program Plan to be promptly filed with the Board of Directors of the District and with the Clerk of the City Council of the City of Athens, Ohio.

The undersigned owner of real property located within the District acknowledges that the District and the City are subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* The undersigned real property owner agrees to the disclosure of certain property owner information by the District or the City to the extent required by law.

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BY EXECUTING THIS PROGRAM PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PROGRAM PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PROGRAM PLAN) AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PROGRAM PLAN.

Date: [____], 2024.

Property Owner:

LOSTRO VENTURES, LLC

By: _____

Name: _____

Title: _____

Address for notices to Property Owner:

Lostro Ventures, LLC

[Property Owner Consent to Program Plan]

EXHIBIT 1

DESCRIPTION OF PROPERTY

The Property subject to this Plan and owned by the Owner is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number 3400700036406028 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs: \$[]

Estimated semi-annual special assessments for [] years: \$[]

Number of semi-annual assessments: []

First semiannual installment due (approximately): []

The schedule of Special Assessments for the Authorized Improvements is as follows:

[illegible]

EXHIBIT 3

Description of Authorized Improvements

The Authorized Improvements are expected to consist of the following energy efficiency elements:

[To Be Added]

EXHIBIT D

ARTICLES OF INCORPORATION OF ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

**FIRST:
NAME**

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 “Regional Energy Special Improvement District, Inc.” For demonstration purposes, as of the adoption of this Article First, the name of the Corporation shall be “Athens Regional Energy Special Improvement District, Inc.”

**SECOND:
PURPOSE**

The purpose for which the Corporation is formed shall be:

- (A) To govern the Athens Regional Energy Special Improvement District, Inc., a special improvement district (the “District”) created pursuant to Ohio Revised Code (“ORC”) Chapter 1710. The District will be authorized to approve special energy improvement projects pursuant to ORC Chapter 1710 within the boundaries of the District. The Corporation will be conducive to and promote the public health, safety, peace, convenience, and general welfare by creating projects that conserve energy and create a clean environment, lead to energy independence, create jobs and economic growth and development, and promote the general welfare within the District and the participating political subdivisions.

The District will be authorized to take any other actions pursuant to ORC Chapter 1710 that may be taken by a special improvement district organized for the purpose of developing and implementing plans for special energy improvement projects. The City of Athens, Ohio (“City”) is a “participating political subdivision,” as that term is defined in ORC Section 1710(E), that will be authorized to levy a special assessment on each property within the territorial boundaries of the City within the District to pay for such improvements, based on the benefits conferred by those special energy improvement projects. All other municipal corporations and townships which duly and validly add real property to the District shall be a participating political subdivision that will be authorized to levy a special assessment on each property within the territorial boundaries of such participating political subdivision within the District to pay for such improvements, based on the benefits conferred by those special energy improvement projects.

- (B) To engage in any lawful act, activity or business not contrary to and for which a nonprofit corporation may be formed under the laws of the State of Ohio.
- (C) To have and exercise all powers, rights and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, 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 may, at any time and from time to time, deem advisable.
- (D) The reasons for establishing the District include the public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory's carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

THIRD:
RESTRICTIONS

In accordance with ORC Chapter 1702, no part of the net earnings of the Corporation shall inure to the benefit of any private person, including any of the Corporation's members, directors, trustees, or officers, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to the Corporation or allowed by the Corporation as reasonable allowance for authorized expenditures incurred on behalf of the Corporation.

FOURTH:
MEMBERS

The members of the Corporation ("Members") shall be those persons or organizations described in the Code of Regulations. The annual meeting of Members shall be determined by the Board of Directors ("Board") as described in the Code of Regulations.

FIFTH:
BOARD OF
DIRECTORS

The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least five (5) individuals (individually a "Director").

- (A) The municipal executive, as defined in ORC Section 1710.01(D), provided that for each participating political subdivision that is a township, municipal executive shall refer to the chief administrative officer of the township, if any, or if no chief administrative officer exists, the board of township trustees, of each participating political subdivision of the District, or an employee of each participating political subdivision who is involved with its planning or economic development functions and who shall be appointed by and serve at the pleasure of such

participating political subdivision's municipal executive each shall serve as a Director.

- (B) A person appointed by and serving at the pleasure of the legislative authority of each participating political subdivision of the District each shall serve as a Director.
- (C) The remaining Directors shall be Members or executive representatives of Members elected, designated, or appointed by the Members as described in the Code of Regulations of the Corporation. At no time when there is more than one participating political subdivision of the District shall the number of Directors appointed under this subsection (C) exceed the total number of Directors appointed under both subsections (A) and (B) hereinabove.

The Board of Directors of the Corporation from time to time shall constitute the Board of Directors of the Corporation under ORC Chapter 1710.

SIXTH:
TERRITORY

The territory within the District shall be described generally as that portion of the participating political subdivisions consisting of property owned by each property owner within a participating political subdivision that has petitioned the participating political subdivision for the development of a special energy improvement project, as that term is defined in ORC Section 1710.01(I). As provided in ORC Section 1710.02(A), the territory in the District may be noncontiguous if at least one special energy improvement project is designated for each parcel of real property included in the District. As further provided in Section 1710.02(A), additional territory may be added to the District for the purpose of developing and implementing plans for special energy improvement projects if at least one special energy improvement project is designated for each parcel of real property included within such additional territory and the addition of territory is authorized by the plan for the District under Chapter 1710. The addition of such territory shall be authorized in the plan for the District.

The following is a listing of properties that are initially included in the District, which are identified by parcel number:

Lostro Ventures, LLC

Parcel No. A027050001400

SEVENTH:
CERTAIN
TRANSACTIONS

No person shall be disqualified from being a Director of the Corporation because he or she is or may be a party to, and no Director of the Corporation shall be disqualified from entering into, any contract or other transaction to which the Corporation is or may be a party.

Under ORC Chapter 1710, certain Directors of the Corporation are elected by the Members of the Corporation, are appointed by participating political subdivisions, or are identified by operation of ORC Chapter 1710 and, further, one of the District's purposes is to approve special energy improvement projects that benefit the property located within the District that, by operation of ORC Section 1710.03, is owned by a Member of the Corporation or governed by the participating political subdivision. As a direct result of such statutory requirements, a Director of the Corporation shall not be prohibited from participating in or voting upon actions relating to special energy improvement projects for which a Director has an interest either in its capacity as a Member of the Corporation or as a Director that was elected by such Member, appointed by a participating political subdivision, or identified by operation of ORC Chapter 1710.

No contract, action or other transaction shall be void or voidable because any Director or officer or other agent of the Corporation is a party thereto, or otherwise has any direct or indirect interest in such contract, action or transaction or in any other party thereto, or for reason that any interested director or officer or other agent of the Corporation authorizes or participates in authorization of such contract, action or transaction, provided that:

The material facts as to such interest and as to the contract, action or transaction are disclosed or are otherwise known to the Board or applicable committee of Directors at the time the contract, action or transaction is authorized and the Directors or the Members of the committee, in good faith reasonably justified by the facts, authorize the contract, action or transaction by at least a majority vote of the disinterested Directors or disinterested Members of the committee, even though such disinterested Directors or Members are less than a quorum; or

The material facts as to such interest and as to the contract, action or transaction are disclosed or are otherwise known to the member at the time the contract, action or transaction is authorized and the member authorizes the contract, action or transaction; or the contract, action or transaction (i) is not less favorable to the Corporation than an arm's length contract, action or transaction in which no director or officer or other agent of the Corporation has any interest or (ii) is otherwise fair to the Corporation as of the time it is authorized.

Any interested director may be counted in determining the presence of a quorum at any meeting of the Board or any committee thereof which authorizes the contract, action or transaction.

EIGHTH:
DISSOLUTION

The existence of the Corporation shall be perpetual, provided however, that the Corporation may be dissolved in accordance with the procedure proscribed under ORC Chapter 1710.13. No rights or obligations of any person under any contract, or in relation to any bonds, notes, or assessments made under this

chapter, shall be affected by the dissolution of the Corporation or the repeal of a plan, except with the consent of that person or by order of a court with jurisdiction over the matter. Upon dissolution of the Corporation, any assets or rights of the Corporation, after payment of all bonds, notes, or other obligations of the Corporation, shall be deposited in a special account in the treasury of each participating political subdivision, prorated among all participating political subdivisions to reflect the percentage of the District's territory within that political subdivision, to be used for the benefit of the territory that made up the District.

Notwithstanding anything herein to the contrary, no part of the Corporation's income will be distributed to any entity other than a political subdivision of a state or an organization the income of which is excluded from gross income under Internal Revenue Code section 115(1).

NINTH:
AMENDMENT

Any provision of these Articles of Incorporation may be amended only (a) by the affirmative vote of a majority of the Members of the Corporation at any meeting at which a quorum is present, and (b) after receipt of approval of such amendment by resolution of the legislative authority of each participating political subdivision, and (c) upon filing the approved amendment and resolution with the Ohio Secretary of State; provided that such amendment shall be consistent with the applicable provisions of ORC Chapters 1702 and 1710; provided, however, that any amendment to these Articles of Incorporation that are necessary solely to recognize (i) the addition of real property to the territory of the District within the boundaries of any municipal corporation or township in which a portion of the District's territory is located or within the boundaries of any municipal corporation or township which may become a participating political subdivision of the District under ORC Chapter 1710, and (ii) the addition of the municipal corporation or township in which such real property is located as a participating political subdivision of the District are hereby approved and shall require no additional action or approval by any Members of the Corporation or any participating political subdivision of the District.

TENTH:
TRADE NAME

The District is hereby authorized to use the trade name "Athens Regional Energy Special Improvement District," or any other such similar trade name as the Board of Directors may duly determine from time to time, and the Corporation is hereby authorized to use the trade name "Athens Regional Energy Special Improvement District, Inc.," or any other such similar trade name as the Board of Directors may duly determine from time to time.

Introduced by Council Member Swank, Chair
Planning & Development Committee

AN ORDINANCE DETERMINING TO PROCEED WITH THE
ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF
CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS,
OHIO IN COOPERATION WITH THE ATHENS REGIONAL ENERGY
SPECIAL IMPROVEMENT DISTRICT.

WHEREAS, the City Council ("Council") of the City of Athens, Ohio ("City") duly adopted Resolution No. [] on [], 2024 (the "Resolution Approving Petition and Declaring Necessity"), (i) declaring the necessity of acquiring, constructing, and improving energy efficiency improvements, including, without limitation, [], and related improvements associated with the adaptive reuse of a 20-suite extended stay hotel and retail building (the "Project", as more fully described in the Petition referenced in this Ordinance) located on real property owned by Lostro Ventures, LLC (the "Owner") located at the commonly used mailing address 63 S. Court Street, Athens, Ohio, with Athens County Auditor Permanent Parcel Identification Number A027050001400 (the "Property", as more fully described in Exhibit A to the Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owner's *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the "Petition"), including by levying and collecting special assessments to be assessed upon the Property (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be \$[] including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and administrative fees and expenses of the Athens Regional Energy Special Improvement District, Inc., an energy special improvement district and nonprofit corporation under the laws of the State of Ohio, (the "District"); and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and

WHEREAS, the claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Athens, Ohio, as follows:

SECTION I: Each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Petition.

SECTION II: This Council declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Petition and the Resolution Approving Petition and Declaring Necessity. The Project shall be made in accordance with the provisions of the Resolution Approving Petition and Declaring Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Council and the City Auditor.

SECTION III: The aggregate maximum amount of Special Assessments to pay costs of the Project, which are estimated to be \$[REDACTED], including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Petition and the Resolution Approving Petition and Declaring Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the Project. The Special Assessments shall be assessed against the Property commencing in tax year [REDACTED] for collection in [REDACTED] and shall continue through tax year [REDACTED] for collection in [REDACTED]. In addition to the Special Assessments, the County Auditor of Athens County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Auditor of Athens County, Ohio.

SECTION IV: The estimated Special Assessments for costs of the Project prepared and filed in the offices of the Council and the City Auditor, in accordance with the Resolution Approving Petition and Declaring Necessity, are adopted.

SECTION V: In compliance with Ohio Revised Code Section 319.61, the Council and the City Auditor are directed to deliver a certified copy of this Ordinance to the County Auditor of Athens County, Ohio within fifteen (15) days after the date of its passage.

SECTION VI: All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Petition, and the costs of the Project shall be financed as provided in the Resolution Approving Petition and Declaring Necessity.

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

SECTION VIII: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

ATTEST:

Clerk of Council

President of Council

APPROVED:

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024 and that a true copy thereof was certified to the County Auditor of Athens County, Ohio within fifteen (15) days of its passage.

Clerk of Council
City of Athens, Ohio

RECEIPT OF ATHENS COUNTY AUDITOR FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, CONSTRUCTION,
AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF ATHENS, OHIO
IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT

I, Jill A. Davidson, the duly elected, qualified, and acting County Auditor in and for Athens County, Ohio hereby certify that a certified copy of Ordinance No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024 and made effective on [], determining to proceed with the acquisition, construction, and improvement of certain public improvements in the City of Athens, Ohio in cooperation with the Athens Regional Energy Special Improvement District, was filed in this office on [], 2024.

WITNESS my hand and official seal at Athens, Ohio on [], 2024.

[SEAL]

County Auditor
Athens County, Ohio

Introduced by Council Member Swank, Chair
Planning & Development Committee

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE
PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING
CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO
IN COOPERATION WITH THE ATHENS ENERGY SPECIAL
IMPROVEMENT DISTRICT, APPROVING AN ENERGY PROJECT
COOPERATIVE AGREEMENT AND A SPECIAL ASSESSMENT
AGREEMENT.

WHEREAS, Lostro Ventures, LLC (the "Owner") has submitted its *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the "Petition") in order to provide for the completion of a special energy improvement project on real property owned by the Owner in the City of Athens, Ohio (the "City");

WHEREAS, this Council ("Council") of the City duly adopted Resolution No. [] on [], 2024 (the "Resolution Approving Petition and Declaring Necessity") and declared the necessity of acquiring, constructing, improving and installing energy efficiency improvements on its real property, including, without limitation, building envelope improvements designed to reduce heating and cooling [], and related improvements associated with the adaptive reuse of a 20-suite extended stay hotel and retail building (the "Project"), as described in the Resolution Approving Petition and Declaring Necessity and as set forth in the Petition requesting those improvements;

WHEREAS, this Council duly passed Ordinance No. [] on [], 2024 and determined to proceed with the Project and adopted the maximum estimated Special Assessments (as defined in the Resolution Approving Petition and Declaring Necessity) filed with the Council and the City Auditor pursuant to the Resolution Approving Petition and Declaring Necessity;

WHEREAS, the City intends to enter into an Energy Project Cooperative Agreement (the "Energy Project Cooperative Agreement") with the District, the Owner, and [] (together with its successors and assigns, the "Investor") to provide for, among other things, (i) the making of the Project Advance (as defined in the Energy Project Cooperative Agreement and referred to herein as the "Project Advance") to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the Project, and (iii) the delivery of the Special Assessments to the Investor by the City or by the County Auditor of Athens County, Ohio (the "County Auditor") on behalf of the City to pay principal and interest and other costs relating to the Project Advance;

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

WHEREAS, the actual costs of the Project have been ascertained and have been certified to the City in the Petition and the Plan for the Project;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Athens, Ohio, as follows:

SECTION I: That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Resolution Approving Petition and Declaring Necessity.

SECTION II: That the list of maximum Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, which is \$[REDACTED], including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file with the Council and the City Auditor, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be 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 Council.

As requested in the Petition, the final aggregate amount of the Special Assessments may be in an amount less than the aggregate maximum amount of \$[REDACTED] if the final rate of interest for the financing for the Project is less than the assumed maximum rate of interest such that the aggregate amount of Special Assessments necessary to repay the financing for the Project is less than the aggregate amount of \$[REDACTED], the Owner and the provider of the financing shall certify a final schedule of Special Assessments to the City, which final schedule shall be certified to the County Auditor for collection.

The Special Assessments are assessed against the Property commencing in tax year [REDACTED] for collection in [REDACTED] and shall continue through tax year [REDACTED] for collection in [REDACTED]. The semi-annual installments of the Special Assessments shall be collected in

each calendar year equal to a total maximum annual amount of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

All Special Assessments shall be certified by the Council or the City Auditor to the County Auditor of Athens County, Ohio pursuant to the Petition and Ohio Revised Code Chapter 727.33 to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

SECTION III: That this Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property through the financing of the Project, as set forth in the Petition, and are not in excess of any applicable statutory limitation.

SECTION IV: That Owner has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Council or the City Auditor to the County Auditor of Athens County, Ohio as provided by the Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

SECTION V: That the Special Assessments will be used by the City to provide for the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION VI: That the Council and the City Auditor shall keep the Special Assessments on file in their respective offices.

SECTION VII: That this Council hereby approves the Energy Project Cooperative Agreement, a copy of which is on file with the Clerk of Council. The Mayor and the Law Director, or their designee, shall sign and deliver, in the name and on behalf of the City, the Energy Project Cooperative Agreement, in substantially the form as is now on file with the Clerk of Council. The Energy Project Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor and the Law Director, or their designee, in the name and on behalf of the City, all of which shall be conclusively evidenced by the signing of the Energy Project Cooperative Agreement or amendments to the Energy Project Cooperative Agreement.

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

SECTION IX: That the Safety Service Director is hereby authorized to enter into such other agreements that are not inconsistent with the Resolution Approving Petition and Declaring Necessity and this Ordinance and that are approved by the Mayor and the Law Director, or their designee, on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

SECTION X: That in compliance with Ohio Revised Code Section 319.61, the Council and the City Auditor are directed to deliver a certified copy of this Ordinance to the County Auditor of Athens County, Ohio within twenty (20) days after its passage.

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

SECTION XII: That this Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024 and that a true copy thereof was certified to the County Auditor of Athens County, Ohio within fifteen (15) days of its passage.

Clerk of Council
City of Athens, Ohio

EXHIBIT A

**LIST OF SPECIAL ASSESSMENTS AND
SCHEDULE OF SPECIAL ASSESSMENTS**

LIST OF SPECIAL ASSESSMENTS

Name	Assessed Properties Description	Portion of Benefit and Special Assessment	Maximum Amount of Special Assessments
Lostro Ventures, LLC	A027050001400	100%	\$[]

* As identified in the records of the Auditor of Athens County, Ohio as of June 24, 2024.

SCHEDULE OF SPECIAL ASSESSMENTS

The following schedule of Special Assessment charges shall be levied in [fifty-eight] ([58]) semi-annual installments with respect to first-half and second-half real property taxes in calendar years [] through []:

[illegible]

RECEIPT OF ATHENS COUNTY AUDITOR FOR
LEGISLATION LEVYING SPECIAL ASSESSMENTS
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING,
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS
IN THE CITY OF ATHENS IN COOPERATION WITH
THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Jill A. Davidson, the duly elected, qualified, and acting Auditor in and for Athens County, Ohio hereby certify that a certified copy of Ordinance No. [____], duly adopted by the Council of the City of Athens, Ohio on [____], 2024 and made effective on [____], levying special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Athens, Ohio in cooperation with the Athens Regional Energy Special Improvement District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges are levied in [fifty-eight] ([58]) semi-annual installments with respect to real property taxes due in calendar years [____] through [____], was filed in this office on [____], 2024.

WITNESS my hand and official seal at Athens, Ohio on [____], 2024.

[SEAL]

Auditor
Athens County, Ohio

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT;

LOSTRO VENTURES, LLC

[_____] ; and

CITY OF ATHENS, OHIO

Dated as of [_____] , 2024

BRICKER GRAYDON LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the "Agreement") is made and entered into as of [____], 2024 (the "Closing Date"), between the ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the "State") (the "ESID"), LOSTRO VENTURES, LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio (the "Owner"), [____], a limited liability duly organized and validly existing under the laws of the State of [____] (together with its successors and assigns, the "Investor"), and the CITY OF ATHENS, OHIO, a municipal corporation and political subdivision 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 (the "Petition") approved by Resolution No. [____] of the City Council of the City (the "City Council"). Pursuant to the same action, the Athens Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the "Plan") was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

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

C. 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, installation, equipping, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor providing the Project Advance to finance the costs of the special energy improvement projects described in the Petition, (ii) the ESID and the Owner cooperating to acquire, install, equip and improve special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, (iv) the City agreeing to assign and transfer all Special Assessment payments and Delinquency Amounts actually received by the

City to the Investor to repay the Project Advance and certain fees identified herein; and (v) the ESID agreeing to assign, transfer, and set over to the Investor any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or be payable to, the City, the County Auditor, or the ESID, all pursuant to and in accordance with this Agreement.

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

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, and agreements contained in this Agreement, the Parties agree as follows; provided, that any obligation of the ESID created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the ESID, or give rise to any pecuniary liability of the ESID, but any such obligation shall be payable solely from the Special Assessments 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, and the Investor. The Owner and the ESID have requested the assistance of the Investor and the City in the financing of special energy improvement projects within the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the City and the ESID have requested the assistance and cooperation of the Investor in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, installation, equipping, and improvement of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(I). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Investor, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and the ESID shall assign, transfer, set over, and pay the Special Assessments actually received by the City or the ESID, respectively, to the Investor, to pay the costs of the Project at the times and in the manner provided in this Agreement, including, without limitation, by repaying the principal of and paying any interest on the Project Advance 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. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual ESID fee for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year, and the semi-annual ESID Fee, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the semi-annual ESID 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 Auditor for collection, and the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

- (b) Collection of Delinquent Special Assessments. 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 Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

- (c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act 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 the Owner shall provide written notice to the Investor of such prepayment, and if the City shall have knowledge of the same, the City shall promptly notify the Investor, and, unless provided the express written consent of the Investor, the City shall not cause any reduction in the amount of the 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 the 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, such written consent or instruction to be provided by Investor to the City within twenty (20) days of the receipt of any prepayment by

Owner as set forth in this Agreement. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor's express written consent or instruction, including the Investor's calculation of the amount of Special Assessments remaining, the City shall certify to the County Auditor, prior to the last date in the then-current tax year on which political subdivisions may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of []%, and a semi-annual ESID Fee. The parties acknowledge and agree that County Auditor 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 Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of the 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 Project, 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 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, together or individually, to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.
- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and Delinquency Amounts will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments and Delinquency Amounts to the City on or before June 1 and December 1 of each year. 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 Auditor, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit F** on the Closing Date. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit F** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and 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 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, the payment of a semi-annual ESID Fee of [] or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each installment of the Special Assessments in an amount that the County Auditor deems necessary to defray the expense of collecting the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. Obligations Unconditional; Place of Payments. The City's obligation to transfer the Special Assessments and any Delinquency Amounts to the Investor under Section 2.2 of this Agreement shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts actually received by or on behalf of the City,

and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of this Agreement, all of the Special Assessments and any Delinquency Amounts received or to be received by the City shall be deemed to have been appropriated to pay the City's obligation under this Agreement to pay to the Investor all Special Assessments and any Delinquency Amounts received by the City. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments and any Delinquency Amounts actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligation under this Agreement to pay to the Investor all Special Assessments and any Delinquency Amounts received by the City; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments and 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, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments and any Delinquency Amounts related to the ESID actually received by or on behalf of the City to the Investor. The Owner and the City agree and consent to that assignment.

ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

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

- (a) It is a municipal corporation and political subdivision 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.

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 ESID shall provide an opinion of PACE Counsel dated as of the Closing Date to the addressees included in such opinion regarding the enforceability and compliance with applicable law of the Agreement, the Special Assessment Agreement, and the Petition.

- (g) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

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

- (a) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.
- (b) It, by proper action, duly has authorized, executed, and delivered the Transaction Documents, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms
- (c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an "Action"), and during the term of this Agreement, the Owner shall promptly notify the Investor of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute 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 (including, without limitation, the Senior Loan from the Senior Lender), it has as of the date of this Agreement made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on its Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, installing, equipping and improving of its Project.
- (f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other

instrument furnished to the Investor or the ESID by it or on its behalf contained, as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

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

and its Lender, unless such premium shall have been paid by the Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, and the receipt of the funds requested by the Disbursement Request Form, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.
- (m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy analysis prepared by the Investor, which energy analysis demonstrates that the Project is expected to generate \$[_____] in annual energy savings.
- (o) Each of the components of the Project is a qualified "special energy improvement project" pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).
- (p) The Owner is not insolvent, and the consummation of the financing described in this Agreement will not render Owner insolvent.
- (q) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act, and shall take any and all action necessary to remain in compliance with the Special Assessment Act.
- (r) All statements set forth in this Section 3.3 are true and correct in all material respects.

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

- (a) It shall not transfer or convey any right, title, or interest, in or to the Property and the Project, except after giving prompt notice of any such transfer or conveyance to the Investor; provided, however, that the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Investor, the City, and the ESID a fully executed "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit E**; (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to

the Project, and (iii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent.

- (b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Investor, upon 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 undisputed claims for labor performed and material and services furnished in connection with the acquisition, installation, equipping, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Investor of any material damage or destruction to the Project or the Property.
- (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 Auditor.
- (i) 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. Notwithstanding the foregoing, Owner may use commercially acceptable and lawful hazardous materials and substances used in connection with the ownership and operation of seniors and residential housing and care communities. 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, until such times as the Project Advance is paid in full, provide to the Investor within 30 days of written request therefor, copies of all utility bills for the Property for the period of time so requested, including, but not limited to water, gas, and electricity bills. Further, Owner will, within 30 days of request therefor, execute a consent to electronic data interface or similar document supplied by Investor allowing Investor to receive utility bills for the Property directly from the Property's utility providers. Investor shall use the information obtained in such utility reporting only for the purpose of tracking energy savings and energy use intensity provided by the installation and operation of the Project on the Property. Data shall be protected by Investor and will not be sold or reused for other purposes.

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 \$[] of which \$[] will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2, closing costs in the amount of \$[] will be disbursed by the Investor in accordance with Section 4.2 and Exhibit C, and capitalized interest in the amount of \$[] will be retained for the account of the Investor for further payment to itself and the EISD in accordance with this Agreement. As further provided in, and subject to, the Disbursing Agreement, the Investor 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 and the Disbursing 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 net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipping, and improvement of its Project, and the Owner shall pay all such additional costs of its

Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments.

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 Disbursement Request Forms (a form of which is attached to the Disbursing Agreement as Exhibit B) to the Investor. Each Disbursement Request Form 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 proof that each project milestone has occurred;
 - (ii) The Owner shall deliver to the Investor copies of all related receipts and invoices;
 - (iii) The Owner shall deliver to the Investor signed lien waivers in the form attached to the Disbursement Request Form as Schedule 2;
 - (iv) The Owner shall deliver to the Investor, as necessary, bank information for wiring the amounts requested for disbursement;
 - (v) The Investor shall have received copies of all other disbursement requests for disbursements of other sources of funds, including from the loan from the Owner's Lender, that have been submitted on or prior to the date on which the related Disbursement Request is submitted, and all such disbursement requests shall have been validly approved in accordance with the Lender Loan Documents; and
 - (vi) All of the conditions to disbursement under the Disbursing Agreement shall have been satisfied.
- (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 copies of all construction permits required for the construction of the Project;
 - (ii) The Owner shall deliver to the Investor copies of all agreements with the general contractor performing work or furnishing materials for the Project;
 - (iii) 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; and
 - (iv) The Owner shall deliver to the Investor copies of all current policies of the Required Insurance Coverage;
 - (v) The construction plans and specifications shall have been approved in all respects by the Investor in its reasonable discretion;
 - (vi) The budget shall have been approved by the Investor in its reasonable discretion;

- (vii) The Owner shall deliver to the Investor the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit D**;
 - (viii) The Owner shall provide to the Investor evidence acceptable to the Investor, in its reasonable discretion, that the City Council and the ESID have approved the Project;
 - (ix) 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 Recorder of Athens County, Ohio with respect to the Property;
 - (x) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates;
 - (xi) The Owner shall provide to the Investor a list of authorized representatives on whose instructions and directions the Investor may rely until such time as an updated list has been provided.
- (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 final lien waiver and release;
 - (ii) The Owner shall deliver to the Investor the executed Completion Certificate; and
 - (iii) 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, 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 have been approved by the Investor.

Additionally, on the Closing Date, the Investor shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed \$[____], as detailed in **Exhibit C** 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, fees to the City, and other closing costs or contingencies.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may withhold approval of any requests for disbursement until the Event of Default is cured and its effects are removed.

Section 4.3. **Casualties and Takings.** The Owner shall promptly notify the Investor if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a "Casualty"). Upon the occurrence of such Casualty, the Owner's Lender, if any, may elect, in accordance with the provisions of the applicable loan documents between the Owner and Owner's Lender, to restore the Property and the Project or to terminate the construction of the

Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Owner's Lender's agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed to the Owner's Lender and to the Investor in accordance with their insured interests, and any excess proceeds will be paid to the Owner.

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

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

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a "Taking"), the Owner's Lender, if any, may elect, in accordance with the provisions of the applicable loan documents between Owner and Owner's Lender, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner, provided that if the Takings proceeds are not used to restore the Property and the Project, Takings proceeds will be distributed to Owner's and to the Investor in accordance with their insured interests, and any excess Takings proceeds will be paid to the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Investor's obligation to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Investor's obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Investor shall release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the

Investor such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

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

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

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

the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

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

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

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

Section 4.6. Repayment. The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of []%, and a semi-annual ESID Fee, over [] semi-annual payments to be collected beginning approximately on [] and continuing through approximately []. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Auditor may charge and collect a County Auditor collection fee on each installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Interest shall

accrue on the entire amount of the Project Advance from the Closing Date; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. The Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. Prepayment. At any time prior to the second anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [105%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. At any time after the second anniversary of the Closing Date and prior to the fifth anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [102%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. At any time after the fifth anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [101%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

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

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

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

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

- (a) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, and the City, together or separately, may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID or the City, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.
- (c) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

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

Section 5.3. Foreclosure. Pursuant to Section 2.1 of the Special Assessment Agreement by and among the County Treasurer, the City, the ESID, and the Owner and dated as of the 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 Investor's prior written direction.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, or now or later existing at law, in equity or by statute; provided, however,

that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Parties to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

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

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

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 resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to its Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the resolutions or ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the Closing Date until the payment in full of the entire aggregate amount of the Special Assessments and any other amounts due hereunder 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 and any other amounts due hereunder which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

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

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

misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

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

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

Section 6.5. Notices. All notices, certificates, requests or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by

registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Parties, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

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

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

Notwithstanding anything in this Agreement to the contrary, the Owner freely may sell the Property and the Project or any portion of the Property and the Project from time to time and may assign this Agreement to an arms-length, good faith purchaser of the Property but only after notice of such assignment is given to the Investor, and only upon (i) the execution and delivery to the City, the Investor, and the ESID of an "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit E**; (ii) 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 Investor's obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

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

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

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

attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. Execution Counterparts. This Agreement may be executed and delivered in original, via facsimile or email with PDF attachment, or other commercially acceptable electronic form, in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute but one and the same instrument, which instrument shall for all purposes be sufficiently evidenced by any such counterpart. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this agreement using an electronic signature, it is signing, adopting, and accepting this agreement and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this agreement on paper.

Section 6.10. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

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

[BALANCE OF PAGE INTENTIONALLY BLANK; SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in their respective names, all as of the Closing Date.

ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, as the ESID

By: _____

Name: _____

Title: _____

LOSTRO VENTURES, LLC,
an Ohio limited liability company, as the
Owner

By: _____

Name: _____

Title: _____

[____], as the Investor

By: _____

Name: _____

Title: _____

CITY OF ATHENS, 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 Athens, 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 Athens, Ohio

Dated: _____, 2024

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 [____], 2024, by and among the ESID, the Owner, the Investor, and the City, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

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

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

“*City Council*” means the Council of the City of Athens, Ohio.

“*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 Certificates attached to the Disbursing Agreement as Exhibit D.

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

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

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

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

“*Delinquency Amounts*” means any penalties or interest which may be 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) under law.

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

“*Disbursing Agreement*” means the Disbursing Agreement dated as of the Closing Date between the Owner and the Investor, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*ESID*” means the Athens Regional 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 “AED Administrator Fee” 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.

“*Investor*” means [____], a limited liability company duly organized and validly existing under the laws of the State of [____], 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, including, initially, and without limitation, the Senior Lender.

“*Lender Loan Documents*” means any loan agreement or loan agreements, mortgage or mortgages, and any other documents and instruments executed and delivered in connection with the a loan from a Lender, as they may be amended, modified, and supplemented from time to time under their terms.

“*Notice Address*” means:

- | | | |
|-----|---------------------|--|
| (a) | As to the City: | City of Athens, Ohio
[]
[]
Attention: [_____] |
| (b) | As to the ESID: | Athens Regional Energy Special
Improvement District, Inc.
[]
[]
Attention: [_____] |
| | With a Copy To: | [] |
| (c) | As to the Owner: | Lostro Ventures, LLC
[]
[]
Attention: [_____]
Email: [] |
| | With a Copy To: | [] |
| (d) | As to the Investor: | [_____] |

[]
[]
Attention: []

“*Owner*” means Lostro Ventures, LLC, a limited liability company duly organized and validly existing under the laws of the State of [], and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated as of [____], 2024 by the Owner and recorded in the records of the Athens County Recorder 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 Athens Regional Energy Special Improvement District Program Plan adopted by the City of Athens, and any and all future supplemental plans approved by the ESID and the City.

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

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

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

“*Property*” means the fee simple and ground lessor interest in the real property subject to the Petition.

“*Reasonable Dispatch*” means on a schedule that is no more than four months behind the estimated completion date of the Project.

“*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 of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$100,000, 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 a commercially reasonable minimum amount, 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 the 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 \$10,000, which insurance coverage shall name the Investor as additional insureds.

“*Senior Lender*” means [____], a[n] [____].

“*Senior Loan*” means the loan from Senior Lender to the Owner in the maximum aggregate principal amount of \$[____].

“*Senior Loan Agreement*” means that certain Construction Loan Agreement between the Senior Lender, the Owner, [____], and [____] dated as of [____].

“*Senior Loan Documents*” means the Senior Loan Agreement, the Senior Mortgage, the Senior Note, and all other documents related to the Senior Loan.

“*Senior Mortgage*” means that certain [____] given by the Owner, dated as of [____] and filed in the Athens County Recorder’s office.

“*Senior Note*” means that certain [____] in the amount of the Senior Loan given pursuant to the Senior Mortgage by the Owner to the Senior Lender.

“*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, Resolution No. [____] approving the Petition and Plan and declaring the necessity of the Project, Ordinance No. [____], determining to proceed with the Project, and Ordinance No. [____] levying the Special Assessments, all adopted on [____], 2024 and all with respect to levying special assessments on real property within the ESID.

“*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 Petition.

“*State*” means the State of Ohio.

“*Transaction Documents*” means this Agreement, the Special Assessment Agreement, the Petition, the Owner Consent, or any other document executed in connection therewith or required thereby.

EXHIBIT B

REPAYMENT SCHEDULE

[To Be Added]

B-1

EXHIBIT C

CLOSING COSTS DETAIL

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

Closing Cost	Amount

EXHIBIT D
CONSENT OF MORTGAGEE

[See Attached]

EXHIBIT E

**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 [____], 2024 between Athens Regional Energy Special Improvement District, Inc. (the “ESID”), Assignor, [____], and the City of Athens, 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 Athens County Treasurer, City of Athens, Ohio, the ESID, Lostro Ventures, LLC, and [____] (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of [____], 2024 by Lostro Ventures, LLC and recorded in the records of the Athens County Auditor with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under the Special Assessment Agreement and the Owner Consent.

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

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

[Signature Pages Follow]

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT F

INVESTOR ACCOUNT AND PAYMENT INFORMATION

[To Be Provided Separately in the Following Format]

Bank Name: [BANK NAME]
[BANK ADDRESS]

ABA: [NUMBER]
Beneficiary Name
[Address]
[Address]
Beneficiary Account: [NUMBER]

Reference: [NUMBER]

Contact: [Information]

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

[BANK NAME]
[ADDRESS]
[ADDRESS]
Attention: [NAME]

SPECIAL ASSESSMENT AGREEMENT
(ORC Sections 5721.33 and 9.482)

by and among

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

And

CITY OF ATHENS, OHIO
("City"),

And

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

And

LOSTRO VENTURES, LLC
("Owner"),

And

[____], LLC
("Investor")

Dated as of [____] [____], 2024

SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [] [], 2024, by and among the County Treasurer of Athens County, Ohio (the “Treasurer”), the City of Athens, Ohio (the “City”), the Athens Regional Energy Special Improvement District, Inc. (“District”), Lostro Ventures, LLC (the “Owner), and [] (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 Resolution [] of the City Council of the City of Athens, Ohio (the “City Council”) approved on [] [], 2024; and

WHEREAS, the District is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 20 of the Ohio Constitution; and

WHEREAS, on [] [], 2024, by its Resolution No. [], the City Council of the City approved the Athens Regional Energy Special Improvement District Project Plan (the “Program Plan”), as a plan for public improvements or public services for the District under Ohio Revised Code Section 1710.02(F); and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy efficiency improvements, including, without limitation, HVAC (heating and cooling systems), domestic hot water systems, retrofitting of interior and exterior lighting, replacement of roofing insulation, replacement of exterior windows, exterior door insulation, an elevator retrofit, and a generator replacement, and related improvements. (collectively, the “Project”) on certain real property located within Athens County, Ohio (the “County”) and the City, and as more fully described in **Exhibit A** to this Agreement (the “Assessed Lands”); and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of \$[] (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [] [], 2024 (the “Energy Project Cooperative Agreement”) between the District, the Investor, the Owner, and the City; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of the City Council a *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”) for the acquisition, installation, equipping, and improvement of the Project and evidencing Owner’s agreement to the levy and collection of

special assessments by the City (the "Special Assessments") on the Assessed Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Athens County, Ohio (the "County Auditor") for collection by the Treasurer in semi-annual installments, and (b) hereby has agreed to transfer to the Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, the Owner agrees that 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 is willing to agree 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, including, without limitation, the right to be indemnified pursuant to this Agreement, at the request of the District and, upon the occurrence of an Event of Default described under Section 7.1 of the Energy Project Cooperative Agreement, the Treasurer has agreed to foreclose the lien of the Special Assessments as soon as possible as described herein upon an occurrence of an Event of Default under the Energy Project Cooperative Agreement; 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 their discretion, but is not required to,

negotiate with one or more persons the sale of any number of tax certificates ("Tax Certificates") which evidence the liens (the "Tax Liens") of the State of Ohio (the "State") and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Assessed Lands; and

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

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

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

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default 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 City 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 hereto 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 [_____] [____], 2024 the City passed Ordinance No. [_____] pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (the "Assessing Ordinance"). The Clerk of the City Council

certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2 The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor 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 facilitate the repayment of the Project Advance, the City, pursuant to Section 2.4 of the Energy Project Cooperative Agreement, 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 Assessments, and any other property received or to be received from 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, the Treasurer will, upon 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 7.1(b) of the Energy Project Cooperative Agreement) has occurred and is continuing and which notice requests the Treasurer to foreclose on the lien of the Special Assessments, 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, but not earlier than the sixtieth day following receipt by the Treasurer of the delinquent land list certifying that the Special Assessments are delinquent. 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, except and unless the Assessed Lands become forfeited land subject to Ohio Revised Code Chapter 5723. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner. All fees and expenses of the Treasurer in collecting the Special Assessments, including other general real estate taxes, payments in lieu of taxes, and assessments then due and owing are to be included and paid for by the Owner prior to any such amounts being paid to the City and to other affected taxing jurisdictions and special districts. The City, Investor, and Owner understand and agree that the failure of the Treasurer to obtain any consent under Section 2.1 shall not create a cause for action against the Treasurer, the Athens County Board of County Councilors, or Athens County, nor shall it subject the Treasurer, the Athens County Board of County Councilors, or Athens County to liability for any difference between the foreclosure price and the amount of the delinquent Special Assessments. Further, nothing in this Agreement shall be construed to limit any immunity to which the Treasurer may be entitled pursuant to Chapter 2744 of the Ohio Revised Code.

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 thirty (30) days of receipt of the Treasurer's notice, shall give a written response to the Treasurer indicating therein whether it consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 Delay or failure of the District or the Investor to give a written response within thirty (30) days of receipt of such notice 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 to 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 thirty (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 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 property 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 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 gross negligence, 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 Council 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. The Owner Consent, and all other required documents and agreements, shall be recorded with the Athens County, Ohio Recorder's Office, so that the agreements of the Parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Assessed Lands.

4.2 The Investor and the District hereby agree that any future legal cause of action to enforce this Agreement against the Treasurer shall be solely limited to specific performance of this Agreement as the sole remedy, and the Investor and the District agree to provide the Treasurer with sixty (60) days advanced written notice delivered by certified mail prior to bringing an action for specific performance.

4.3 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.

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

If to City: City of Athens, Ohio

Attention:

If to Treasurer: County Treasurer
Athens County, Ohio

If to the District: Athens Regional Energy Special Improvement District

If to the Owner: Lostro Ventures, LLC

If to the Investor: ☐

4.5 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement and may sell or assign any and all liens received directly or indirectly from the City to any person (each, an "Investor Assignee"), 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 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 Participants.

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

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

[Signature Pages Immediately Follow]

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

“TREASURER”
COUNTY TREASURER OF ATHENS
COUNTY, OHIO

Treasurer
County of Athens, Ohio

Approved as to form and correctness:

"CITY"
CITY OF ATHENS, OHIO

City Attorney

By: _____

Name: _____

Title: _____

“DISTRICT”

ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC.

By: _____

Name: _____

Title: _____

“OWNER”
LOSTRO VENTURES, LLC

By: _____

Name: _____

Title: _____

“INVESTOR”

[]

By: _____

Name: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the City of Athens, Ohio, hereby certifies that the City 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 previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44

Dated: [] [], 2024

Fiscal Officer
City of Athens, Ohio

EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Lostro Ventures, LLC is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number A027050001400 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

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 Lostro Ventures, LLC, an Ohio limited liability company (the "Owner").

This Owner Consent, dated as of [_____] [____], 2024, is given by the Owner pursuant to the Special Assessment Agreement dated as of [_____] [____], 2024 (the "Agreement") by and among the County Treasurer of Athens County, Ohio (the "Treasurer"), the City of Athens, Ohio (the "City"), the Athens Regional Energy Special Improvement District (the "District"), Lostro Ventures, LLC (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 expedited foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this 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 expedited foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the expedited foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the City, and the Investor, as applicable, in writing, the expedited foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, the City, or the Investor, as applicable, shall be filed of record with the Athens County, Ohio Recorder's Office. The Owner agrees that this Owner Consent shall be recorded with the Athens County, Ohio Recorder's Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the expedited foreclosure process with respect to

the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

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

[Signature Page Immediately Follows]

Further affiant sayeth naught.

“OWNER”

LOSTRO VENTURES, LLC

By: _____

Name: _____

Title: _____

STATE OF _____)

) SS:

COUNTY OF _____)

Sworn to or affirmed and subscribed before me by _____ this date of _____
_____, 2024.

[SEAL]

Notary Public

This instrument was prepared by:
Colin J. Kalvas, Esq.
Bricker Graydon LLP
100 South Third St.
Columbus, Ohio 43215

EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Lostro Ventures, LLC is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number A027050001400 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

[illegible]

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Athens County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Athens County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.

**ANNEXATION AGREEMENT BY AND BETWEEN
ATHENS TOWNSHIP (ATHENS COUNTY), OHIO AND
THE CITY OF ATHENS, OHIO**

Dated as of _____

ANNEXATION AGREEMENT

This Annexation Agreement (hereinafter the “Agreement”) is made and entered into on or as of the day of _____, 2024 (hereinafter the “Effective Date”) by and between the Athens Township Trustees, the legislative authority of and for Athens Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio (hereinafter the “Township” or “Trustees”), and the Council of the City of Athens, Ohio, the legislative authority of and for the City of Athens, Ohio, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (hereinafter the “City”, collectively with the Township, the “Parties” and each a “Party” hereto).

WHEREAS, the Township and City are political subdivisions located adjacent and contiguous to each other and having, to a certain extent, overlapping jurisdictions within Athens County, Ohio (hereinafter the “County”); and

WHEREAS, the Township and City have cooperated in numerous matters, including but not limited to, cooperation in the development, annexation, and services to citizens and properties within the Township and the City in order to foster and promote harmony and development within each of the Parties’ respective jurisdictional areas; and

WHEREAS, a certain landowner has expressed a desire to pursue annexation of property located east of and in part immediately adjacent to Cable Lane; and

WHEREAS, the annexation of this property will, if successful, require development assistance in various forms, including the extension of public water and sanity sewer utility service lines from the City to said property; and

WHEREAS, the Parties believe that annexation of certain real property located within Athens Township, which is further described in attached “Attachment A,” and incorporated herein, will benefit their mutual interests if annexed to the City, the subject property more specifically consisting of one (1) parcel of real property designated as Athens County Auditor Tax Parcel Numbers A010010082100 (the “Annexation Parcel”); and

WHEREAS, the Annexation Parcel is further depicted and shown on the map labeled “Annexation Parcel Map” attached hereto and incorporated herein as “Attachment B”; and

WHEREAS, this Agreement is authorized under the provisions of Section 709.192 of the Ohio Revised Code and other applicable laws of the state of Ohio, and has been approved by the respective legislative authority of both Parties;

NOW, THEREFORE, in consideration for the mutual promises contained herein, the Parties covenant and agree as follows:

ARTICLE 1

ANNEXATION OF ANNEXATION PARCEL AND LIMITATIONS

Section 1.1. Designation of Annexation Parcel. This Agreement shall apply to the annexation of the Annexation Parcel enumerated on "Attachment A." The perimeter boundary of the Annexation Parcel is graphically set forth on "Attachment B" for purposes of reference only.

Section 1.2. Annexation of Annexation Parcel. The Township agrees and consents to the annexation of the Annexation Parcel to the City in accordance with the terms of the Agreement.

- A. **Procedure:** The petitioners for the annexation of the Annexation Parcel to the City shall file the annexation pursuant to and shall comply with the provisions of "Expedited Procedure No. 1" as contained in Sections 709.021 and 709.022 of the Ohio Revised Code. Any such annexation of the Annexation Parcel shall also comply with the terms of this Agreement.
- B. **Scope of Petition:** The agent for the annexation petitioner(s) shall process the annexation of the Annexation Parcel under one (1) annexation petition which includes all of the Annexation Parcel.
- C. **Time Frame:** This Agreement shall only apply if the annexation petition for the Annexation Parcel is filed with the Clerk of the Board of the Athens County Commissioners on or before _____, and, upon filing, is diligently processed to completion in order to accomplish the annexation of the Annexation Parcel to the City pursuant to the terms of this Agreement.
- D. **Effect of Annexation:** The City shall not exclude the Township from any portion of the Annexation Parcel by changing Township boundaries under Chapter 503 of the Ohio Revised Code or any future statute of like tenor or effect. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the City and Township boundaries for all portions of the Annexation Parcel which will be annexed to the City under the terms of this Agreement and that the Annexation Parcel shall be subject to the regular and customary property tax rates for all other parcels similarly situated. If any proceedings or other effort is initiated or made which seeks to initiate a change to the Township boundaries in order to exclude all or any portion of this property from the Township, the City and the Township shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance of the City's and Township's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably

requested by either Party which will be detrimental to the success of any effort seeking such change.

- E. Cooperative Efforts: Upon the filing of any annexation petition for the annexation of the Annexation Parcel to the City in accordance with the terms of this Agreement, the Township and the City shall cooperate in good faith to facilitate the approval and success of such petition. In such an instance, each Party shall refrain from taking any action that would directly or indirectly delay the annexation process or endanger the possible approval of the annexation petition by the Commissioners. If such annexation petition does not comply with the terms of this Agreement, the City shall refrain from any act which would, directly or indirectly, contribute to the success of the petition. This obligation shall include refraining from acceptance of a petition seeking to annex any such property.

ARTICLE 2

SERVICES

Section 2.1. Contribution of Services.

- A. Upon the annexation of the Annexation Parcel to the City, the City shall furnish to said property all the customary governmental services furnished by the City to other areas of the City including, but not limited to the following services:
1. Public water and sanitary sewer;
 2. Athens Police Department services;
 3. Athens Fire Department services;
 4. Code Enforcement services;
 5. Solid waste collection services;
 6. Other services customary for typical city residents.
- B. With respect to Cable Lane, ~~there shall be no modification of existing obligations to provide general maintenance and improvements or the City of Athens shall notify the Ohio Department of Transportation, Division of Planning, Office of Technical Services, to amend the road inventory system of Athens County, Athens Township by removing a total of 0.104 miles of Cable Lane, also known as Township Road 1141, and adding the description and mileage to the City of Athens ODOT road inventory for general maintenance and~~ emergency services, as Cable Lane, subsequent to annexation, is currently will in its entirety be located in and served by the City.

ARTICLE 3

TERM OF AGREEMENT

Section 3.1 Term and Renewal. The term of this Agreement (hereinafter the “Initial Term”) shall be perpetual.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1. Support of Agreement. In the event that this Agreement, or any of its terms, conditions, or provisions, is challenged by any third party or parties in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any terms or provisions thereof.

Section 4.2. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions, and similar documents, and to take such other actions as either Party may reasonably request in order to effectuate the purposes of this Agreement.

Section 4.3. Mediation. In the event the Parties have a dispute as to any of the terms of applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any party filing a lawsuit. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other Party, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

Section 4.4. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have ninety (90) days, after receiving written notice from the other Party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both; or may pursue such other remedies as may be available.

Section 4.5. Character of Payments. Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to the other Party is intended, and therefore to be interpreted, as a reasonable, practical, and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made

under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code.

Section 4.6. Amendments. This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties by means of appropriate legislation authorizing such amendment. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

Section 4.7. Immunities Preserved. By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

Section 4.8. No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such 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 any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent, or employee of any Party shall be liable personally by reason of the covenants, obligations, or agreements of the Parties contained in this Agreement.

Section 4.9. Powers Preserved. This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to townships under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provisions contained herein.

Section 4.10. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. Except for the Parties, this Agreement is not intended to and does not create rights or benefits of any kind for any other persons or entities that are not a party to this Agreement.

Section 4.11. Agreement. The Parties acknowledge and agree that this Agreement is intended to and shall serve as an annexation agreement pursuant to Section 709.192 of the Ohio Revised Code.

Section 4.12. Liberal Construction. The Parties agree that just as Section 709.192 of the Ohio Revised Code is to be liberally construed to allow the Parties to enter into Annexation Agreements, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desires of each of the Parties to carry out this Agreement. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Section 709.192 of the Ohio Revised Code.

Section 4.13. Notices. All notices, demands, requests, consents, or approvals given, required, or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a generally recognized overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(a) The Township at:

Athens Township Trustees
Attention: Brenda Cox, Fiscal Officer
P.O. Box 193
The Plains, Ohio 45780

With a copy simultaneously sent or delivered to:

Timothy L. Warren
Assistant Athens County Prosecutor
1 South Court St.
Athens, Ohio 45701

(b) The City at:

The City of Athens, Ohio
Attention: Debbie Walker, Clerk of Council
8 E. Washington St.
Athens, Ohio 45701

With a copy simultaneously sent or delivered to:

Lisa Eliason
Law Director for the City of Athens
8 E. Washington St.
Athens, Ohio 45701

The Parties, by notice given hereunder, may designate any further or different address to which subsequent notices, consents, certificates, requests or other communications shall be sent.

Section 4.14. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections hereof.

Section 4.15. Counterparts. This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 4.16. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes, and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Athens County, Ohio.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts hereof to be executed by their duly authorized officers on or as of the date first set forth above.

ATTEST:

**THE CITY OF ATHENS,
ATHENS COUNTY, OHIO**

Debbie Walker
Athens City Council Clerk

By: _____
Steve Patterson
Mayor

APPROVED AS TO FORM:

Lisa Eliason
City of Athens Law Director

Keller Blackburn
Athens County Prosecutor
Timothy L. Warren
Assistant Athens County Prosecutor

ATTEST:

**ATHENS TOWNSHIP TRUSTEES,
ATHENS COUNTY, OHIO**

Brenda Cox
Athens Twp. Fiscal Officer

By: _____
Ted J. Linscott
Chair, Athens Twp. Board of Trustees

ATTACHMENT A

ANNEXATION AGREEMENT

The Annexation Parcel consists of the following parcel as numbered and in the records of the County Auditor of Athens County, Ohio, and as further depicted and shown on the Annexation Parcel Map attached as Attachment B:

Parcel Number:

A010010082100

Legal Description

34.874 Acres

Situate Ohio Company Purchase, Town 9, Range 14, Farm Lot 43, Athens Township, Athens County, Ohio.
Being a resurvey of the lands deeded to:
Frander Properties LLC, Official Record Book 600, pages 936-939.
Parcel A010010082100.

Beginning at a stone found at the northeast corner of Farm Lot 43;

- 1.) Thence S03°25'25"W 890.51 feet along a common boundary to Kuhnert 583-760 to a point, passing an iron pin set at 638.20 feet;
- 2.) Thence S22°16'32"W 150.47 feet along said common boundary to an iron pin found capped Highland;
- 3.) Thence S03°28'59"W 335.62 feet along said common boundary to an iron pin found capped Highland;
- 4.) Thence N74°56'40"W 399.83 feet along a common boundary with the north line of the Cable Acres 2nd Addition to a one-inch diameter pipe found, passing other one-inch diameter pipes found at 190.75 feet, 255.30 feet, and at 370.17 feet;
- 5.) Thence S67°24'04"W 117.06 feet to a one-inch diameter pipe found, passing an iron pin found at 90.46 feet capped England at the northeast corner of Lot 2817 of Cable Acres Addition;
- 6.) Thence N84°53'28"W 401.72 feet along the north line of the Cable Acres Addition to one-inch diameter pipe found, passing a #5 rebar found at 395.53 feet;
- 7.) Thence S70°06'21"W 204.80 feet along the north line of the Cable Acres Addition to a point in the center of Cable Lane, passing a one-inch diameter pipe found at 56.95 feet, and an iron pin set at 178.34 feet;
- 8.) Thence N17°37'40"W 352.58 feet to a point in the center of Cable Lane;
- 9.) Thence N10°25'58"W 95.10 feet to a point in the center of Cable Lane;
- 10.) Thence S89°53'53"E 220.78 feet along the south boundary of Lot 3393 of the Jagers Subdivision to a one-inch diameter square steel found, passing an iron pin set at 54.23 feet;
- 11.) Thence N15°33'24"E 100.52 feet along the east line of Lot 3393 to a one-inch diameter square steel found;
- 12.) Thence N89°53'53"W 46.96 feet along the north line of Lot 3393 to an iron pin set;
- 13.) Thence N06°37'07"E 97.22 feet along the east line of Lot 3394 to a one-inch diameter square steel found;
- 14.) Thence N03°35'07"E 96.77 feet along the east line of Lot 3395 to a one-inch diameter square steel found;
- 15.) Thence N04°43'07"E 96.90 feet along the east line of Lot 3396 to a #5 rebar found;
- 16.) Thence N89°53'53"W 134.54 feet along the north line of Lot 3396 to a point in the center of Cable Lane, passing a one-inch diameter square steel found at 79.12 feet;
- 17.) Thence N15°21'31"E 248.15 feet to a point in the center of Cable Lane;
- 18.) Thence N18°48'23"E 116.39 feet to a point in the center of Cable Lane;
- 19.) Thence N28°29'04"E 84.10 feet to a point in the center of Cable Lane;
- 20.) Thence N27°25'21"E 155.63 feet to a point in the center of Cable Lane;
- 21.) Thence N21°42'54"E 39.50 feet to a point in the center of Cable Lane;
- 22.) Thence S85°44'13"E 1023.20 feet along a common boundary to Cantino 99-782, and Cable Lane Farms 558-2242, (Passing an iron pin set at 50.00 feet, passing an iron pin set at 259.90 feet, and passing a one-inch diameter pipe found at 698.86 feet) to the point of beginning containing a total of 34.874 acres.

Plat of Survey is attached herewith and made a part thereof.

Subject to all easements, rights-of-way, covenants, and agreements of record.

Iron Pins Set are number 5 rebar, 30-inches in length capped NEWMAN PS-8043

Basis of Bearings: Ohio State Plane Coordinate System, Ohio South Zone, NAD83.

Survey completed by Charles T. Newman, Licensed Professional Surveyor 8043 on January 12, 2023.



Charles T. Newman PS
66 Elmwood Place
Athens, Ohio 45701

Legal Description Pre-Approval
APPROVED
All transfers are subject to
Athens County Conveyance Standards

Description Checked for
Mathematical Accuracy
Athens County
ENGINEER'S OFFICE

BY: *Thompson*
DATE: 1/24/23

JAN 25 2023

Jill Thompson
Athens County Auditor

ATTACHMENT B
ANNEXATION AGREEMENT

C. TIM NEWMAN
Professional Surveyor

66 Elmwood Place
Athens, Ohio 45701

740-594-1864
FAX 740-594-8413

Plot of Survey of 34.874 Acres,
Situate Ohio Company Purchase, Town 9, Range 14, Form Lot 43,
Athens Township, Athens County, Ohio,
Deeded to: Flander Properties LLC, Official Record Book 600, pages 936-939,
Parcel A010010082100.

Root of Geographic Ohio State Plane Coordinate System, South Zone, NAD83
Survey Reference: Prior Surveys and Deeds as noted on Plot

Charles T. Newman
Surveyed Jan. 2023



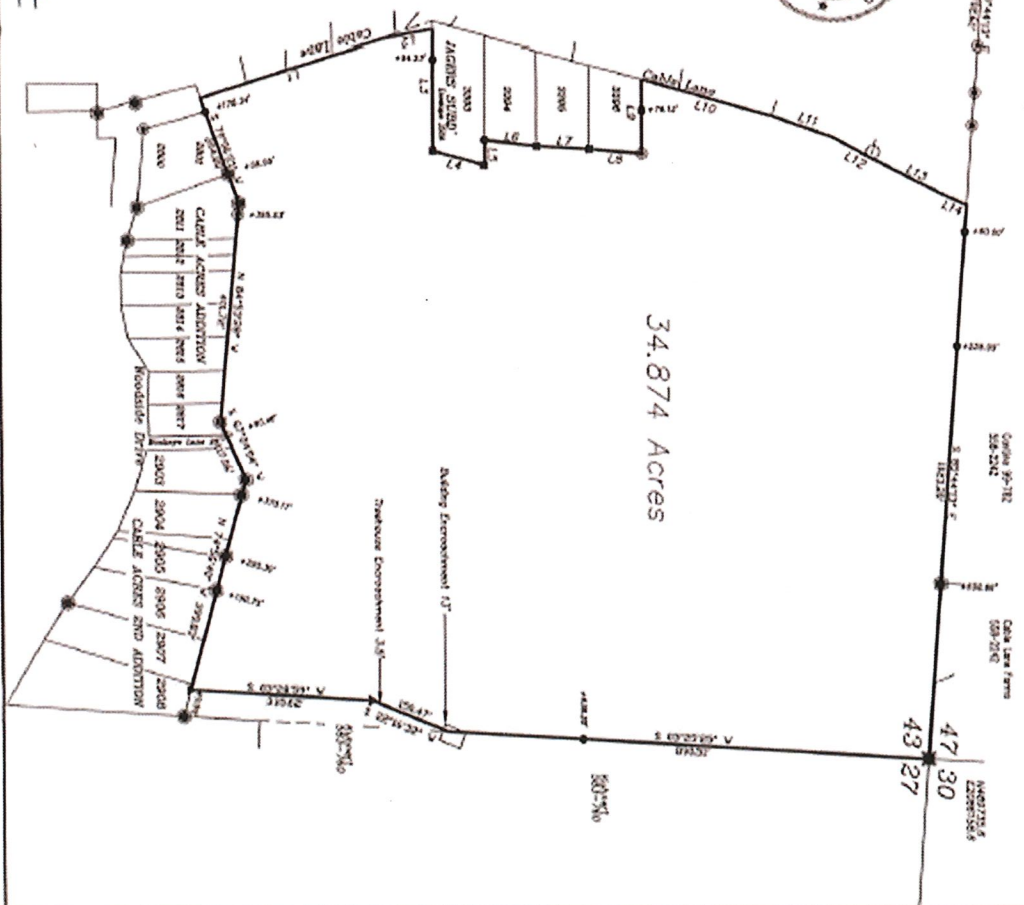
LINE	BEARING	LENGTH
L1	N17°31'49"W	262.58'
L2	N10°23'58"W	93.10'
L3	S89°33'33"E	820.76'
L4	N83°33'24"E	100.52'
L5	N89°33'53"W	45.96'
L6	N66°37'07"E	97.22'
L7	N04°35'07"E	96.77'
L8	N04°43'07"E	96.50'
L9	N89°53'53"W	134.54'
L10	N5°21'01"E	244.15'
L11	N18°48'23"E	116.37'
L12	N28°27'04"E	84.10'
L13	N27°25'21"E	155.63'
L14	N01°42'54"E	34.50'

- One-inch Square Steel
- ▲ Iron Pin Found capped England
- ▲ Iron Pin Found capped Highland
- Iron Pin Found #3 Rebar
- Iron Pin Set capped Neuman
- Stone Found
- One-inch OD Pipe Found
- Iron Pin Found capped Buckley

GRAPHIC SCALE



Description Checked for
Mathematical Accuracy
Athens County
ENGINEER'S OFFICE
BY: *[Signature]*
DATE: 1/24/23



Introduced by [____], Chair
Planning & Development Committee

AN ORDINANCE AMENDING ORDINANCE NO. 0-103-20, AS AMENDED BY ORDINANCE NO. 0-42-21, WITH RESPECT TO THE CREATION OF THE UNIVERSITY ESTATES INCENTIVE DISTRICT WITHIN THE CITY OF ATHENS; AUTHORIZING THE EXECUTION OF A FIRST AMENDED AND RESTATED TAX INCREMENT FINANCING AGREEMENT WITH THE PROPERTY OWNER IN SUCH INCENTIVE DISTRICT; AUTHORIZING THE EXECUTION OF A FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS AND CONDITIONS RELATIVE TO SERVICE PAYMENTS IN LIEU OF TAXES, MINIMUM SERVICE PAYMENT OBLIGATIONS, AND OTHER MATTERS.

WHEREAS, Howard and Lawson, LTD (the “Developer”) has proposed to develop several parcels of real property specifically identified and depicted on EXHIBIT A attached hereto (with each such parcel referred to herein individually as a “Parcel” and collectively as the “Project Site”) within the corporate boundaries of the City of Athens, Ohio (the “City”) by constructing Woods Edge, an affordable housing development to be known as the “University Estates Development” as identified and described in greater detail on EXHIBIT B attached hereto (the “Development”); and

WHEREAS, pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the “TIF Statute”), this City Council of the City (the “City Council”) passed Ordinance No. 0-103-20 on October 19, 2020 (the “Original TIF Ordinance”), as amended by Ordinance No. 0-42-21 on May 3, 2021 (the “First TIF Ordinance Amendment”), as further amended by this Ordinance (the “Second TIF Ordinance Amendment” and, together with the Original TIF Ordinance and the First TIF Ordinance Amendment, the “TIF Ordinance”), otherwise creating the “University Estates Incentive District” within the City and authorizing a seventy-five percent (75%) exemption from real property taxation with respect to the increase assessed value of the Parcels occurring as a result of the Development for a period of ten (10) years (the “TIF Exemption”), all as further defined by the TIF Ordinance; and

WHEREAS, pursuant to Ohio Revised Code Section 5709.42, the TIF Ordinance requires the present and future owners of the Project Site, including, but not limited to, the Developer (the “Owners”) to make service payments in lieu of taxes (the “Service Payments”) to the Athens County Treasurer for the duration of the TIF Exemption; and

WHEREAS, in accordance with Ohio Revised Code Section 5709.83, the City delivered notice to the Boards of Education of both the Athens City School District and Tri-County ~~Joint Vocational School District~~ Career Center, stating the City’s intent to adopt the Original TIF Ordinance and the City delivered such notice not less than fourteen (14) days prior to the adoption of the Original TIF Ordinance; and

WHEREAS, the City entered into a Tax Increment Financing Agreement with the Developer on October 27, 2020 (the “Original TIF Agreement”), as amended on May 3, 2021 pursuant to the First TIF Ordinance Amendment (the “Amended TIF Agreement”), and as further

amended by this Ordinance (the “First Amended and Restated TIF Agreement” and, together with the Original TIF Agreement and the Amended TIF Agreement, the “TIF Agreement”), otherwise requiring the City to reimburse the Developer for the “Costs of Public Infrastructure Improvements” (as defined by the TIF Agreement) incurred by the Developer to construct various Public Infrastructure Improvements (as defined by the TIF Ordinance); and

WHEREAS, pursuant to the requirements of the TIF Ordinance, the Developer entered into a *Declaration of Covenants and Conditions Relative to Service Payments in Lieu of Taxes and Other Matters* with respect to Service Payments on the Project Site on October 27, 2020; and

WHEREAS, as a result of changing market conditions, the Developer informed the City that the Developer would no longer be in a financial position to incur the Costs of Public Infrastructure Improvements pursuant to the TIF Agreement; and

WHEREAS, the City has determined that it is willing to provide for the construction of the Public Infrastructure Improvements by incurring the Costs of Public Infrastructure Improvements in order to encourage the Development, provided, that the TIF Agreement is amended to reimburse the City for its incurred Costs of Public Infrastructure Improvements from Service Payments and Minimum Service Payments (as defined by the TIF Agreement, and which such First Amended and Restated TIF Agreement in substantially the form of EXHIBIT C is attached hereto and incorporated herein) and the Developer enter into a *First Amended and Restated Declaration of Covenants and Conditions Relative to Service Payments In Lieu of Taxes, Minimum Service Payment Obligations, and Other Matters* (the “Amended Service Payment Declaration” in substantially the form of EXHIBIT D attached hereto) to provide for the allocation of a portion of such Service Payments and Minimum Service Payments to its Costs of Public Infrastructure Improvements; and

~~**WHEREAS**, pursuant to the First Amended and Restated TIF Agreement, the Developer as Owner of the Project Site shall execute in favor of, and in form and substance acceptable to the City, an option to purchase the Parcels comprising the Project Site (the “Option”) to further ensure completion of the Developer in order to generate Service Payments and Minimum Service Payments sufficient to pay Costs of Public Infrastructure Improvements; and~~

WHEREAS, this City Council is desirous that the Development proceed in order to encourage the fulfillment of the “Affordable Housing Commission Goals” associated with the Development in the City and now desires to amend the TIF Ordinance and authorize the City to enter into the First Amended and Restated TIF Agreement and the Amended Service Payment Declaration pursuant to the terms of this Ordinance.

Now, therefore, be it ordained by the City Council of the City of Athens, Ohio, that:

SECTION I: Except where specifically amended by this Ordinance, the terms of the Original TIF Ordinance, the First TIF Ordinance Amendment, and the TIF Exemption authorized therein, shall continue in full force and effect. For the avoidance of doubt, the recitals to this Ordinance shall supersede the recitals of the Original TIF Ordinance and the First TIF Ordinance Amendment, where the application of the recitals to this Ordinance conflict. This City Council hereby amends the Original TIF Ordinance, as amended by the First TIF Ordinance Amendment, as follows:

SECTION I to the TIF Ordinance, as amended by the First TIF Ordinance Amendment, is further AMENDED and REPLACED as follows:

Pursuant to Ohio Revised Code Section 5709.40(C), this Council hereby creates the “University Estates Incentive District” No. 1, No. 2, No. 3, and No. 4, each of which consist of the parcels of real property specifically identified and depicted in Exhibit A, attached hereto (with each of those parcels referred to herein individually as a “Parcel” and collectively as the “Project Site”). The boundaries of the University Estates Incentive District No. 1, No. 2, No. 3, and No. 4 will be coextensive with the boundaries of the Project Site, as indicated by Exhibit A attached hereto and incorporated herein.

SECTION II to the TIF Ordinance, as amended by the First TIF Ordinance Amendment, is further AMENDED and REPLACED as follows:

Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.40(C), this Council declares that seventy-five percent (75%) of the increase in assessed value of each Parcel (the “TIF Exemption”), subsequent to the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the “Improvement” as defined in Ohio Revised Code Section 5709.40(A), is a public purpose and exempt from taxation for a period coextensive with the University Estates Incentive District No. 1, No. 2, No. 3, and No. 4, which commences, for each individual incentive district, with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure located on any Parcel within an University Estates Incentive District would first appear on the tax list and duplicate of real and public utility property (the “Commencement Date”) were it not for the exemption granted in this Ordinance, and ends on the earlier of (a) ten (10) years after the Commencement Date or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvement are paid for, all in accordance with the requirements of the TIF Statutes. Upon the expiration of all the tax exemptions granted with respect to a particular University Estates Incentive District, the respective University Estates Incentive District shall be dissolved.

SECTION IV to the TIF Ordinance, as amended by the First TIF Ordinance Amendment, is further AMENDED and REPLACED as follows:

This City Council hereby authorizes and directs the City Auditor to establish, pursuant to Ohio Revised Code Section 5709.43 a municipal public improvement tax increment equivalent fund, together with such other accounts and sub-accounts as the City Auditor deems appropriate from time to time, to be known as the “University Estates Tax Increment Fund” (the “TIF Fund”). The City shall deposit the Service Payments collected and distributed to the City by the County Treasurer into the TIF Fund and allocate the money in such fund as specified in the First Amended and Restated TIF Agreement. Money in the TIF Fund shall be used to finance the Public Infrastructure Improvements, and is hereby pledged, in part, to the repayment of the City’s costs of the Public Infrastructure Improvements, all as provided in the First Amended and Restated TIF Agreement, and any subsequent amendments thereto. The TIF Fund will exist so long as such Service Payments are collected and used for the aforesaid purposes, after which time the TIF Fund will be dissolved and any surplus funds remaining will be transferred to the City’s general fund and applied as provided by then-current law.

SECTION VI to the TIF Ordinance, as amended by the First TIF Ordinance Amendment, is further AMENDED and REPLACED as follows:

The public infrastructure improvements, as more particularly described on EXHIBIT B attached hereto (the “Public Infrastructure Improvements”), shall be acquired, constructed and improved in accordance with the First Amendment and Restated TIF Agreement. The cost of such Public Infrastructure Improvements will be paid from the Service Payments and “minimum service payment obligations” made by the Owners, including any future owners of all or a portion of the Project Site, as set forth herein. The City hereby determines that the Public Infrastructure Improvements will benefit or serve the University Estates Incentive District.

EXHIBIT A to the TIF Ordinance, as amended by the First TIF Ordinance Amendment, is further AMENDED and REPLACED with EXHIBIT A attached to this Ordinance and incorporated herein.

SECTION II: The Service-Safety Director of the City (the “Service-Safety Director”) is hereby authorized to execute on behalf of the City, together with such revisions or additions as approved by the Service-Safety Director as are consistent with the objectives and requirements of this Ordinance and not otherwise materially adverse to the City, which approval and determinations shall be conclusively evidenced by the signing of the following agreements:

- (i) the First Amended and Restated TIF Agreement substantially in the form attached hereto as EXHIBIT C, which First Amended and Restated TIF Agreement includes provisions regarding the construction of the Development and the Public Infrastructure Improvements (as defined by the TIF Ordinance) providing for, among other things, the payment of Service Payments and the use of the TIF Funds (as defined in the TIF Ordinance); and
- (ii) the Amended Service Payment Declaration substantially in the form attached hereto as EXHIBIT D, which Amended Service Payment Declaration includes provisions regarding the payment of minimum service payments obligations (as defined by the Amended Service Payment Declaration).

The Service-Safety Director and other appropriate City officials are further authorized to provide such information and to execute, certify or furnish such other documents, and to do all other things as are necessary for and incidental to carrying out the provisions of the First Amendment to TIF Agreement and the Amended Service Payment Declaration.

SECTION III: The Clerk of City Council is hereby directed to deliver, not later than fifteen (15) days after the effective date of this Ordinance, a copy hereof to the Director of the Ohio Department of Development (together with any successor, the "ODOD") and the Service-Safety Director is hereby directed to deliver to the Director of ODOD, not later than March 31 of each year during which the TIF Exemption remains in effect, a status report outlining the progress of the Development herein described.

SECTION IV: The Service-Safety Director is hereby authorized to take all actions, including but not limited to the execution of all documents, certificates, agreements, and amendments thereto, necessary to establish the TIF Exemption and implement and administer the TIF Fund (as defined by the TIF Ordinance), that are not substantially inconsistent with this Ordinance.

SECTION V: It is hereby found and determined that all formal actions of this City Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this City Council, and that all deliberations of this City Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

SECTION VI: This Ordinance shall be effective from and after the earliest time provided by law.

President of City Council

ATTEST:

APPROVED:

Clerk of City Council

Mayor

CERTIFICATE

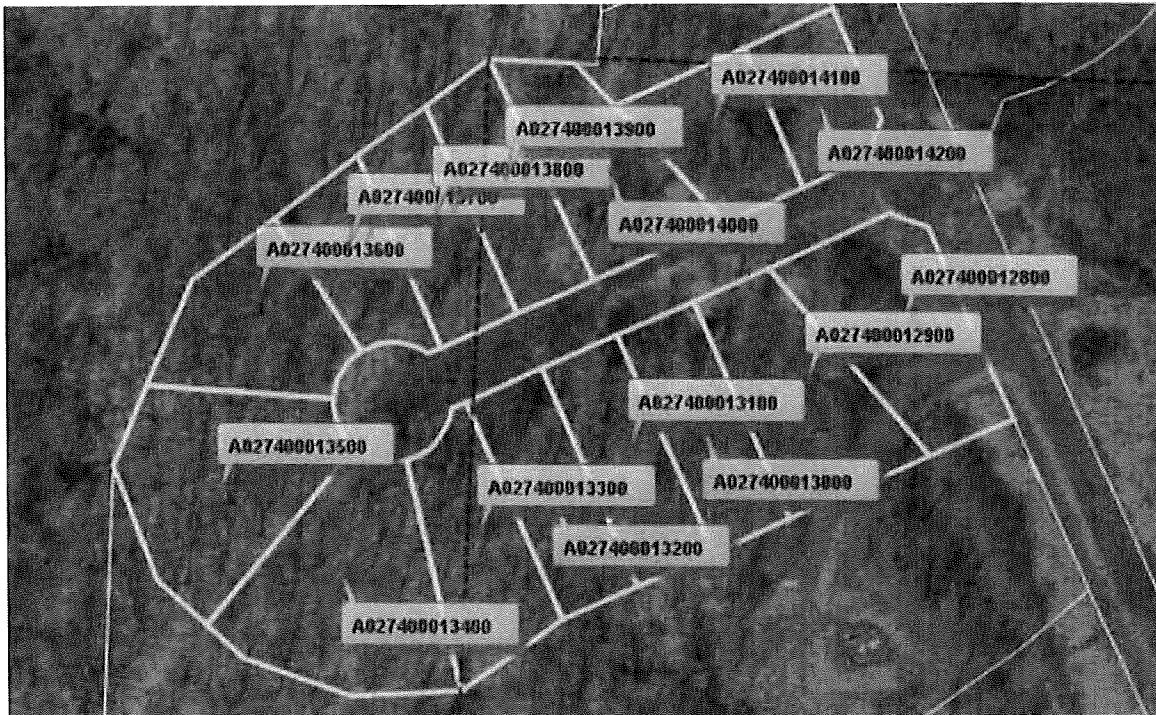
The undersigned Clerk of City Council hereby certifies that the foregoing is a true copy of Ordinance No. []-24 duly adopted by the City City Council of the City of Athens, Ohio on [] [], 2024 and that the Ordinance was published in accordance with the Ohio Revised Code.

Clerk of City Council
City of Athens, Ohio

EXHIBIT A

DESCRIPTION OF THE PROJECT SITE

The Project Site includes the following Parcels identified in the records of the Athens County Auditor, as of calendar year 2024, including as such Parcels may be divided, combined, re-combined, re-numbered, or otherwise altered from time to time. For the avoidance of doubt, the Parcels included within each, individual University Estates Incentive District are listed below.



Parcel Numbers

Incentive District No.	Included Parcels
University Estates Incentive District No. 1	A027400014100 A027400014200 A027400012900 A027400012800
University Estates Incentive District No. 2	A027400013700 A027400013800 A027400013900 A027400014000
University Estates Incentive District No. 3	A027400013600 A027400013500 A027400013400
University Estates Incentive District No. 4	A027400013300 A027400013200

	A027400013100 A027400013000
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EXHIBIT B
DESCRIPTION OF DEVELOPMENT

[See Attached]

EXHIBIT C

FORM OF FIRST AMENDED AND RESTATED TIF AGREEMENT

[See Attached]

EXHIBIT D

FORM OF AMENDED SERVICE PAYMENT DECLARATION

[See Attached]

Summary report: Litera Compare for Word 11.3.1.3 Document comparison done on 8/6/2024 2:09:54 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://bricker-mobility.imanage.work/BRICKER2/19305779/6	
Modified DMS: iw://bricker-mobility.imanage.work/BRICKER2/19305779/8	
Changes:	
<u>Add</u>	1
Delete	2
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	3

**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS AND
CONDITIONS RELATIVE TO SERVICE PAYMENTS IN LIEU OF TAXES,
MINIMUM SERVICE PAYMENT OBLIGATIONS, AND OTHER MATTERS**

UNIVERSITY ESTATES INCENTIVE DISTRICT

THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS AND CONDITIONS RELATIVE TO SERVICE PAYMENTS IN LIEU OF TAXES, MINIMUM SERVICE PAYMENT OBLIGATIONS, AND OTHER MATTERS (this "Declaration") is made and executed as of [] [], 2024 by HOWARD AND LAWSON, LTD. (the "Declarant").

WITNESSETH:

WHEREAS, the Declarant has proposed to develop several parcels of real property specifically identified and depicted on Exhibit A attached hereto (with each such parcel referred to herein individually as a "Parcel" and collectively as the "Project Site") within the corporate boundaries of the City of Athens, Ohio (the "City") by constructing the Development; and

WHEREAS, pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the "TIF Statute"), the City Council of the City (the "City Council") passed Ordinance No. 0-103-20 on October 19, 2020 (the "Original TIF Ordinance"), as amended by Ordinance No. 0-42-21 on May 3, 2021 (the "First TIF Ordinance Amendment"), and as further amended by Ordinance No. []-24 on [] [], 2024 (the "Second TIF Ordinance Amendment" and, together with the Original TIF Ordinance and the First TIF Ordinance Amendment, the "TIF Ordinance"), otherwise creating the "University Estates Incentive District" No. 1, No. 2, No. 3, and No. 4 within the City and authorizing a seventy-five percent (75%) exemption from real property taxation with respect to the increase assessed value of the Parcels occurring as a result of the Development for a period of ten (10) years (the "TIF Exemption"), all as further defined by the TIF Ordinance; and

WHEREAS, pursuant to Ohio Revised Code Section 5709.42, the TIF Ordinance requires the present and future owners of the Project Site, including, but not limited to, the Declarant (the "Owners") to make service payments in lieu of taxes (the "Service Payments") to

the Athens County Treasurer (the “County Treasurer”) for the duration of the TIF Exemption; and

WHEREAS, after passage of the Original TIF Ordinance, the City entered into a Tax Increment Financing Agreement with the Declarant on October 27, 2020 (the “Original TIF Agreement”), as amended by the First TIF Ordinance Amendment (the “First Amended TIF Agreement”), and as further amended by the Second TIF Ordinance Amendment (the “First Amended and Restated TIF Agreement and together with the Original TIF Agreement and the First Amended TIF Agreement the “TIF Agreement”), otherwise requiring the City to reimburse the Declarant for the “Costs of Public Infrastructure Improvements” (as defined by the TIF Agreement) incurred by the Declarant to construct various Public Infrastructure Improvements (as defined by the TIF Ordinance) and the Declarant entered into a *Declaration of Covenants and Conditions Relative to Service Payments in Lieu of Taxes and Other Matters* with respect to Service Payments on the Project Site on October 27, 2020 (the “Original Service Payment Declaration”); and

WHEREAS, as a result of changing market conditions, the Declarant informed the City that the Declarant would no longer be in a financial position to incur the Costs of Public Infrastructure Improvements pursuant to the TIF Agreement; and

WHEREAS, the City has determined that it is willing to provide for the construction of the Public Infrastructure Improvements by incurring the Costs of Public Infrastructure Improvements in order to encourage the Development and, pursuant to the Second TIF Ordinance Amendment, entered into the First Amended and Restated TIF Agreement with the Declarant on [_____] [____], 2024, to provide for the allocation of a portion of Service Payments and Minimum Service Payments (as defined herein) to its Costs of Public Infrastructure Improvements in accordance with the TIF Statutes, the TIF Ordinance, and the TIF Agreement; and

~~WHEREAS, pursuant to the First Amended and Restated TIF Agreement, the Declarant as Owner of the Project Site shall, or has, executed in favor of, and in form and substance acceptable to the City, an option to purchase the Parcels comprising the Project Site (the “Option”) to further ensure completion of the Development in order to generate Service Payments and Minimum Service Payments sufficient to pay Costs of Public Infrastructure Improvements; and~~

WHEREAS, the City has further determined and the Declarant has further agreed pursuant to the First Amended and Restated TIF Agreement, to amend and fully restate the Original Service Payment Declaration with this Declaration such that each Owner of a Parcel specified herein shall have the obligation to make certain payments (the “Minimum Service Payments”), which are “minimum service payment obligations” pursuant to Ohio Revised Code Section 5709.91, all pursuant to a formula specified for each Parcel as described by the Minimum Service Payment Schedule and Formula attached hereto as Exhibit B and incorporated herein; and

WHEREAS, the Declarant agrees that the ~~Option, the~~ Service Payments, and the Minimum Service Payments are necessary to ensure there are sufficient funds to reimburse the City for its Costs of Public Infrastructure Improvements identified by the TIF Agreement.

NOW, THEREFORE, the Declarant, for itself as an Owner and for each successive Owner, hereby declares that the foregoing recitals are incorporated into this Declaration by this reference and that each Parcel owned by an Owner and any improvements thereon will be held, developed, encumbered, leased, occupied, improved, built upon, used, and conveyed subject to the terms and provisions of this Declaration:

Section 1. Use of Defined Terms. In addition to the words and terms elsewhere defined in this Declaration and its Exhibit B, unless the context or use clearly indicates another or different meaning or intent, the defined terms in this Declaration shall have the meaning specified in the TIF Agreement. The City and the Declarant expressly agree that the terms of this Declaration are intended to fully amend and restate the terms of the Original Service Payment Declaration and that the Original Service Payment Declaration shall have no effect as of the date first set forth above.

Section 2. Covenant to Make Service Payments. Except as otherwise expressly specified herein, each Owner shall be responsible to make Service Payments for each Parcel attributable to its period of ownership of that Parcel, all pursuant to and in accordance with the requirements of the TIF Statute, the TIF Ordinance, and the TIF Agreement, and any subsequent amendments or supplements thereto. Service Payments for each Parcel will be made semi-annually to the County Treasurer (or to the County Treasurer's designated agent for collection of the Service Payments) on or before the date on which real property taxes would otherwise be due and payable for each Parcel and will be in the same amount as the real property taxes that would have been charged and payable against the Improvements to each Parcel had the TIF Exemption not been granted, including any penalties and interest. Any late payments will bear penalties and interest at the then-current rate established under Ohio Revised Code Section 323.121 and 5703.47 or any success provisions thereto, as the same may be amended from time to time. No Owner shall enter into a delinquent tax or service payment agreement pursuant to Ohio Revised Code Section 323.31.

Pursuant to Ohio Revised Code Section 5709.42, each Owner's obligations to make the Service Payments shall be and are unconditional, and shall not and cannot be terminated for any cause, and no Owner shall have the right to suspend or set off such Service Payments for any cause, including without limitation any acts or circumstances that may constitute failure of consideration, destruction, or damage to the Parcels or the structures of the Parcels, commercial frustration of purpose, or any failure by the City to perform or observe any obligation or covenant, whether express or implied, arising out of or in connection with the TIF Ordinance or the TIF Agreement. No Owner will, under any circumstances, be required for any tax year to pay both real

property taxes and Service Payments with respect to the Improvement of a Parcel, whether pursuant to Ohio Revised Code Section 5709.42, the TIF Ordinance, or this Declaration. The City and the Declarant agree that the TIF Fund established by the TIF Ordinance shall receive all Service Payments payable to the City.

Section 3. Covenant to Make Minimum Service Payments. Except pursuant to Sections 4 and 10 hereof, each Owner shall make Minimum Service Payments for each Parcel attributable to its period of ownership of that Parcel. On or before March 1 and September 1 of each year commencing as described pursuant to Section 4 of this Declaration, the City shall determine, using the official records of the County Auditor of Athens County, Ohio (the "County Auditor"), the effective real property tax rate (the "Tax Rate") for the Parcels, and using any other official records of the County Auditor and the County Treasurer as may be required by the City from time to time and the Minimum Service Payment Schedule and Formula attached hereto as Exhibit B, the amount of the semi-annual Minimum Service Payments due, if any, for each Parcel, and shall provide notice to the Owners of such determination, including any penalties and interest. With respect to the Parcels, the Owners shall pay the semi-annual Minimum Service Payment applicable to their respective Parcels on or before the date on which real property taxes would otherwise be due and payable for each Parcel, as applicable, by providing notice to the City of such payment and delivering such semi-annual amount to the City at the below address. Any late payments will bear penalties and interest at the then-current rate established under Ohio Revised Code Section 323.121 and 5703.47 or any success provisions thereto, as the same may be amended from time to time.

City of Athens
8 East Washington Street
Athens, Ohio 45701
Attention: City Auditor

In the event the Parcels are subdivided, or are consolidated with any other Parcel, the Minimum Service Payments attributable to those Parcels shall be apportioned among the resulting tax Parcels and all other Parcels based on any reasonable method determined by the City. Regardless of the apportionment method, such apportionment shall be evidenced by an addendum to this Declaration ("Addendum") filed prior to the subdivision or consolidation by the applicable Owner of such Parcel being subdivided or such Parcels being consolidated, which Addendum also shall be approved and executed by the City to evidence its approval of the apportionment of the Minimum Service Payments as required hereunder. If for any reason such apportionment does not occur or such Addendum is not recorded, the applicable Owner shall remain obligated to pay the Minimum Service Payment attributable to such Parcels notwithstanding that an Owner is no longer the Owner of such Parcels.

Section 4. Duration of Minimum Service Payments.

As further described by Exhibit B attached hereto and incorporated herein, the obligation to make Minimum Service Payments with respect to a Parcel shall begin in the Commencement Year applicable to the Phase of the Development for that Parcel and continue for the duration of the TIF Exemption (the "Minimum Service Payment Term"), including as may be further amended from time to time.

Notwithstanding anything to the contrary herein, however, the City shall have the right, in its sole discretion and at any time, to (i) waive any Minimum Service Payment due by any Owner of any Parcel for any Phase of the Development, (ii) terminate any obligation to make Minimum Service Payments with respect to any Owner of any Parcel for any Phase of the Development, (iii) toll any obligation to make Minimum Service Payments with respect to any Owner of any Parcel for any Phase of the Development and re-apply such Minimum Service Payments that would have been due to a subsequent calendar year (including a calendar year beyond the Minimum Service Payment Term), and (iv) unilaterally commence the Minimum Service Payment due by any Owner of any Parcel for any Phase of the Development prior to the Commencement Year associated with the Minimum Service Payment Term where a TIF Exemption with respect to any Phase has not commenced by ~~calendar year July 1, 2034~~tax year 2035 (unless waived, terminated, or tolled by the City pursuant to Section 4(i), 4(ii), or 4(iii), above, for any reason or no reason).

Section 5. Exemption Applications. No Additional Exemptions. Each Owner shall prepare and file all necessary applications and supporting documents to obtain the exemption from real property taxation authorized by the TIF Statute and the TIF Ordinance, and to enable the City to collect the Service Payments and Minimum Service Payments in a timely manner.

The Owners shall not apply for any other real property tax exemption for any Parcel without the express, written consent of the City.

Section 6. Provision of Information. Each Owner agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of the TIF Exemption the compliance of each Owner with the terms of the TIF Ordinance, the TIF Agreement, and the TIF Statute. Each Owner further agrees to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Department of Development on or before March 31 of each year.

Section 7. Reduction in Assessed Value. While the TIF Exemption is in effect, no Owner of a Parcel shall contest or challenge the assessed value of any Parcel without the prior written consent of the City.

Section 8. Additional Covenants. The Declarant, and any succeeding Owner, agrees that:

- A. Any two-bedroom unit that includes one- and one-half bathrooms constructed on a Parcel will be sold with an initial sale price, determined as follows: Not to exceed ~~\$260,000~~267,800 in calendar year ~~2024~~2025 and increasing not more than three percent (3%) per year for any succeeding year (i.e., ~~\$267,800 in calendar year 2025,~~ \$275,834 in calendar year 2026, \$284,109 in calendar year 2027, \$292,632 in calendar year 2028, and so forth).
- B. Each Parcel must be owner-occupied for a period of not less than five (5) years from the initial sale, and any purchaser must declare such housing unit as their principal ~~resident~~residence for tax purposes.
- C. Any unit constructed on a Parcel may be rented during the period between the completion of construction and sale, as necessary, prior to the sale to the first buyer of such unit, at which time the covenants described in this Section 8 shall commence.

Section 9. Use of Parcels. Until the end of the TIF Exemption with respect to any Parcel, the Owner of such Parcel shall be prohibited from converting that Parcel to any use that would cause the County Auditor to classify the Parcel as being used for agricultural purposes under Ohio Administrative Code Section 5703-25-10.

Section 10. Automatic Release of Encumbrances. Except as specified in Section 4 hereof, if and when (i) a Parcel is transferred by the Declarant to any other Owner of such Parcel pursuant to an arms-length transaction with a person or entity who is not controlled by, under common control with, or affiliated with the Declarant (each a "Residential Owner"), (ii) such arms-length transaction is evidenced by a recorded instrument of transfer to such Residential Owner reflecting the transfer of one or more completed single-family homes for which the City has issued a certificate of occupancy, and (iii) such one or more completed single-family homes have a true value, as identified by the Athens County Auditor, equal to or exceeding the applicable initial sales price per two-bedroom unit that includes one- and one-half bathrooms identified by Section 8 hereof in the year of the instrument of transfer, then the Declarant's obligation to make Minimum Service Payments shall terminate automatically and without further action by Declarant with respect to each Parcel so transferred by the Declarant. The covenants contained in this Section 10, including the release of the Minimum Service Payment obligation attributable to Parcels transferred by the Declarant, are subject to the performance by the

Declarant of its obligations related to subdivision or consolidation contained in Section 3 of this Declaration.

Notwithstanding anything in this Declaration to the contrary, if and when a Parcel is transferred by the Declarant to any Residential Owner, as evidenced by a recorded instrument of transfer to any Residential Owner, the covenants running with the land described in this Declaration with respect to Service Payments shall continue to apply to such Residential Owner, and this Declaration shall be deemed updated to reflect that such transferred Parcel is so burdened pursuant to Section 2 of this Declaration.

Pursuant to the terms of this Section 10 and its first paragraph written above, if and when a Parcel is transferred by the Declarant to any Residential Owner, as evidenced by a recorded instrument of transfer to any Residential Owner, the covenants running with the land described in this Declaration with respect to Minimum Service Payments shall not apply to such Residential Owner, and this Declaration shall be deemed updated to reflect that such transferred Parcel is not so burdened pursuant to Sections 3 and 4 of this Declaration.

Notwithstanding anything to the contrary herein: ~~(i), portions of the Parcels that may be dedicated, sold, or otherwise transferred for use as public improvements, including, without limitation, as streets or pedestrian walkways, shall be released from the Service Payment and Minimum Service Payment obligation contained in Section 3 upon such dedication, sale, or other transfer to the City and (ii) in the event the City exercises its Option with respect to any Parcel, the obligation to make Service Payments and Minimum Service Payments with respect to that Parcel shall terminate automatically and without further action by any party.~~

Section 11. Covenants to Run With the Land. Except as specified in Sections 4 and 10 hereof, the Declarant agrees on behalf of itself as an Owner that the covenants contained in this Declaration shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal, or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, against each Parcel and any improvements thereon. The City has the right, in the event of any breach of any covenant herein contained, to exercise all of the rights and remedies and to maintain all actions or suits at law or in equity or in other proper proceedings to which it may be entitled to cure that breach.

Except as specified in Sections 4 and 10 hereof, the Declarant further agrees on behalf of itself as an Owner and each successive Owner that all covenants herein, whether or not these covenants are included by any Owner of a Parcel in any deed to that Owner's successors and assigns, shall be binding upon each subsequent Owner and shall be enforceable by the City, and that any future Owner of that Parcel shall be treated as the Declarant and Owner with respect to that Parcel for all purposes of this Declaration. Except as otherwise expressly specified herein and pursuant to Sections 4 and 10 hereof, the covenants herein will remain in effect so long as the

Service Payments and Minimum Service Payments can be collected pursuant to this Declaration, unless otherwise modified or released in writing by the City in a written instrument filed in the official records of the Recorder of Athens County, Ohio.

The covenants herein have priority over all obligations arising from ground leases, other leases, mortgages, trust indentures, bond indentures, and other debt instruments, and any other lien or encumbrance on any Parcel and any improvements thereon, except for such title exceptions as are approved in writing by the City, and each Owner will, upon the request of the City, cause any and all holders of mortgages or other liens existing on each Parcel it owns as of, and after, the time of recording of this Declaration to subordinate such mortgage or lien to those covenants running with the land. The Declarant intends, and the Owners agree, that this Declaration shall not be deemed to be an executory contract terminable in bankruptcy proceedings under Title 11 of the United States Code. Each Owner acknowledges that the provisions of Ohio Revised Code Section 5709.91, which specify that the obligation to make Service Payments and Minimum Service Payments, will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11, including, but not limited to, the priority of the lien and the collection of the Service Payments and Minimum Service Payments, apply to the Parcels and any improvements thereon.

Section 12. Third-Party Beneficiary. This Declaration shall inure to the benefit of, and be enforceable by, the City.

Section 13. Defeasance. Without in any manner altering the covenants contained herein, the lien created pursuant to Ohio Revised Code Section 5709.91 and this Declaration shall be partially released to the extent Service Payments and Minimum Service Payments are actually paid for any Parcel. Upon payment of all Service Payments and Minimum Service Payments attributable to dates prior to the last day of the Minimum Service Payment Term or Extended Minimum Service Payment Term for each Parcel in each Phase of the Development, as applicable, the lien created pursuant to Ohio Revised Code Section 5709.91 and this Declaration shall be void, otherwise it shall remain in full force and effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and effective as of the date first set forth above.

DECLARANT:
HOWARD AND LAWSON, LTD.

By: _____

Name: Bret Howard

Title: Developer / Co-Owner

By: _____

Name: Patrick Lawson

Title: Developer / Co-Owner

STATE OF OHIO)
) SS:
COUNTY OF ATHENS)

BEFORE ME, a Notary Public in and for said County and State, this [] day of [], 2024, personally appeared Bret Howard, Developer / Co-Owner of HOWARD AND LAWSON, LTD, an Ohio limited liability company, on behalf of the company, who acknowledged that he did sign the foregoing instrument in the capacity indicated and that the same is his respective free act and deed individually and in such capacity. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this [] day of [], 2024.

Notary Public

This instrument prepared by:
Price D. Finley, Esq.
Bricker Graydon LLP
100 South Third Street
Columbus, OH 43215

STATE OF OHIO

)

) SS:

COUNTY OF ATHENS

)

BEFORE ME, a Notary Public in and for said County and State, this [] day of [], 2024, personally appeared Patrick Lawson, Developer / Co-Owner of HOWARD AND LAWSON, LTD, an Ohio limited liability company, on behalf of the company, who acknowledged that he did sign the foregoing instrument in the capacity indicated and that the same is his respective free act and deed individually and in such capacity. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this [] day of [] [], 2024.

Notary Public

This instrument prepared by:

Price D. Finley, Esq.

Bricker Graydon LLP

100 South Third Street

Columbus, OH 43215

Pursuant to Ohio Revised Code Section 5709.91, a “minimum service payment obligation” is an obligation, including a contingent obligation, for a property owner to make a payment to a legislative authority pursuant to an agreement between the property owner and the legislative authority to ensure sufficient funds to finance the expenditures authorized pursuant to the TIF Statute. Pursuant to Ordinance No. []-24 passed on [], 2024 the City Council of the City approved this Declaration and authorized the Service-Safety Director to execute this Declaration as an agreement between the City and the Declarant.

**ACCEPTED AND AGREED:
CITY OF ATHENS, OHIO**

By: _____

Name: Andrew B. Stone

Title: Service-Safety Director

STATE OF OHIO)
) SS:
COUNTY OF ATHENS)

BEFORE ME, a Notary Public in and for said County and State, this [] day of [], 2024, personally appeared Andrew B. Stone, the Service-Safety Director of the CITY OF ATHENS, OHIO, a municipal corporation organized and validly existing under the laws of the State of Ohio, who acknowledged that he did sign the foregoing instrument in the capacity indicated and that the same is his respective free act and deed individually and in such capacity. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this [] day of [], 2024.

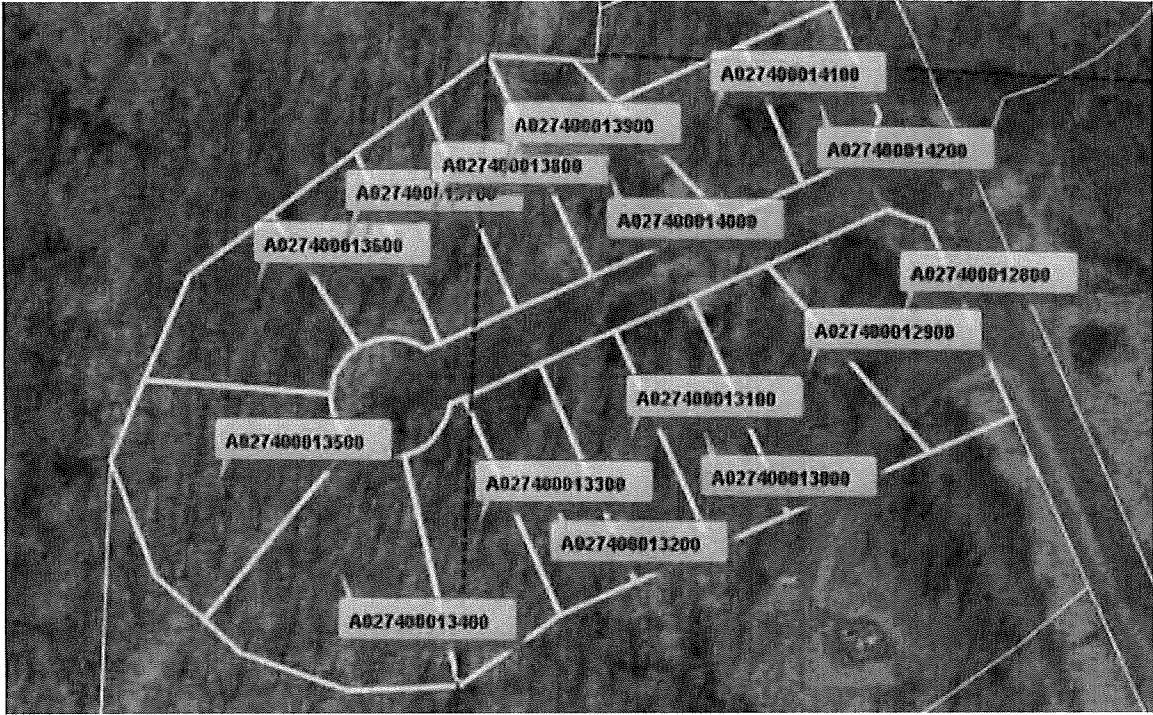
Notary Public

This instrument prepared by:
Price D. Finley, Esq.
Bricker Graydon LLP
100 South Third Street
Columbus, OH 43215

EXHIBIT A

PARCELS SUBJECT TO DECLARATION

The Project Site includes the following Parcels identified in the records of the Athens County Auditor, as of 2024, including as such Parcels may be divided, combined, re-combined, re-numbered, or otherwise altered time. For the avoidance of doubt, the Parcels included within each, individual University Estates Incentive I listed below.



Parcel Numbers

Incentive District No.	Included Parcels
------------------------	------------------

University Estates Incentive District No. 1	A027400014100 A027400014200 A027400012900 A027400012800
University Estates Incentive District No. 2	A027400013700 A027400013800 A027400013900 A027400014000
University Estates Incentive District No. 3	A027400013600 A027400013500 A027400013400
University Estates Incentive District No. 4	A027400013300 A027400013200 A027400013100 A027400013000

EXHIBIT B

MINIMUM SERVICE PAYMENT SCHEDULE AND FORMULA

It is currently anticipated that the Declarant will complete the Development in one or more phases or sub-phases. The exact Minimum Service Payment due by the Declarant, and any Owner, to the City in any calendar year is defined in greater detail below. All capitalized terms not otherwise defined herein shall have the meaning given them by the Declaration to which this Exhibit B is attached:

Phase	Parcels	Projected Assessed Value	Projected Service Payments
1	A027400014100	\$1,050,000.00 [True Value of \$3,000,000.00]	\$[] [To be calculated pursuant to Sections 3 and 4 of this Declaration.]
	A027400014200		
	A027400012900		
	A027400012800		
2	A027400013700	\$1,260,000.00 [True Value of \$3,600,00.00]	\$[] [To be calculated pursuant to Sections 3 and 4 of this Declaration.]
	A027400013800		
	A027400013900		
	A027400014000		
3	A027400013600	\$945,000.00 [True Value of \$2,700,000.00]	\$[] [To be calculated pursuant to Sections 3 and 4 of this Declaration.]
	A027400013500		
	A027400013400		
4	A027400013300	\$1,260,000.00 [True Value of \$3,600,000.00]	\$[] [To be calculated pursuant to Sections 3 and 4 of this Declaration.]
	A027400013200		
	A027400013100		
	A027400013000		

“Phase” means the individual phase of the Development associated with the Parcels listed in the table for that Phase.

“Commencement Year” means the first calendar year in which real property taxes would be due and payable but for a TIF Exemption applicable to a particular Phase.

“*Projected Assessed Value*” means the total assessed valuation of the Improvements upon each Parcel included within each Phase of the Development, as would be calculated for purposes of ad valorem real estate taxation if full build-out with respect to that particular Phase of the Development was otherwise complete.

“*Projected Service Payments*” means the total annual Service Payments, based on the Projected Assessed Value of each Parcel in each Phase, that Owners in each Phase would pay as a result of the TIF Exemption, as shall be calculated by the City pursuant to Sections 3 and 4 of this Declaration for each Phase of the Development beginning in a Commencement Year for the duration of the Minimum Service Payment Term.

“*Minimum Service Payment*” means the semi-annual payment due by any Owner of any Parcel to the City according to the following formula and in accordance with the Declaration:

$$A - B = (C/2)$$

A = Projected Service Payments

B = Minimum Service Payment Credit

C = Minimum Service Payment

The semi-annual Minimum Service Payment charged against the Parcels subject to this Declaration shall be calculated on the basis of the Projected Assessed Value of the Parcels within each Phase of the Development. Except as otherwise provided in Section 4 of the Declaration to which this Exhibit B is attached, Minimum Service Payments with respect to the Parcels included in a particular Phase shall commence in a Commencement Year and continue for the duration of the TIF Exemption applicable to that Phase. The exact Minimum Service Payment due with respect to each Parcel shall be proportionally allocated among the Parcels within each Phase on the basis of the respective Projected Assessed Value of each Parcel.

“*Minimum Service Payment Credit*” means the Service Payments paid by an Owner and actually received by the City with respect to the Improvements to Parcels included within a particular Phase of the Development.

Summary report: Litera Compare for Word 11.3.1.3 Document comparison done on 8/6/2024 2:11:02 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://bricker-mobility.imanage.work/BRICKER2/19305766/12	
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Changes:	
<u>Add</u>	25
Delete	10
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	35

**FIRST AMENDED AND RESTATED
TAX INCREMENT FINANCING AGREEMENT**

This First Amended and Restated Tax Increment Financing Agreement (this “Agreement”) is made and entered into as of [_____] [___], 2024 by and between the CITY OF ATHENS, OHIO, a municipal corporation duly organized and validly existing under the constitution and the laws of the State of Ohio (the “City”), and HOWARD AND LAWSON, LTD, dba Cornerstone Home Builders of Southeast Ohio (the “Developer”), an Ohio limited liability company, whose mailing address is 39403 State Route 689, Albany, Ohio 45710.

RECITALS:

WHEREAS, the Developer has proposed to develop several parcels of real property specifically identified and depicted on Exhibit A attached hereto (with each such parcel referred to herein individually as a “Parcel” and collectively as the “Project Site”) within the corporate boundaries of the City of Athens, Ohio (the “City”) by constructing Woods Edge, an affordable housing development to be known as the “University Estates Development” as identified and described in greater detail on Exhibit B attached hereto (the “Development”); and

WHEREAS, pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 (collectively, the “TIF Statute”), the City Council of the City (the “City Council”) passed Ordinance No. 0-103-20 on October 19, 2020 (the “Original TIF Ordinance”), as amended by Ordinance No. 0-42-21 on May 3, 2021 (the “First TIF Ordinance Amendment”), and as further amended by Ordinance No. [_____] -24 on [_____] [___], 2024 (the “Second TIF Ordinance Amendment” and, together with the Original TIF Ordinance and the First TIF Ordinance Amendment, the “TIF Ordinance”), otherwise creating the “University Estates Incentive District” No. 1, No. 2, No. 3, and No. 4, within the City and authorizing a seventy-five percent (75%) exemption from real property taxation with respect to the increase assessed value of the Parcels occurring as a result of the Development for a period of ten (10) years (the “TIF Exemption”), all as further defined by the TIF Ordinance; and

WHEREAS, pursuant to Ohio Revised Code Section 5709.42, the TIF Ordinance requires the present and future owners of the Project Site, including, but not limited to, the Developer (the “Owners”) to make service payments in lieu of taxes (the “Service Payments”) to the Athens County Treasurer for the duration of the TIF Exemption; and

WHEREAS, after passage of the Original TIF Ordinance, the City entered into a Tax Increment Financing Agreement with the Developer on October 27, 2020 (the “Original TIF Agreement”), as amended by the First TIF Ordinance Amendment (the “Amended TIF Agreement”), and this Agreement (collectively, the “TIF Agreement”) otherwise requiring the City to reimburse the Developer for the “Costs of Public Infrastructure Improvements” (as defined by the TIF Agreement) incurred by the Developer to construct various Public Infrastructure Improvements (defined by Exhibit C attached hereto) and the Developer entered into a *Declaration of Covenants and Conditions Relative to Service Payments in Lieu of Taxes*

and Other Matters with respect to Service Payments on the Project Site on October 27, 2020; and

WHEREAS, as a result of changing market conditions, the Developer informed the City that the Developer would no longer be in a financial position to incur the Costs of Public Infrastructure Improvements pursuant to the TIF Agreement; and

WHEREAS, the City has determined that it is willing to provide for the construction of the Public Infrastructure Improvements by incurring the Costs of Public Infrastructure Improvements in order to encourage the Development and, pursuant to the Second TIF Ordinance Amendment, has authorized the City to enter into this Agreement with the Developer, to provide for the allocation of a portion of Service Payments to its Costs of Public Infrastructure Improvements in accordance with the TIF Statutes, the TIF Ordinance, and this Agreement; and

WHEREAS, pursuant to this Agreement, the Developer as Owner of the Project Site shall, or has, executed in favor of, and in form, substance, and on terms acceptable to the City ~~(i) an option to purchase one or more Parcels comprising the Project Site (the "Option") and (ii) a joint, a~~ life insurance policy in the minimum amount of \$2,000,000.00 naming Bret Howard ~~and Pat Lawson (the "Partners")~~ as insured and naming the City as the sole beneficiary in the event of the death of ~~both Partners~~ Bret Howard (the "Life Insurance Policy"), all to further ensure completion of the Development in order to generate Service Payments sufficient to pay Costs of Public Infrastructure Improvements; and

WHEREAS, the City has further determined and the Developer has further agreed, pursuant to this Agreement, that each Owner of a Parcel specified herein may be required to make certain payments (the "Minimum Service Payments"), which are "minimum service payment obligations" pursuant to Ohio Revised Code Section 5709.91, all pursuant to a formula specified for each Parcel as described by the *First Amended and Restated Declaration of Covenants and Conditions Relative to Service Payments In Lieu of Taxes, Minimum Service Payment Obligations, and Other Matters* attached to this Agreement substantially in the form of Exhibit D (the "Amended Service Payment Declaration"); and

WHEREAS, the Developer agrees that the ~~Option, the~~ Service Payments, ~~and~~ the Minimum Service Payments, and the Life Insurance Policy are necessary to ensure there are sufficient funds to reimburse the City for its Costs of Public Infrastructure Improvements identified by this Agreement.

NOW, THEREFORE, in consideration of the premises and covenants contained in this Agreement and to induce the City to proceed with the construction of the Public Infrastructure Improvements, the Developer and the City hereby agree as follows:

Section 1. Covenants of the Developer with Respect to the Development. In consideration of the incentives provided by the City in this Agreement, the Developer agrees to the following:

- A. Affordable Housing Commission Goals. The Developer agrees to complete the Development in accordance with the City's Affordable Housing Commission Goals, which include, but are not limited to:
1. Building approximately 50 units +/- in 2 or 3 bedroom configurations.
 2. Incorporate principles of "universal design" in the three-bedroom units (https://en.wikipedia.org/wiki/Universal_design). The City will provide examples of the specific elements expected. ~~Once design is complete the Developer must gain letters of support from the Athens Affordable Housing Commission and Disabilities Commission prior to construction.~~ THE DEVELOPER WILL PUT FORTH A GOOD FAITH EFFORT TO WORK WITH BUYERS UNDER CONTRACT TO ACCOMMODATE INDIVIDUALIZED UNIVERSAL DESIGN NEEDS.
 3. Incorporate concepts of cluster design, **ENERGY EFFICIENCY**, and solar readiness.
 - (a) **FOR PURPOSES OF THIS AGREEMENT "CLUSTER DESIGN" MEANS A RESIDENTIAL HOUSING PROJECT WHERE HOUSING UNITS ARE LOCATED RELATIVELY CLOSE TOGETHER OR SHARE COMMON WALLS IN ORDER TO YIELD MORE DWELLING UNITS THAN A TYPICAL RESIDENTIAL SUBDIVISION OF THE SAME ACREAGE WOULD.**
 - (b) **FOR PURPOSES OF THIS AGREEMENT "ENERGY EFFICIENCY" MEANS PLANNING AND DESIGN OF HOUSING UNITS, THAT INCLUDES, TO THE FULL EXTENT POSSIBLE, UTILIZATION OF BUILDING MATERIALS, APPLIANCES, FIXTURES, WINDOWS, LIGHTING, INSULATION, AND WEATHERIZATION IN ORDER TO REDUCE THE AMOUNT OF ENERGY WASTED.**
 - (c) **FOR PURPOSES OF THIS AGREEMENT 'SOLAR READY' MEANS PLANNING AND DESIGN OF HOUSING UNITS, THAT INCLUDES TO THE FULL EXTENT POSSIBLE, UTILIZATION OF THE HOUSING CONSTRUCTION GUIDELINES OF THE NATIONAL RENEWABLE ENERGY LABORATORY'S SOLAR READY BUILDINGS PLANNING GUIDE (TECHNICAL REPORT NREL/TP-7A-46078, DECEMBER 2009).**
<https://www.nrel.gov/docs/fy10osti/4607.pdf>.
 4. Setting the initial **BASE** sale price of each two-bedroom unit that includes one- and one-half-bathrooms at an amount not to exceed ~~\$260,000~~ 267,800 in calendar year ~~2024~~ 2025 and increasing not more than three percent (3%) per year for any succeeding year (i.e., ~~\$267,800 in calendar year 2025,~~ \$275,834 in calendar year

2026, \$284,109 in calendar year 2027, \$292,632 in calendar year 2028, and so forth). **FOR PURPOSES OF THIS AGREEMENT, “BASE SALE PRICE” MEANS THE LEAST EXPENSIVE OFFERED SALE PRICE FOR A COMPLETELY FINISHED TWO-BEDROOM DWELLING UNIT THAT INCLUDES ONE- AND ONE-HALF BATHROOMS AND STANDARD FIXTURES, TRIMS, FLOORING, COUNTERTOPS AND THE LIKE. A ~~BUILDER~~BUYER MAY OPT TO PURCHASE MORE EXPENSIVE FIXTURES, TRIMS, FLOORING, COUNTERTOPS, AND THE LIKE THAT EXCEEDS THE BASE SALE PRICE.**

5. Include as a covenant running with the land for each parcel in the Development a provision requiring that each unit is owner-occupied for the first 5-years from initial sale, and any buyer must declare such housing unit as their ~~principle~~principal residence for tax purposes.
6. Providing that housing units may be rented during the period between construction completion and sale, as necessary, prior to sale to the first buyer of such unit, at which time the covenants described in this Section 1(A) shall commence.

B. Compliance with City Development Requirements. The Developer agrees to undertake the following with respect to the Development:

1. Comply with the City’s Planned Unit Development process and secure all necessary development permits.
2. Hire an engineering firm acceptable to the City to update subdivision design including meeting current City construction standards (including sidewalks) and new platting to match proposed number of units.
3. Pay all capacity fees due in accordance with current law—with all housing units treated as 2 or 3 bedroom apartments.
4. Provide, at no cost to the City, all easements and other real property rights necessary for the City to construct the Public Infrastructure Improvements.

Section 2. Construction of Public Infrastructure Improvements.

A. Authorization, Cooperation, Dedication, and Maintenance. The City shall design and construct or cause to be constructed the Public Infrastructure Improvements within and adjacent to the Project Site after the approval of the plans required by Section 2.B hereof.

B. Approval of Plans. The Public Infrastructure Improvements shall be constructed in accordance with construction plans complying with Section 29.08.01 of the City’s Code of

Ordinances and approved by the Service-Safety Director prior to commencement of construction.

C. Reimbursement from Service Payments and Minimum Service Payments. The City shall use the Service Payments in the "TIF Fund" (as defined in the TIF Ordinance) and any Minimum Service Payments it may receive pursuant to the Amended Service Payment Declaration, to reimburse the City for the Costs of Public Infrastructure Improvements. The Costs of Public Infrastructure Improvements shall include costs the City incurs in order to construct the Public Infrastructure Improvements, including the items of "costs of permanent improvements" set forth in Ohio Revised Code Section 133.15(B).

Section 3. Priority of Lien; Exemption Applications. The provisions of Ohio Revised Code Section 5709.91, which specify that Service Payments and Minimum Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments and Minimum Service Payments, apply to this Agreement and to the Project Site. The provisions of Ohio Revised Code Section 5709.911 apply to exemption applications filed pursuant to the TIF Ordinance and this Agreement.

Section 4. TIF Exemption, Related Agreements, ~~Purchase Option~~, and Life Insurance Policy.

A. In connection with the construction of the Development by the Developer, the City, through the TIF Ordinance, has granted, among other things, with respect to the Improvement to the University Estates Incentive District No. 1, No. 2, No. 3, and No. 4 (as each are defined by the TIF Ordinance), a seventy-five percent (75%) exemption from real property taxation, commencing, for each individual incentive district, in the first tax year subsequent to the effective date of the TIF Ordinance in which an Improvement attributable to a new structure located on any Parcel within an University Estates Incentive District would have first appeared on the tax list and duplicate of real and public utility property (the "TIF Exemption Commencement Date") had the TIF Exemption not been provided pursuant to the TIF Ordinance, and ending on the earlier of (a) ten (10) years after the TIF Exemption Commencement Date or (b) the date on which the City can no longer require Service Payments, either by law, or because the costs of all Public Infrastructure Improvements have been paid.

B. In accordance with Ohio Revised Code Sections 5715.27 and 5709.911, the Developer for itself as an Owner or, as described below, on behalf of any other Owner, of any Parcel at the time the TIF Exemption becomes effective with respect to that Parcel, shall file or cause to be filed a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) with the Athens County Auditor (the "County Auditor") for the Improvement to each Parcel. The Developer and the City agree to cooperate with each other for this purpose, and to cooperate with the County Auditor, the Ohio Department of Taxation and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF

Ordinance and this Agreement. Pursuant to the Amended Service Payment Declaration, which such Amended Service Payment Declaration shall be recorded with respect to each of the Parcels, every Owner or Owners of the Parcels consents to the tax exemption granted by the TIF Ordinance and grants to the Developer an irrevocable power of attorney for and on behalf of such Owner or Owners and in such Owner or Owners' names to file or cause to be filed a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) in accordance with this paragraph. The Developer and the City agree that this paragraph and this Agreement do not constitute consent by an owner to the filing by the City of an application for exemption within the meaning of Ohio Revised Code Section 5709.911(B). No Parcel may be transferred by the Developer until such a DTE Form 24 (or its successor) has been filed and the Ohio Tax Commissioner has approved such Parcel's TIF exemption.

C. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the exemptions from real property taxation granted under the TIF Ordinance and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions, so long as such acts will not put the City at risk for any obligations beyond those set out in the TIF Ordinance and this Agreement.

D. In consideration of the City's construction of the Public Infrastructure Improvements and providing funding for Costs of Public Infrastructure Improvements, the Developer expressly agrees that it (i) shall execute in favor of, and in form, substance, and on terms acceptable to the City, ~~an Option to purchase the Parcels comprising the Project Site to further ensure reimbursement to the City for its Costs of Public Infrastructure Improvements, (ii) shall execute in favor of, and in form, substance, and on terms acceptable to the City, at the~~ Life Insurance Policy, to further ensure reimbursement to the City for its Costs of Public Infrastructure Improvements, ~~and (iii)~~ (ii) shall execute and record upon the Project Site in the records of the Athens County, Ohio Recorder, the Amended Service Payment Declaration in substantially the form of Exhibit D attached hereto. Notwithstanding anything to the contrary, the City shall have no obligation whatsoever to construct the Public Infrastructure Improvements until and unless the Developer has ~~provided the Option to the City and~~ recorded the Amended Service Payment Declaration in the records of the Athens County Recorder.

Section 5. Service Payments and Minimum Service Payments. As provided in Ohio Revised Code Section 5709.42, the Owners are required under this Agreement, the TIF Ordinance, and the Amended Service Payment Declaration to make Service Payments to the County Treasurer on or before the final dates for payment of real property taxes. Each such payment (including any interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from real property taxation. Any late payments shall be subject to penalty and bear interest at the then-current rates established under Ohio Revised Code Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. No Owner shall, under any circumstances, be required with respect to any tax year both to pay

Service Payments with respect to an Improvement and to reimburse local taxing authorities for the amount of real property taxes that would have been payable had the Improvement not been exempted from taxation pursuant to the TIF Ordinance.

Notwithstanding anything to the contrary with respect to such Service Payments, as provided in Ohio Section 5709.91, the Owners are further required under this Agreement, the TIF Ordinance, and the Amended Service Payment Declaration to make Minimum Service Payments to the City on the terms and conditions specified by the Amended Service Payment Declaration.

Section 6. Tax Increment Equivalent Fund. Pursuant to the TIF Ordinance, the City has established its TIF Fund, which TIF Fund shall be maintained in the custody of the City. The TIF Fund shall receive all Service Payments distributed by the County Treasurer to the City pursuant to Ohio Revised Code Section 5709.42.

The TIF Fund shall remain in existence so long as Service Payments are collected and used for the purposes described in this Agreement and the TIF Ordinance, after which time the TIF Fund shall be dissolved in accordance with Ohio Revised Code Section 5709.43. Further, except as otherwise provided in this Agreement or the TIF Ordinance, moneys deposited in the TIF Fund shall be used as described in Section 7 of this Agreement.

Section 7. Use of Service Payments Deposited Into the TIF Fund.

A. The City agrees that the Service Payments deposited into the TIF Fund shall be used exclusively as set forth in this Section 7.

B. The Service Payments deposited into the TIF Fund shall be used on a semi-annual basis to reimburse the City for the Costs of Public Infrastructure Improvements in accordance with Section 1 of this Agreement. After the City is paid in full for the Cost of Public Infrastructure Improvements, the TIF Fund shall be dissolved and 100% of any remaining Service Payments shall be deposited into the City's general fund, as provided for in Ohio Revised Code Section 5709.43 and applied as then permitted by law. The City makes no representation as to the sufficiency or timeliness of the Service Payments to pay all Costs of Public Infrastructure Improvements.

Section 8. Estoppel Certificate. Upon request of the Developer, the City shall execute and deliver to the Developer or any proposed purchaser, mortgagee or lessee of any Parcel, a certificate stating: (a) that this Agreement is in full force and effect, if the same is true; (b) that the Developer is not in default under any of the terms, covenants or conditions of the Agreement, or, if the Developer is in default, specifying the same; and (c) such other matters as the Developer may reasonably request.

Section 9. Representations of the Parties. The Developer hereby represents that it is or intends to be the owner in fee simple of all of the Parcels comprising the Project Site, it has full power and authority to enter into this Agreement and carry out its terms, that the

persons whose names appear on this Agreement are duly authorized and empowered to make and execute this Agreement on behalf of the Developer, and that this Agreement is supported by consideration.

Section 10. Remedies.

A. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by either party to this Agreement, or any successor to such party, such party (or successor) shall, within forty-five (45) days of receipt of written notice from the other, proceed to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity.

B. Unforeseeable Delay. Neither party shall be considered in breach of its obligations under this Agreement due to unforeseeable causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Federal Government, orders of courts, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. The party seeking the benefit of the provisions of this subsection shall, within fifteen (15) calendar days after actual notice of any such unforeseeable delay, have first notified the other party of such unforeseeable delay in writing, and of the cause or causes of the unforeseeable delay. With respect to the Developer, delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays beyond the reasonable control of the Developer.

Section 11. Successors. This Agreement shall be binding upon and inure to the benefit of the Developer and its beneficiaries, successors and assigns, including successive as well as immediate successors and assigns; and shall be binding upon and inure to the benefit of the City, and its successors and assigns.

Section 12. Indemnification. The Developer shall indemnify, defend and hold harmless the City and the City's agents, employees and public officials (each, an "Indemnified Party") from and against any and all suits, claims, damages, losses and expenses (including reasonable attorneys' fees) incurred by the City as a result of the TIF Ordinance or this Agreement, or arising or allegedly arising out of, or resulting from the construction of the Public Infrastructure Improvements, including claims for bodily injury, personal injury or property damage and contract and legal disputes. The provisions of this subparagraph shall survive the termination of this Agreement. In case any claim or demand is at any time made, or action or proceeding is brought, against the City in respect of which indemnity may be sought under this Agreement, an Indemnified Party shall promptly give notice of that action or proceeding to the Developer, upon receipt of that notice shall have the obligation and the right to assume the

defense of the action or proceeding with counsel that is not, without the City's consent, counsel to the Developer, and that is reasonably satisfactory to the City; provided, that failure of a party to give that notice shall not relieve the Developer from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Developer. At its own expense, an Indemnified Party may employ separate counsel and participate in the defense. The City agrees to fully cooperate with the Developer and lend the Developer such assistance as the Developer shall reasonably request in defense of any claim, demand, action or proceeding at no cost to the Indemnified Party or the City. The Developer shall not be liable for any settlement made without its consent. The provisions of this Section shall survive termination of this Agreement.

Section 13. Agreement Binding on Parties; No Personal Liability; City Consents. All covenants, obligations and agreements of the City and the Developer contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, official, officer, agent, or employee of the City in other than their official capacity or of any individual person who is a partner, shareholder, director, member, manager, employee, officer or agent of the Developer other than in their capacity as a partner, shareholder, director, member, manager, employee, officer, or agent, and neither the members of the City Council nor any City official executing this Agreement, or any individual person executing this Agreement on behalf of the Developer, shall be liable personally by reason of the covenants, obligations or agreements of the City or the Developer contained in this Agreement. The City is a political subdivision of the State of Ohio and shall be entitled to all of the immunities and defenses provided by law. Any consent of the City to be given under this Agreement may be given by the Authorized City Representative (as hereinafter defined) and shall be given in writing.

Section 14. Merger and Amendments. This Agreement supersedes any and all other agreements, either oral or in writing, between the City and the Developer with respect to the matters contained in this Agreement and contains all of the covenants, agreements, and other terms and conditions between the City and the Developer with respect to the same. No waivers, alterations, or modifications of this Agreement or any agreements in connection with this Agreement shall be valid unless in writing and duly executed by both the City and the Developer. For the avoidance of doubt, the parties intend for this Agreement to supersede the Original TIF Agreement and the Amended TIF Agreement in all respects and that the Original TIF Agreement and the Amended TIF Agreement be null and void.

Section 15. Consents; Waivers. All consents required by, and any waivers of, the provisions of this Agreement must be in writing and signed on behalf of the City by the Service-Safety Director (together with any other officer from time to time designated in writing by the Service-Safety Director, the "Authorized City Representative") and Bret Howard, Developer and Co-Owner of the Developer (together with any other officer from time to time designated in writing by Bret Howard, Developer and Co-Owner of the Developer, the "Authorized Developer Representative"). No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other party shall be construed

as a consent to or waiver of any other breach of the same or any other covenant, condition or duty to be observed by the other party.

Section 16. Notices. Except as otherwise specifically set forth in this Agreement, all notices, certificates, demands, requests, consents, or approvals given, required, or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, demands, requests, consents or approvals, or other communications shall be sent. The present notice addresses of the parties follow:

- (a) To the Developer at: Howard and Lawson, LTD
39403 State Route 689
Albany, Ohio 45710
Attention: Bret Howard
 - (b) To the City at: City of Athens, Ohio
8 East Washington Street
Athens, Ohio 45701
Attention: Service-Safety Director

City of Athens, Ohio
8 East Washington Street
Athens, Ohio 45701
Attention: Law Director
- With a Copy to: Bricker Graydon LLP
100 South Third Street
Columbus, Ohio 43215
Attention: Price D. Finley

Section 17. Counterparts. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 18. Severability and Cooperation Clause. In the event that any portions, sections, or subsections of this Agreement are rendered invalid by the decision of any court or by

the enactment of any law, resolution, or regulation, such provision of this Agreement will be deemed to have never been included therein and the balance of the Agreement shall continue in full force and effect. If the terms of this Agreement, or any amendment or amendments to any provision of City laws that are required to be enacted or amended as a consequence of this Agreement, are challenged by either referendum or administrative appeal to the courts or such other legal or equitable remedies sought by those who may oppose this Agreement, the parties agree to cooperate with each other to uphold the validity and enforceability of this Agreement at the expenses of the Developer in accordance with Section 12 of this Agreement, because the parties recognize that it is within the discretion of the City under the laws and Constitution of the State of Ohio to provide for agreements between landowners and municipalities to further what is in the best interest of the public health, safety and welfare of a municipality and the other rights of private property there under. This cooperation clause only pertains to the City Council's decisions relating to this Agreement, and this cooperation clause cannot be used to attempt to force the City Council to repeal or override other legislative or administrative decisions relating to the Development.

Section 19. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties to this Agreement or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between Developer and the City.

Section 20. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 21. Governing Law and Choice of Forum. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction. Each of the City and the Developer irrevocably consents to the jurisdiction of any state court located within Athens County, Ohio in connection with any matter based upon or arising out of this Agreement, agrees that process may be served upon them in any manner authorized by the laws of the State of Ohio, and waived and covenants not to assert or plead any objection which they might otherwise have under such jurisdiction or such process.

Section 22. Assignments. Except as otherwise provided in this Section, the Developer agrees not to assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld (and shall not, in any event, be withheld to stop or delay development consistent with zoning already in effect). Notwithstanding any provisions to the contrary in this Agreement and without the consent of the City: (i) the Developer may assign its interest in this Agreement to an entity controlled by or under common control with the Developer; (ii) the Developer, in a written instrument signed by the Developer, may designate an authorized designee to receive all or any portion of the Service Payments payable to the Developer pursuant to this Agreement, upon which designation such designee shall receive the portion of Service Payments specified by the Developer as if it was the Developer under this Agreement; and (iii) the Developer, as security for the payment of all

or any portion of the Service Payments payable to the Developer pursuant to this Agreement, may collaterally assign its right, title, and interest in and to, but not its obligations under, this Agreement upon the written consent of the City.

Section 23. Further Actions. The City and the Developer agree to execute such additional documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Agreement.

Section 24. Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against either the City or the Developer. Section headings in this Agreement are for convenience only and are not to be constructed as part of this Agreement or in any way defining, limiting or amplifying the provisions of this Agreement.

Section 25. Litigation Notice; Management. The Developer shall give the City prompt notice of any action, suit, or proceeding by or against the Developer, at law or in equity, or before any governmental instrumentality or agency, of which the Developer has notice, which, if adversely determined, would materially impair the right or ability of the Developer to implement, operate, maintain, and develop the Development, perform its obligations under this Agreement, or would materially and adversely affect any of its business, operations, properties, assets, or condition (financial or otherwise) together with a written statement setting forth the details and any actions taken or proposed to be taken by Developer in response.

Section 26. Term. The City and the Developer agree that except as expressly set forth in this Agreement, following the payment of all Service Payments and Minimum Service Payments due pursuant to the TIF Ordinance, the Amended Service Payment Declaration, and this Agreement, this Agreement, and all obligations of the parties under this Agreement (except as otherwise set forth in this Agreement) shall terminate and be of no further force or effect.

[Signature Page Follows]

As evidence of their intent to be bound by this Agreement, the authorized representatives of each of the City and the Developer have executed this Agreement for and on behalf of the City and the Developer as of the date first set forth above.

CITY OF ATHENS, OHIO, as City

By: _____

Name: Andrew B. Stone

Title: Service-Safety Director

Pursuant to Ordinance No. [____]-24
passed on [____] [____], 2024 the
City Council of the City approved this
Agreement and authorized the Service-Safety
Director to execute this Agreement.

HOWARD AND LAWSON, LTD,
as Developer

By: _____

Name: Bret Howard

Title: Developer / Co-Owner

By: _____

Name: Patrick Lawson

Title: Developer / Co-Owner

CITY AUDITOR'S CERTIFICATE

As City Auditor for the City of Athens, Ohio, I hereby certify that funds sufficient to meet the obligations of the City under the foregoing Agreement have been lawfully appropriated for the purposes thereof and are available in the treasury, or upon implementation of the processes under Ohio Revised Code Sections 5709.40, 5709.41, 5709.42, and 5709.43, are in the process of collection to the credit of an appropriate fund, free from any previous encumbrance. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

CITY OF ATHENS, OHIO, as City

By: _____

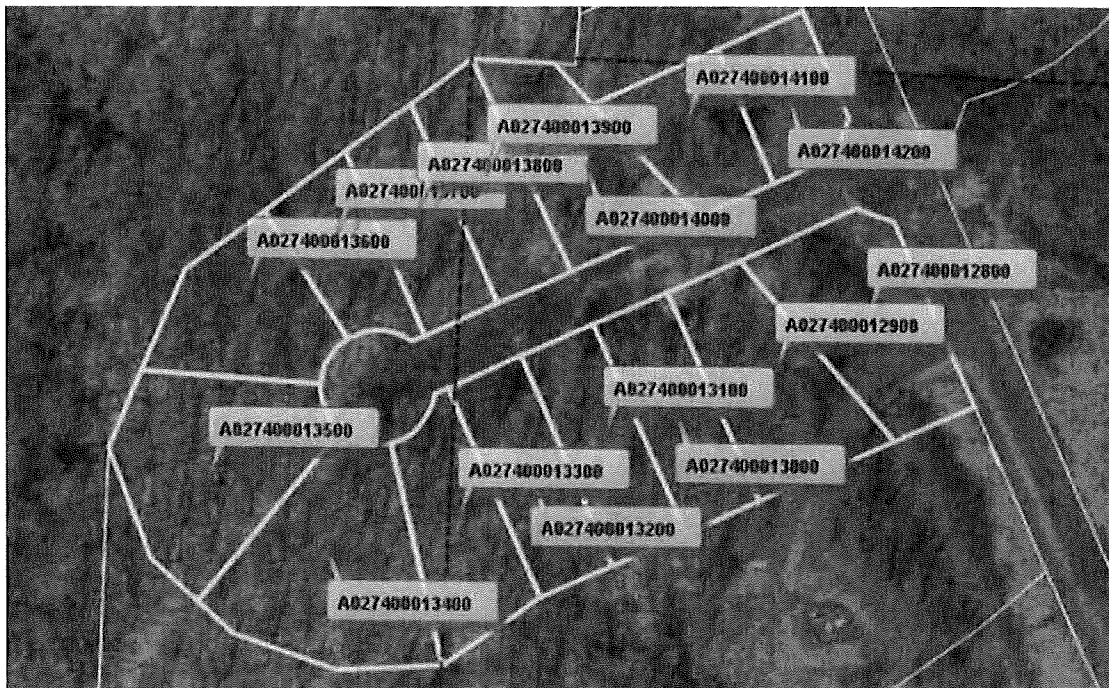
Print Name: Kathy Hecht

Title: City Auditor

EXHIBIT A

PROJECT SITE

The Project Site includes the following Parcels identified in the records of the Athens County Auditor, as of calendar year 2024, including as such Parcels may be divided, combined, re-combined, re-numbered, or otherwise altered from time to time. For the avoidance of doubt, the Parcels included within each, individual University Estates Incentive District are listed below.



Parcel Numbers

Incentive District No.	Included Parcels
University Estates Incentive District No. 1	A027400014100 A027400014200 A027400012900 A027400012800
University Estates Incentive District No. 2	A027400013700 A027400013800 A027400013900 A027400014000
University Estates Incentive District No. 3	A027400013600 A027400013500 A027400013400
University Estates Incentive District No. 4	A027400013300 A027400013200

	A027400013100 A027400013000
--	--------------------------------

EXHIBIT B

DESCRIPTION OF THE DEVELOPMENT

[See Attached]

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The City Council, in the TIF Ordinance, has determined that all of the Public Infrastructure Improvements described below and all related costs are “public infrastructure improvements” (as defined in Ohio Revised Code Section 5709.40(A)(8)) and are intended to benefit or serve the parcels of the University Estates Incentive District.

- Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, bridges (both roadway and pedestrian), traffic calming devices, sidewalks, bikeways, medians and viaducts accessible to and serving the public, and providing lighting systems, signalization, and traffic controls, and all other appurtenances thereto;
- Construction, reconstruction or installation of public utility improvements (including any underground municipally owned utilities), storm and sanitary sewers (including necessary site grading therefore), and all appurtenances thereto;
- Construction or installation of streetscape and landscape improvements including trees and shrubs, landscaping mounds and fencing, tree grates, planting beds, signage, curbs, sidewalks, street and sidewalk lighting, and burial of overhead utility lines and related improvements, together with all appurtenances thereto; and
- All engineering, architectural, and legal, consulting and professional service fees of the City and the Developer related to the foregoing, this Agreement, or the TIF Ordinance.

EXHIBIT D

FORM OF AMENDED SERVICE PAYMENT DELCARATION

[See Attached]

Summary report: Litera Compare for Word 11.3.1.3 Document comparison done on 8/6/2024 2:12:15 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://bricker-mobility.imatech.com/BRICKER2/19307193/8	
Modified DMS: iw://bricker-mobility.imatech.com/BRICKER2/19307193/11	
Changes:	
<u>Add</u>	18
Delete	16
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	34

**Office of Code Enforcement and
Community Development**

28 Curran Drive
Athens, OH 45701
(740)592-3306
(740)594-6304 Fax
<http://www.ci.athens.oh.us>



City of Athens
ATHENS, OHIO

July 19, 2024

Athens City Council and
Athens City Council President, Sam Crawl

RE: T4924-0000006
49 Central Avenue

Dear Mr. Crawl,

The City has received a request for a Title 49 special right-of-way permit for the use of the City's property located at 49 Central Avenue. The applicant James Blackwell (property owner) is requesting use of the City's right-of-way, the request pertains to a pre-existing paving stone patio, stairs leading to home, and a parking area that are currently situated within an unmaintained alley. These items were in the City's right-of-way when the Blackwell family purchased the home in July of 2023.

The special right-of-way permit has been reviewed by the Code Office, the City Engineer and the Safety Service Director.

The term of these special right-of-way permits will be seven (7) years.

If you have any questions or need additional information please let me know.

Regards,



David R. Riggs, PE
City of Athens
Director of Development and Code Enforcement

C: Andy Stone, Service-Safety Director
Saleh Eldabaja, City Engineer
Mayors Office



TITLE 49 APPLICATION

Use of the City's Public Rights of Way

In accordance with Title 49, Application Fee: "At the time that a person submits an application for Use of Right of Way Permit, such person shall pay a non-refundable application fee of \$50 payable to the City of Athens."

(For Office Use Only)

Permit # 74924-000000

Date Rec'd 7/19/2024

Applicant shall comply with all sections of Athens City Code Title 49 Right of Way. All required information shall be attached to application, including such things as but not limited to detailed site plans, a certificate of liability insurance listing City of Athens Ohio as certificate holder. Property owner shall be solely responsible for the maintenance and upkeep of said right-of-way.

Applicant James Blackwell Phone 936-715-8464

Mailing Address 49 Central Ave Athens, OH 45701

Email Address jamesharperblackwell3@gmail.com

Address of Project/ Site 49 Central Ave Athens, OH 45701

Parcel Number A02802000600

Zoning Designation R1

Property Owner James Blackwell

Phone 936 715 8464

Property Owner Mailing Address 49 Central Ave Athens, OH 45701

Project Description (See Attached Drawing)

I HEREBY SWEAR OR AFFIRM THAT ALL THE INFORMATION PROVIDED AND ATTACHED REQUIRED DOCUMENTATION ARE TO THE BEST OF MY KNOWLEDGE TRUTHFUL AND ACCURATE.

By signing this application, the applicant agrees to comply with all facets of Athens City Code Title 49.

Applicant Signature [Signature]

Date 7/19/2024

By signing property owner agrees to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this application.

Property Owner Signature [Signature]

Date 7/19/2024

For Official Use Only

1. Code Enforcement Admin: Signature [Signature] Date 7/19/24

☒ Supporting Documents Attached

☒ Fee Paid

Amount \$ 50

2. Code Directors Review: ☒ Approved ☐ Refused ☐ Missing Documentation

Remarks _____

Signature [Signature] Date 7-15-24

3. City Engineer Review: ☐ Approved ☐ Refused ☐ Missing Documentation

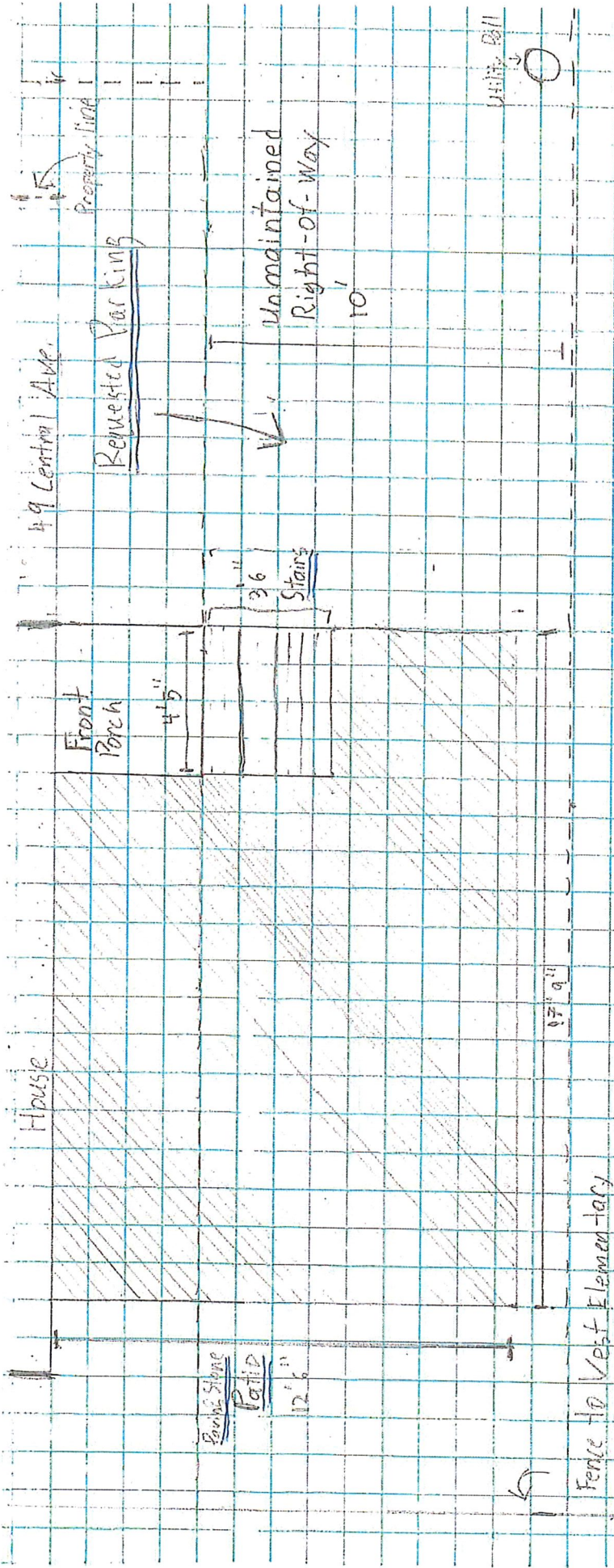
Remarks _____

Signature [Signature] Date 7-15-24

4. Service Safety Director: ☒ Approved ☐ Refused ☐ Missing Documentation

Remarks _____

Signature [Signature] Date 7/17/24



Requesting Special Use of Right-of-Way Permit for pre-existing

Paving Stone patio and stairs in portion of Unmaintained Right-of-Way

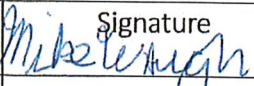
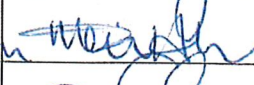
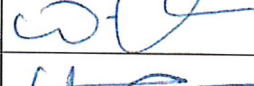
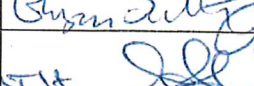
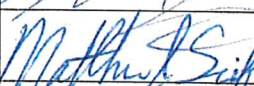
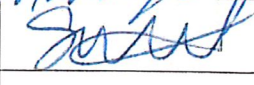
adjacent to the East side of 49 Central and Permit to park in said portion of Right-of-Way

to more easily access front door.



Petition of support for Special Use of Right-of-Way Permit:

I understand by signing this petition I am voicing my support for a permit for pre-existing paving stone patio, and stairs in portion of Unmaintained Right-of-Way located along the east side of 49 Central Ave, and to allow residents of 49 Central to park in said portion of Right-of-Way for easy access to their front door. (See back for details)

Printed Name	Signature	Address	Phone #
MIKE WAUGH		14B CLARKE ST	740 447 8496
Brihenny Hanesworth		14 D Clarke St	740 274 2666
Winsome Chumma		14 Clarke St Apt	614-886-6886
Aarin Brown		18 Clarke St	220-232-8994
Garrison Schultz		55 Central Ave	608-228-4383
Gerald Smith		17 Curran	740 707 4011
Taylor Long		8 Clarke St	812-614-9599
MAT SEIFERT		55 CENTRAL AVE	740-649-7501
Evon Smith		17 Curran Dr.	740-707-4454



GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY

PAGE 4
MAIL-GENR-I

9800 Fredericksburg Road - San Antonio, Texas 78288

RENEWAL DECLARATIONS PAGE

Named Insured and Residence Premises

Policy Number

JAMES H BLACKWELL AND EMILY ELIZABETH BLACKWELL

GAR 00611 84 38 90A

49 CENTRAL AVE

ATHENS, ATHENS, OH 45701-1502

Policy Period From: 06/29/24 To: 06/29/25
(12:01 A.M. standard time at location of the residence premises)

SECTION I - COVERAGES AND AMOUNTS OF INSURANCE

COVERAGE A - DWELLING PROTECTION	\$408,000
COVERAGE B - OTHER STRUCTURES PROTECTION	\$40,800
COVERAGE C - PERSONAL PROPERTY PROTECTION	\$204,000
COVERAGE D - LOSS OF USE PROTECTION (UP TO 12 MONTHS)	UNLIMITED

SECTION II - COVERAGES AND LIMITS OF LIABILITY

Personal Liability - Each Occurrence	\$500,000
Medical Payments to Others	\$5,000

DEDUCTIBLES (Applies to SECTION I Coverages ONLY)

We cover only that part of the loss over the deductible stated.

WIND AND HAIL	\$4,080	(1%)
ALL OTHER PERILS	\$2,000	

POLICY PREMIUM for Section I and Section II Coverages Above \$908.47

CREDITS AND DISCOUNTS (Included in policy premium above.) \$765.59 CR
Details on the following page. (If applicable)

OTHER COVERAGES AND ENDORSEMENTS \$11.49

Forms and Endorsements are printed on the following page.

STATE SURCHARGES AND TAXES (Shown below if applicable)

TOTAL POLICY PREMIUM

Including Credits, Discounts, Optional Coverages, Endorsements, State Surcharges and Taxes
\$919.96

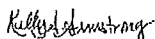
PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL. STATEMENT TO FOLLOW.

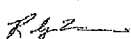
FIRST MORTGAGEE:

PEOPLES BANK
ITS SUCCESSORS AND/OR ASSIGNS
PO BOX 738
MARIETTA, OH 45750-0738

LOAN NR 7230026018

In witness whereof, this policy is signed on 05/01/24


Kelly Armstrong, Secretary


Randy Termeer, President

REFER TO YOUR POLICY FOR OTHER COVERAGES, LIMITS AND EXCLUSIONS.

HO-D1 (07-08)

ATTACH THIS DECLARATION TO PREVIOUS POLICY

87028-0708

From: USAA USAA.Customer.Service@mailcenter.usaa.com
Subject: USAA Certificate of Insurance
Date: Jul 8, 2024 at 10:01:50 AM
To: jamesharperblackwell3@gmail.com

To ensure delivery to your inbox, please add USAA.Customer.Service@mailcenter.usaa.com to your address book.



Insurance Policy Issued

Dear James Blackwell,

CERTIFICATE OF INSURANCE

Loan number: 90A
Insured's name: James Blackwell
Property address: 49 Central Avenue
Athens, OH 45701

This will affirm and certify that a hazard insurance policy has been issued by the company indicated and is in force on the property described here with the following additional insured:

City of Athens Code Enforcement
28 Curran Drive

COVERAGE (Fire and Extended Coverage Minimum)
Policy Type: Condominium
USAA Policy: GAR 006118438 90A
Effective: July 8, 2024
Policy Term: 1 year
Building Items Coverage: \$0.00
Annual Premium: \$919.96

This certificate of insurance neither affirmatively nor negatively amends, extends, or alters the coverage provided by the referenced insurance policy, nor does it confer any new or additional contractual rights to the certificate holder other than those conveyed by the policy.

If we decide to cancel or not to renew this policy, the mortgagee will be properly notified at least 10 days before the cancellation or nonrenewal takes effect.

How to Contact Us

If you have questions, please contact us at one of the following numbers:

Phone: [210-531-USAA](tel:210-531-USAA) (8722), our mobile shortcut #8722 or [800-531-8722](tel:800-531-8722)

Thank you,
Garrison Property and Casualty Insurance Company

Garrison Property and Casualty Insurance Company, a subsidiary of USAA Casualty Insurance Company, is authorized to use the USAA logo, a registered trademark of United Services Automobile Association.



Go Digital

Review and edit your online document preferences at usaa.com.



Please do not reply to this e-mail.
To contact USAA, visit our secure [contact page](#)



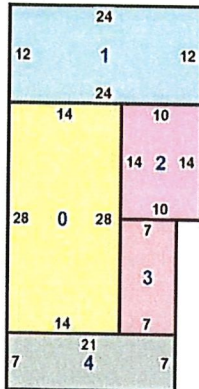
A028020006600

7/18/2024



Jill A. Davidson
County Auditor
Athens County, Ohio
www.athenscountyauditor.org

FIRST SKETCH	LEGAL
--------------	-------



0	Main Building 392 sqft
1	FRAME 288 sqft
2	FRAME 140 sqft
3	FRAME 98 sqft
4	ENCL FRAME PORCH 147 sqft

OWNER BLACKWELL JAMES HARPER EMILY ELIZABETH
ADDRESS 49 CENTRAL AVE
DESCRIPTION 14-09-00 IL R-2071 M-18
SCHOOL DIST ATHENS CSD **TAX DIST** A02
ACREAGE 0.0000

VALUATION		
	APPRAISED	ASSESSED
LAND	\$6,290.00	\$2,200.00
IMPROVEMENTS	\$113,080.00	\$39,580.00
CAUV	\$0.00	\$0.00
TOTAL	\$119,370.00	\$41,780.00

TAXES		SPECIAL ASSESSMENTS	
TAXABLE VALUE	\$41,780.00	COUNT	0
ROLLBACKS	NONE	DELINQUENT / BALANCE	\$0.00 / \$0.00
HALF (1ST / 2ND)	\$1,056.47 / \$1,056.47	TOTAL / BALANCE	\$0.00 / \$0.00
YEAR (TOTAL / BALANCE)	\$2,112.94 / \$1,056.47		

MOST RECENT SALES						
DATE	BUYER	SELLER	# PARCELS	PRICE	VALIDITY	
7/7/2023	BLACKWELL JAMES HARPER	WILLOW MANAGEMENT LLC	0	\$154,000.00	QUALIFIED	
10/24/2019	WILLOW MANAGEMENT LLC	BIERLEIN JEFFREY R	0	\$0.00	MULTIPLE NOT VALID	
12/17/2013	BIERLEIN JEFFREY R	NOSTRANT RENTALS LLC	0	\$84,250.00	QUALIFIED	
5/5/2005	NOSTRANT RENTALS LLC	NOSTRANT KURT C & CHERYL A	0	\$0.00	RELATED INDIVIDUALS OR CORPORATIONS	
9/16/2003	NOSTRANT KURT C & CHERYL A	DEDDENS MICHAEL J ETAL	0	\$55,000.00	QUALIFIED	

LAND					IMPROVEMENTS	
CODE	FRONTAGE	DEPTH	ACREAGE	SQFT	VALUE	
FRONT FOOT Building Site	43	161	0.159	6,923	\$21,710.00	
FRONT FOOT House Lot	43	79	0.078	3,397	-\$15,420.00	

RESIDENTIAL			
Building (CARD:1)	OLD STYLE TWO STORY BUILT 1900	Baths (Full / Half)	1 / 0
Area	1,310 sqft	Rooms (Bedroom / Family)	4 / 0
Basement (Code / Finished / Total)	CRAWL / 0 sqft / 0 sqft	Stories	2.0
Heat Full Type	GAS	Cooling	CENTRAL AIR CONDITION
External Wall	FRAME	Fireplace Stacks	1

0--24

Introduced by Micah McCarey
City & Safety Services Committee

AN ORDINANCE AFFIRMING THE SERVICE-SAFETY DIRECTOR'S EXECUTION OF EASEMENTS WITH THE STATE OF OHIO NECESSARY FOR THE CONSTRUCTION OF CITY SEWER SYSTEM IMPROVEMENTS, PROJECT #330.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Council does hereby affirm the Service-Safety Director's execution of easements with the State of Ohio necessary for the construction of City Sewer System Improvements, Project #330, as follows:

Fifteen (15) years, commencing on June 1, 2024, and expiring on May 31, 2039, on behalf of the Department of Mental Health and Addiction Services, File No. 8900; and

Twenty-Five (25) years, commencing on June 1, 2024, and expiring on May 31, 2049, File No. 8913, copies of said easements are attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

TRANSFER NOT NECESSARY

File No. 8900
DMH

MAY 13 2024

Jill Davidson
Athens County Auditor

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of May 6th, 2024, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of the Department of Mental Health and Addiction Services (hereinafter referred to as "Agency"), and City of Athens, a body politic, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at 8 East Washington Street, Suite 301, Athens, Ohio 45701, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 8900 on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain sewer force main pipeline upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. USE OF PREMISES.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a sewer force main pipeline (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. TERM.

The term of this Agreement shall be for fifteen (15) years, commencing on June 1, 2024 (hereinafter referred to as "Commencement Date"), and expiring on May 31, 2039 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.

202400001947
FILED FOR RECORD IN
ATHENS COUNTY, OHIO
JESSICA MARKINS, RECORDER
05/13/2024 03:29:47 PM
OR BOOK: 614 PAGE: 1002
EASEMENT 122.00 PG: 13

202400001947
ATHENS CITY MAYORS OFFICE

0298108*%1
b878108*PTC00



III. CONSIDERATION.

Grantee shall pay to Agency the total sum of One and 00/100 Dollars (\$1.00) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

- (A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.
- (B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.
- (C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.
- (D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.
- (F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. LIABILITY.

Grantee shall indemnify and hold State harmless, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees ensuing from or in connection with Grantee's occupation and use of the Easement Area and

operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. INSURANCE.

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At the State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. MECHANIC'S LIENS.

- (A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.
- (B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. TAXES/ASSESSMENTS.

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason

of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

X. TERMINATION.

This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

XI. DEFAULT.

- (A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.
- (B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.
- (C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the

removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.

- (D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (E) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph XI, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

XII. RECORDATION.

At its expense and within thirty (30) days of its receipt, Grantee shall present for recording a fully executed Agreement in accordance with Chapter 5301 of the Ohio Revised Code in the office of the County where the Easement Area is located. Grantee shall do likewise with respect to any addendum to this Agreement which may be entered into hereafter by the parties. As proof of recording, Grantee shall promptly return a copy of the recorded Agreement to the State.

XIII. RIGHTS CUMULATIVE.

All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

XV. NOTICES, DEMANDS OR INSTRUMENTS.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid,

- (a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning

4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

- (b) with respect to Agency, addressed to:
Ohio Department of Mental Health & Addiction Services
30 East Broad Street, 11th Floor
Columbus, Ohio 43215
Attention: Chief, Office of Capital Development and Operations Management
and,
- (c) with respect to Grantee, addressed to:
City of Athens
8 East Washington Street, Ste 301
Athens, Ohio 45701
Attention: Service Safety Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

XVIII. HEADINGS.

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

XIX. CAMPAIGN CONTRIBUTIONS & ETHICS COMPLIANCE.

Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

XX. INDEPENDENT CONTRACTOR STATUS.

It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by the Ohio Department of Mental Health & Addiction Services.

By: LeeAnne Cornyn
LeeAnne Cornyn, Director

Date: 1/11/2024

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By: Kathleen Madden
Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this 6th day of May, 2024, before me personally appeared Kathleen C. Madden who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.



Molly Elkins
Notary Public, State of Ohio
My Commission Expires 10-04-27

Molly Elkins
Notary Public, State of Ohio
My Commission Expires: 10/4/27

GRANTEE
City of Athens

By: 
Andy Stone

Title: Service Safety Director

ACKNOWLEDGMENT

State of Ohio, Athens County, ss:

On this 1 day of April, 2024, the foregoing instrument was acknowledged before me by Andy Stone, Service Safety Director of City of Athens, a body politic. Andy Stone acknowledges that he executed the foregoing instrument, that the same is his free and voluntary act and deed, and that he is duly authorized to enter into this instrument for and on behalf of the City of Athens.



TONYA L BAKER
Notary Public
State of Ohio
My Comm. Expires
January 8, 2027


Notary Public, State of Ohio
My Commission Expires January 8, 2027

APPROVED AS TO FORM
City of Athens, Ohio
Department of Law

By: 
Lisa Eliason, City Law Director

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

Exhibit "A"



buckleygroup
engineering + surveying

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckleygroup

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

Situated in Athens Township, Athens County, State of Ohio

Being a **20 foot wide Easement** located in part Section 15, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens, Athens Township, Athens County, State of Ohio and being part of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by a deed recorded in Vol 145 at Page 638 of said county deed records and being 10 foot each side and parallel of the following centerline particularly described as follows:

Point of Beginning being a point on the westerly line of said 9.80 acre parcel, and the easterly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 61° 37' 29" E, 1009.73 feet for reference;

Thence, S 48° 29' 14" E a distance of 48.81 feet to a point;
Thence, S 40° 39' 57" E a distance of 22.66 feet to a point;
Thence, S 33° 26' 32" E a distance of 50.93 feet to a point of terminus;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676

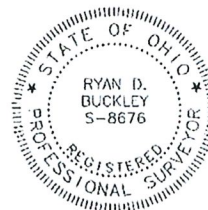


Exhibit "A"
(continued)



6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckley.group

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

Situated in Athens Township, Athens County, State of Ohio

Being a 20 foot wide Easement located in part Section 15, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens, Athens Township, Athens County, State of Ohio and being part of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by a deed recorded in Vol 145 at Page 638 of said county deed records and being 10 foot each side and parallel of the following centerline particularly described as follows:

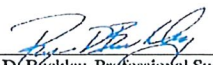
Point of Beginning being a point on the southerly line of said 9.80 acre parcel, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 12° 07' 51" E, 1005.76 feet for reference;;

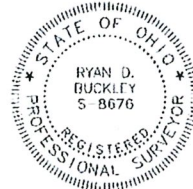
Thence, line S 71° 45' 11" E a distance of 24.84 feet to a point;
Thence, line S 55° 50' 42" E a distance of 22.45 feet to a point of terminus;

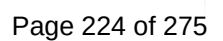
Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676





TRANSFER NOT NECESSARY

MAY 29 2024

Jill Davidson
Athens County Auditor

202400002158
FILED FOR RECORD IN
ATHENS COUNTY, OHIO
JESSICA MARKINS, RECORDER
05/29/2024 01:45:35 PM
OR BOOK: 614 PAGE: 2009
EASEMENT 154.00 PG: 17

202400002158
ATHENS CITY MAYORS OFFICE

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of May 17th, 2024, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of Ohio University (hereinafter referred to as "Agency"), and City of Athens, a body politic, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at 8 East Washington Street, Ste 301, Athens, Ohio 45701, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 8913 on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain sewer force main pipeline upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. USE OF PREMISES.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a sewer force main pipeline (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. TERM.

The term of this Agreement shall be for twenty-five (25) years, commencing on June 1, 2024 (hereinafter referred to as "Commencement Date") and expiring on May 31, 2049 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.



III. CONSIDERATION.

Grantee shall pay to Agency the total sum of Eighteen and 04/100 Dollars (\$18.04) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

- (A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.
- (B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.
- (C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.
- (D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.
- (F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. LIABILITY.

Grantee shall indemnify and hold State harmless, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees ensuing from or in connection with Grantee's occupation and use of the Easement Area and

operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. INSURANCE.

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At the State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. MECHANIC'S LIENS.

- (A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.
- (B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. TAXES/ASSESSMENTS.

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason

of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

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This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

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- (A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.
- (B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.
- (C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the

removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.

- (D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
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All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

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- (a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning

4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

- (b) with respect to Agency, addressed to:
Ohio University
Office of Real Estate
1 Ohio University
Athens, Ohio 45701
Attention: Director of Real Estate

and,

- (c) with respect to Grantee, addressed to:
City of Athens
8 East Washington Street, Ste 301
Athens, Ohio 45701
Attention: Service Safety Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

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The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

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Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

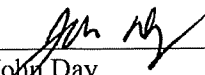
Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

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It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by Ohio University.

By:  Date: 5-1-24
John Day
Interim Vice President of Finance and Administration

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By:



Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this 14th day of May, 2024, before me personally appeared Kathleen C. Madden who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.



Molly Elkins
Notary Public, State of Ohio
My Commission Expires 10-04-27


Notary Public, State of Ohio
My Commission Expires: 10/4/27

GRANTEE
City of Athens

By: 
Andy Stone

Title: Service Safety Director

APPROVED AS TO FORM
City of Athens, Ohio
Department of Law

By:


Lisa Eliason, City Law Director

ACKNOWLEDGMENT

State of Ohio, Athens County, ss:

On this 26 day of March, 2024, the foregoing instrument was acknowledged before me by Andy Stone, Service Safety Director of City of Athens, a body politic. Andy Stone acknowledges that he executed the foregoing instrument, that the same is his free and voluntary act and deed, and that he is duly authorized to enter into this instrument for and on behalf of the City of Athens.


Notary Public, State of Ohio
My Commission Expires January 8, 2027



TONYA L. BAKER
Notary Public
State of Ohio
My Comm. Expires
January 8, 2027

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

Exhibit "A"



buckleygroup
exploring • creating

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckleygroup

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

Situated in Athens Township, Athens County, State of Ohio

Being a 20 foot wide Easement located in part Section 15, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens, Athens Township, Athens County, State of Ohio and being part of a parcel as conveyed to Ohio University by Senate Bill 363 and being 10 foot each side and parallel of the following centerline particularly described as follows:

Point of Beginning being a point on the southerly right of way line of West Union, a variable width right of way, and the northerly line of said State of Ohio parcel, from which the calculated southeast corner of Lot 1208 of John C. Campbell's Fairfield Addition as platted in Envelope 175B of said county plat records, bears N 56° 40' 59" E, 170.30 feet for reference;

Thence, S 10° 00' 44" E a distance of 46.02 feet to a point;
Thence, S 33° 00' 25" E a distance of 24.66 feet to a point;
Thence, S 43° 32' 02" E a distance of 52.45 feet to a point;
Thence, S 48° 58' 33" E a distance of 107.62 feet to a point;
Thence, S 53° 38' 24" E a distance of 132.44 feet to a point;
Thence, S 57° 28' 54" E a distance of 263.58 feet to a point;
Thence, S 52° 22' 09" E a distance of 390.27 feet to a point;
Thence, S 48° 29' 14" E a distance of 359.54 feet to a point of terminus, being a point on the westerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676



Exhibit "A"
(Continued)



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engineering • surveying

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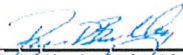
Point of Beginning being a point on the southerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 51° 00' 01" E, 990.31 feet for reference;

Thence, S 33° 26' 32" E a distance of 27.74 feet to a point;
Thence, S 40° 38' 51" E a distance of 27.71 feet to a point;
Thence, S 50° 35' 16" E a distance of 26.51 feet to a point;
Thence, S 54° 13' 41" E a distance of 78.31 feet to a point;
Thence, S 54° 37' 23" E a distance of 232.70 feet to a point;
Thence, S 54° 31' 01" E a distance of 231.80 feet to a point;
Thence, S 55° 15' 22" E a distance of 53.52 feet to a point;
Thence, S 64° 13' 44" E a distance of 26.55 feet to a point;
Thence, S 71° 45' 11" E a distance of 51.88 feet to a point of terminus;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

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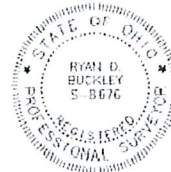


Exhibit "A"
(Continued)



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Point of Beginning being a point on the southerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 9° 34' 03" E, 1017.64 feet for reference;

Thence, S 55° 50' 42" E a distance of 107.25 feet to a point;
Thence, S 54° 20' 04" E a distance of 132.09 feet to a point;
Thence, S 62° 09' 25" E a distance of 101.66 feet to a point;
Thence, S 72° 29' 09" E a distance of 42.55 feet to a point of terminus, being a point on the westerly line of a 20.35 acre parcel as conveyed to Sheltering Arms Hospital Foundation by deed recorded in Volume 277 at Page 648 of said county deed records;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


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Exhibit "A"
(Continued)



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Point of Beginning being a point on the southerly line of a 20.35 acre parcel as conveyed to Sheltering Arms Hospital Foundation by deed recorded in Volume 277 at Page 648 of said county deed records, from which the calculated northeast corner Out Lot 89, bears N 8° 22' 27" W, 1548.70 feet for reference;;

Thence, S 58° 19' 01" E a distance of 101.57 feet to a point;
Thence, S 54° 24' 52" E a distance of 101.07 feet to a point;
Thence, S 52° 18' 28" E a distance of 131.00 feet to a point;
Thence, S 50° 38' 08" E a distance of 208.13 feet to a point;
Thence, S 51° 12' 41" E a distance of 160.12 feet to a point;
Thence, S 48° 52' 51" E a distance of 183.14 feet to a point;
Thence, S 49° 20' 32" E a distance of 310.49 feet to a point;
Thence, S 49° 41' 06" E a distance of 320.85 feet to a point;
Thence, S 50° 30' 50" E a distance of 321.89 feet to a point;
Thence, S 49° 54' 05" E a distance of 391.54 feet to a point;
Thence, S 46° 26' 00" E a distance of 74.57 feet to a point;
Thence, S 51° 25' 49" E a distance of 204.50 feet to a point;
Thence, S 83° 59' 48" E for a distance of 42.65 feet, to point of terminus, being a point on the westerly right of way of Richland Avenue, a variable width right of way.

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676



Exhibit "B"
(Continued)

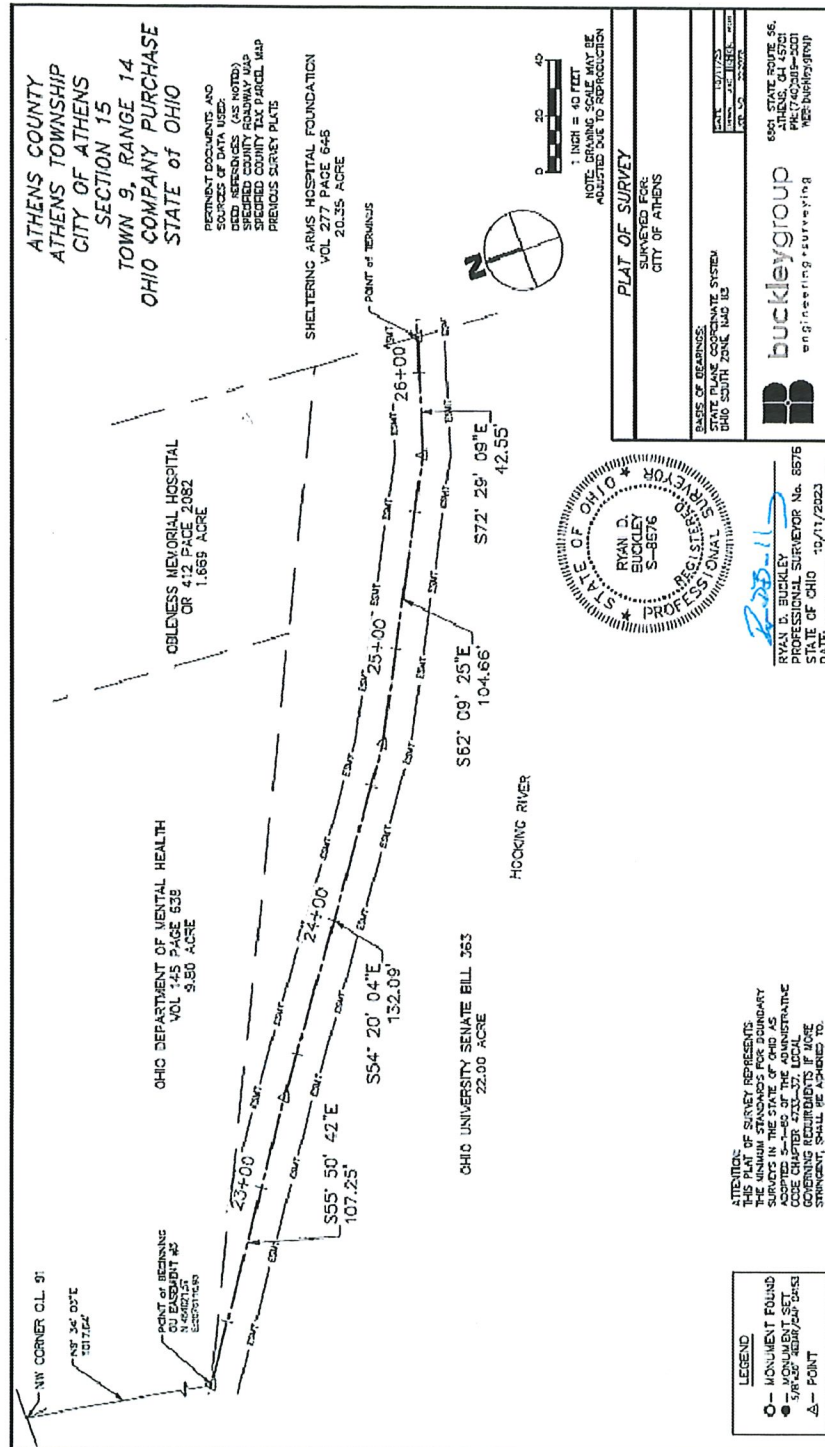
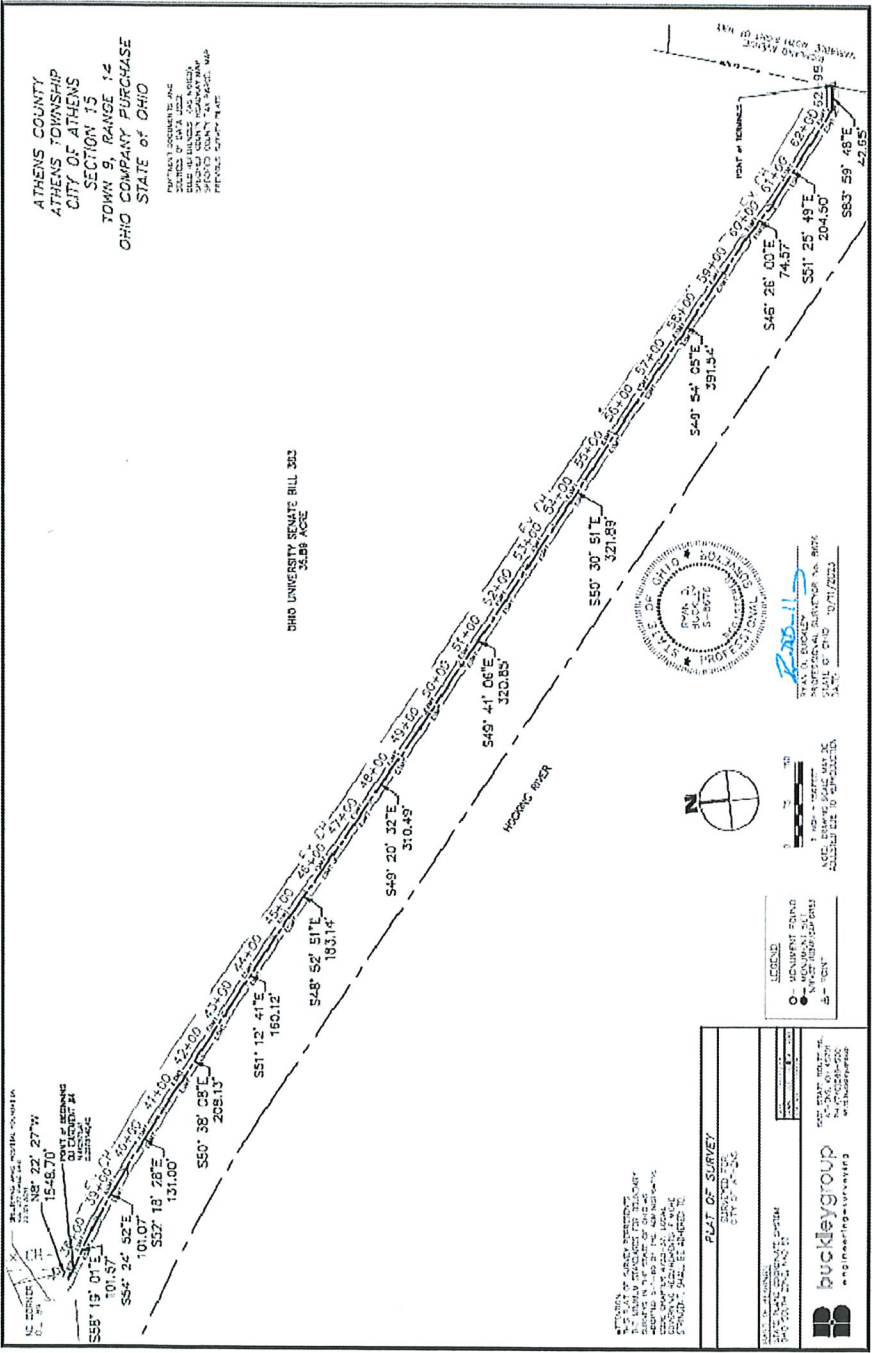


Exhibit "B"
(Continued)



**Office of Code Enforcement and
Community Development**

28 Curran Drive
Athens, OH 45701
(740)592-3306
(740)594-6304 Fax
<http://www.ci.athens.oh.us>



City of Athens
ATHENS, OHIO

August 5th, 2024

Memorandum

To: City Council
From: David Riggs
RE: Proposed Revisions to Title 25 – Flood Damage Prevention
CC: Andy Stone
Steve Patterson

The Federal Emergency Management Agency and the Ohio Department of Natural Resources require communities that are participating in the FEMA Flood Insurance Program to periodically update local floodplain legislation to meet State and Federal requirements. In addition to the revisions to Title 25, the City of Athens will need to adopt an updated Flood Insurance Study and Flood Insurance Rate Map that will become effective September 26th, 2024.

The changes required to Title 25 are generally minor; updating and refining definitions, updating state and federal code references, etc. Other changes include reducing the expiration of permits from 1 year to 180 days and requiring projects with state and federal funding to comply with the Title 25 requirements.

Sections 25.04.10 through 25.04.14 are optional requirements to Title 25. These requirements tend to be overly burdensome to property owners and do little to improve the flood carrying capacity within the City. These requirements have been removed in the updated changes.

The city currently has one physical map of the pending floodplain for the City of Athens. We will receive additional copies prior to adoption. Residents will have difficulty determining if their property flood zone has changed through this physical map. The best way to determine what changes residents' properties will undergo is by using FEMA's flood map service center website. The website is a little difficult to maneuver as the effective map and the pending floodplain map need to both be shown. The link to FEMA's floodplain mapping center is:

<https://msc.fema.gov/portal/home>

Click the "Search All Products" link and then select "Pending Products" to see the new FIS. If residents have floodplain questions they should contact the Athens City Code Office for assistance.

0-48-24

Introduced by Micah McCarey, Chair
City & Safety Services Committee

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 25, FLOOD DAMAGE PREVENTION, CHAPTER 25.01, GENERAL PROVISIONS, SECTION 25.01.07, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD; **AND DECLARING AN EMERGENCY.**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code Title 25, Flood Damage Prevention, **Chapters 25.01, General Provisions, 25.02, Definitions; 25.03, Administration; 25.04, Use and Development Standards for Flood Hazard Reduction; 25.05, Appeals and Variances; and 25.06, Enforcement.** Section 25.01.07, Basis for Establishing the Areas of Special Flood Hazard, is hereby amended to read as follows:

~~25.01.07. Basis for establishing the areas of special flood hazard.~~

~~For the purposes of these regulations, the following studies and/or maps are adopted:~~

~~(A) Flood Insurance Rate Map for Athens County, Ohio and Incorporated Areas, effective December 18, 2009 **September 26, 2024.**~~

~~Flood Insurance Study for Athens County, Ohio and Incorporated Areas, effective December 18, 2009 **September 26, 2024.**~~

~~(B) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard include:~~

~~Appalachian Flood Risk Reduction Initiative (AFRRI) Flood Risk Study for the City of Athens, Ohio, effective February 2004 and revised March 2007, issued by the Ohio Department of Natural Resources, Division of Water, Floodplain Management Program.~~

~~"City of Athens Higher Risk Floodplain Boundaries" Map, adopted on Sept. 21, 2009.~~

~~(C) Any hydrologic and hydraulic engineering analysis authored by a registered professional engineer in the State of Ohio which has been approved by the City of Athens, Ohio, as required by Chapter [Section] 25.04.03 Subdivisions and large scale developments.~~

~~Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the city building, 8 East Washington Street, Athens, Ohio, 45701.~~

~~SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.~~ **This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to continue to provide efficient delivery of services, and it shall be in full force and effect upon its passage and approval by the Mayor.**

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

Title 25

Flood Damage Prevention

Chapter 25.01. General Provisions

25.01.01. Title.

This title shall be known as the "Flood Damage Prevention Title of the City of Athens, Ohio," hereinafter referred to as "this title," or "these regulations."

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.02. Statutory authorization.

Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the City Council of Athens, State of Ohio, does ordain as follows:

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.03. Findings of fact.

The City of Athens, Ohio, has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.04. Statement of purpose.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
- (G) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (H) Minimize the impact of development on adjacent properties within and near floodprone areas;

-
- (I) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
 - (J) Minimize the impact of development on the natural, beneficial values of the floodplain;
 - (K) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
 - (L) Meet community participation requirements of the National Flood Insurance Program.
- (Ord. No. 0-100-09, § I, 9-12-2009)

25.01.05. Methods of reducing flood loss.

In order to accomplish its purposes, these regulations include methods and provisions for:

- (A) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (B) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (D) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and
- (E) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.06. Lands to which these regulations apply.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Athens, Ohio, as identified in Section 25.01.07, including any additional areas of special flood hazard annexed by the City of Athens, Ohio.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.07. Basis for establishing the areas of special flood hazard.

For the purposes of these regulations, the following studies and/or maps are adopted:

- (A) ~~Flood Insurance Rate Map for Athens County, Ohio and Incorporated Areas, effective December 18, 2009.~~
~~Flood Insurance Study for Athens County, Ohio and Incorporated Areas, effective December 18, 2009.~~
FLOOD INSURANCE RATE MAP (FIRM) AND FLOOD INSURANCE STUDY (FIS) FOR ATHENS COUNTY, OHIO AND INCORPORATED AREAS, BOTH EFFECTIVE SEPTEMBER 26, 2024.
- (B) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard include:

Appalachian Flood Risk Reduction Initiative (AFRRI) Flood Risk Study for the City of Athens, Ohio, effective February 2004 and revised March 2007, issued by the Ohio Department of Natural Resources, Division of Water, Floodplain Management Program.

"City of Athens Higher Risk Floodplain Boundaries" Map, adopted on Sept. 21, 2009.

- (C) Any hydrologic and hydraulic engineering analysis authored by a registered professional engineer in the State of Ohio which has been approved by the City of Athens, Ohio, as required by Chapter [Section] 25.04.03 Subdivisions and large scale developments.

Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the city building, 8 East Washington Street, Athens, Ohio, 45701.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.08. Abrogation and greater restrictions.

These regulations are not intended to repeal any existing ordinances including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. ~~These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.~~ **THESE REGULATIONS ARE NOT INTENDED TO REPEAL, ABROGATE OR IMPAIR ANY EXISTING EASEMENTS, COVENANTS OR DEED RESTRICTIONS. HOWEVER, WHERE THIS ORDINANCE AND ANOTHER ORDINANCE, EASEMENT, COVENANT OR DEED RESTRICTION CONFLICT OR OVERLAP, WHICHEVER IMPOSES THE MORE STRINGENT RESTRICTIONS SHALL PREVAIL.**

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.09. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.10. Warning and disclaimer of liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Athens, Ohio, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.11. Severability.

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.02. Definitions

25.02.01. [Definitions.]

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

"Accessory structure." A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

"Appeal." A request for review of the floodplain administrator's interpretation of any provision of these regulations or a request for a variance.

"Base flood." The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the one percent chance annual flood or 100-year flood.

"Base (100-year) flood elevation (BFE)." The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in feet mean sea level (MSL). In Zone AO areas, the base flood elevation is the **LOWEST ADJACENT** natural grade elevation plus the depth number (from one to three feet).

"Basement." Any area of the building having its floor subgrade (below ground level) on all sides.

"Development." Any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Enclosure below the lowest floor." See "Lowest floor."

"Executive order 11988 (floodplain management)." Issued by President Carter in 1977, this order requires that no federally-assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

"Federal Emergency Management Agency (FEMA)." The agency with the overall responsibility for administering the National Flood Insurance Program.

"Fill." A deposit of earth material placed by artificial means.

"Flood" or "Flooding." A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood hazard boundary map (FHBM)." Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

"Flood insurance rate map (FIRM)." An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

"Flood insurance risk zones." Zone designations on FHBMS and FIRMS that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

"Zone A:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; base flood elevations are not determined.

"Zones A1—30 and Zone AE:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; base flood elevations are determined.

"Zone AO:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; with flood depths of one to three feet (usually sheet flow on sloping terrain); average depths are determined.

"Zone AH:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; flood depths of one to three feet (usually areas of ponding); base flood elevations are determined.

"Zone A99:" Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a federal flood protection system under construction; no base flood elevations are determined.

"Zone B" and "Zone X (shaded):" Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected by levees from the base flood.

"Zone C" and "Zone X (unshaded):" Areas determined to be outside the 500-year floodplain.

"Flood insurance study (FIS)." The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on flood boundary and floodway maps), and the water surface elevations of the base flood.

"FLOODPROOFING" ANY COMBINATION OF STRUCTURAL AND NON-STRUCTURAL ADDITIONS, CHANGES, OR ADJUSTMENTS TO STRUCTURES WHICH REDUCE OR ELIMINATE FLOOD DAMAGE TO REAL ESTATE OR IMPROVED REAL PROPERTY, WATER AND SANITARY FACILITIES, STRUCTURES AND THEIR CONTENTS.

"Flood protection elevation." The flood protection elevation, or FPE, is the base flood elevation plus one foot of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the floodplain administrator.

"Floodway." A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community.

The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity floodwaters, high potential for debris and projectile impacts, and moderate to high erosion forces.

"Freeboard." A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

"Historic structure." Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;

-
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
 - (3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
 - (4) Individually listed on the inventory of historic places maintained by the City of Athens, Ohio's historic preservation program, which program is certified by the Ohio Historic Preservation Office.

"Hydraulic connection." Hydraulic connection is generally defined as a condition where water from one location can reach another location through pervious subsurface geologies in a relatively rapid manner. Two sites with a hydraulic connection between them are considered to be hydraulically connected.

"Hydrologic" and "hydraulic engineering analysis." An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

"Letter of map change (LOMC)." A letter of map change is an official FEMA determination, by letter, to amend or revise effective flood insurance rate maps, flood boundary and floodway maps, and flood insurance studies. LOMCS are broken down into the following categories:

"Letter of map amendment (LOMA)." A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

"Letter of map revision (LOMR)." A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.

"Conditional letter of map revision (CLOMR)." **A COMMENT BY FEMA REGARDING A PROPOSED PROJECT THAT WOULD, UPON CONSTRUCTION, AFFECT THE HYDROLOGIC OR HYDRAULIC CHARACTERISTICS OF A FLOODING SOURCE AND THUS RESULT IN THE MODIFICATION OF THE EXISTING REGULATORY FLOODWAY, THE EFFECTIVE BASE FLOOD ELEVATIONS, OR THE SPECIAL FLOOD HAZARD AREA. A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria.** A CLOMR does not amend or revise effective flood insurance rate maps, flood boundary and floodway maps, or flood insurance studies.

"Lowest floor." The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

"Manufactured home." A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle." For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 3733 of the ORC.

"Manufactured home park." As specified in the **OAC 3701-27-01 OHIO ADM. CODE 4781-12-01(K)**, a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured

homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. **MANUFACTURED HOME PARK DOES NOT INCLUDE ANY TRACT OF LAND USED SOLELY FOR THE STORAGE OR DISPLAY FOR SALE OF MANUFACTURED HOMES.**

"Market value." Any of the following:

- (1) Sale price of the property within last five years;
- (2) Professional appraisal;
- (3) Auditor's appraised (true) value.

"MEAN SEA LEVEL." FOR PURPOSES OF THE NATIONAL FLOOD INSURANCE PROGRAM, THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929 OR OTHER DATUM, TO WHICH BASE FLOOD ELEVATIONS SHOWN ON A COMMUNITY'S FLOOD INSURANCE RATE MAP ARE REFERENCED.

"National Flood Insurance Program (NFIP)." The NFIP is a federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the federal government will make flood insurance available within the community as a financial protection against flood loss.

"New construction." ~~Structures for which the "start of construction" commenced on or after the initial effective date of the City of Athens, Ohio, Flood Insurance Rate Map, March 28, 1980, and includes any subsequent improvements to such structures.~~ **STRUCTURES FOR WHICH THE "START OF CONSTRUCTION" COMMENCED ON OR AFTER THE EFFECTIVE DATE OF A FLOODPLAIN REGULATION ADOPTED BY THE CITY OF ATHENS AND INCLUDES ANY SUBSEQUENT IMPROVEMENTS TO SUCH STRUCTURES.**

FOR THE PURPOSES OF DETERMINING INSURANCE RATES, STRUCTURES FOR WHICH THE "START OF CONSTRUCTION" COMMENCED ON OR AFTER THE EFFECTIVE DATE OF AN INITIAL FIRM [MARCH 28, 1980] AND INCLUDES ANY SUBSEQUENT IMPROVEMENTS TO SUCH STRUCTURES.

"Ordinary high water mark." The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. the ordinary high water mark defines the bed of a watercourse.

"Person." Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the the **ORC Section 111.15 OHIO REV. CODE SECTION 111.15(A)(2)** as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

"Recreational vehicle." A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Registered professional architect." A person registered to engage in the practice of architecture ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4703.01 to 4703.19 ~~of the ORC.~~

"Registered professional engineer." A person registered as a professional engineer ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4733 ~~of the ORC.~~

"Registered professional surveyor." A person registered as a professional surveyor ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4733 ~~of the ORC.~~

"Riparian area." Naturally vegetated land adjacent to streams that, if appropriately sized, helps to stabilize stream banks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.

"Riparian setback." The real property adjacent to a designated stream located in the area defined by the criteria set forth in this regulation.

"Routine maintenance" includes, but is not limited to, replacing roofing, windows or appliances, painting and basement sealing, or for small development activities (except for filling and grading) valued at less than \$5,000.00.

"Special flood hazard area." Also known as "areas of special flood hazard," it is the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on flood insurance rate maps, flood insurance studies, flood boundary and floodway maps and flood hazard boundary maps as Zones A, AE, AH, AO, A1—30, and A99. Special flood hazard areas may also refer to areas that are floodprone and designated from other federal state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and floodprone soils associated with a watercourse.

"Start of construction." The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

"Stream." A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water (O.R.C. 6105.01) in such a way that terrestrial vegetation cannot establish roots within the channel.

"Structure." A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

"Substantial damage." Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement." Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. Substantial improvement also includes improvements to a structure on one or more occasions during a five-year period for which the cumulative cost of the improvements equals or exceeds 50 percent of the market value of the structure, before the improvement was performed. This term includes

structures, which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include:

~~(1) Any improvement to a structure that is considered "new construction;"~~

- (21) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
- (32) Any alteration of a "historic structure," provided that the alteration would not preclude the structure's continued designation as a "historic structure;"
- (43) Routine maintenance.

"Variance." A grant of relief from the standards of these regulations ~~consistent with the variance conditions herein.~~

"Violation." The failure of a structure or other development to be fully compliant with these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009; Ord. No. 0-77-11, § I, 7-18-2011)

Chapter 25.03. Administration

25.03.01. Designation of the floodplain administrator.

The service-safety director of the city or their designee is hereby appointed to administer and implement these regulations and is referred to herein as the "floodplain administrator."

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.03.02. Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include but are not limited to:

- (A) Evaluate applications for permits to develop in special flood hazard areas.
- (B) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (C) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
- (D) Inspect buildings and lands to determine whether any violations of these regulations have been committed.
- (E) Make and permanently keep all records for public inspection necessary for the administration of these regulations including flood insurance rate maps, letters of map amendment and revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, **FLOODPROOFING CERTIFICATES**, variances, and records of enforcement actions taken for violations of these regulations.
- (F) Enforce the provisions of these regulations.
- (G) Provide information, testimony, or other evidence as needed during variance hearings.
- (H) Coordinate map maintenance activities and FEMA follow-up.

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- (l) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.03. Floodplain development permits.

It shall be unlawful for any person to begin construction or other development activity including, but not limited to, filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section 25.01.07, until a floodplain development permit is obtained from the floodplain administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the floodplain administrator until the requirements of these regulations have been met. All departments, officials, and public employees of the city who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter and shall issue no permit or license for any use, development, or purpose in conflict with the provisions of this chapter. Any permit or license that is issued in conflict with the provisions of this chapter shall be null and void.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.04. Application required.

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or their authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished by the code enforcement office and on the city website for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the floodplain administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

- (A) Duplicate site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing in relation to the channel, the floodway, and the flood protection elevation.
- (B) Elevation of the existing, natural ground where structures are proposed.
- (C) Elevation of the lowest floor, including basement, of all proposed structures.
- (D) Such other material and information as may be requested by the floodplain administrator to determine conformance with, and provide enforcement of these regulations.
- (E) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:
 - (1) Floodproofing certification for nonresidential floodproofed structure as required in Section 25.04.05.
 - (2) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of subsection 25.04.04(E) are designed to automatically equalize hydrostatic flood forces.

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- (3) Description of any watercourse alteration or relocation that the flood-carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in subsection 25.04.09(C).
 - (4) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by subsection 25.04.09(B).
 - (5) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by subsection 25.04.09(A).
 - (6) Generation of base flood elevation(s) for subdivision and ~~large-scale~~ **OTHER NEW** developments as required by Section 25.04.03.
- (F) A floodplain development permit application fee is due upon application. The fee is established by separate ordinance [0-55-08].

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.03.05. Review and approval of a floodplain development permit application.

(A) Review.

- (1) After receipt of a complete application, the floodplain administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in Section 25.03.04 has been received by the floodplain administrator.
- (2) The floodplain administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

- (B) Approval. Within 30 days after the receipt of a complete application, the floodplain administrator shall either approve or disapprove the application. **IF THE FLOODPLAIN ADMINISTRATOR IS SATISFIED THAT THE DEVELOPMENT PROPOSED IN THE FLOODPLAIN DEVELOPMENT APPLICATION CONFORMS TO THE REQUIREMENTS OF THIS ORDINANCE, THE FLOODPLAIN ADMINISTRATOR SHALL ISSUE THE PERMIT. ALL FLOODPLAIN DEVELOPMENT PERMITS SHALL BE CONDITIONAL UPON THE COMMENCEMENT OF WORK WITHIN 180 DAYS. A FLOODPLAIN DEVELOPMENT PERMIT SHALL EXPIRE 180 DAYS AFTER ISSUANCE UNLESS THE PERMITTED ACTIVITY HAS BEEN SUBSTANTIALLY BEGUN AND IS THEREAFTER PURSUED TO COMPLETION.** ~~If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one year. A floodplain development permit shall expire one year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.06. Inspections.

The floodplain administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.07. Post-construction certifications required.

The following as-built certifications are required after a floodplain development permit has been issued:

- (A) For new or substantially-improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered **PROFESSIONAL** surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.
- (B) For all development activities subject to the standards of subsection 25.03.10(A), a letter of map revision.
- (C) **FOR NEW OR SUBSTANTIALLY IMPROVED NONRESIDENTIAL STRUCTURES THAT HAVE BEEN FLOODPROOFED IN LIEU OF ELEVATION, WHERE ALLOWED, THE APPLICANT SHALL SUPPLY A COMPLETED FLOODPROOFING CERTIFICATE FOR NON-RESIDENTIAL STRUCTURES COMPLETED BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT TOGETHER WITH ASSOCIATED DOCUMENTATION.**

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.08. Revoking a floodplain development permit.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the board of zoning appeals in accordance with Chapter 25.05 of these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.09. Exemption from filing a development permit.

An application for a floodplain development permit shall not be required for **MAINTENANCE WORK SUCH AS ROOFING, PAINTING, AND BASEMENT SEALING, OR FOR SMALL NONSTRUCTURAL DEVELOPMENT ACTIVITIES (EXCEPT FOR FILLING AND GRADING) VALUED AT LESS THAN \$2500.**

~~(A) Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than \$5,000.00.~~

~~(B) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the OAC Section 3701.~~

~~(C) Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the ORC.~~

~~(D) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the ORC.~~

~~(E) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988—Floodplain Management.~~

~~Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.10. STATE AND FEDERAL DEVELOPMENT.

A. DEVELOPMENT THAT IS FUNDED, FINANCED, UNDERTAKEN, OR PREEMPTED BY STATE AGENCIES SHALL COMPLY WITH MINIMUM NFIP CRITERIA.

B. BEFORE AWARDING FUNDING OR FINANCING OR GRANTING A LICENSE, PERMIT, OR OTHER AUTHORIZATION FOR A DEVELOPMENT THAT IS OR IS TO BE LOCATED WITHIN A 100-YEAR FLOODPLAIN, A STATE AGENCY SHALL REQUIRE THE APPLICANT TO DEMONSTRATE TO THE SATISFACTION OF THE AGENCY THAT THE DEVELOPMENT WILL COMPLY WITH MINIMUM NFIP CRITERIA AND ANY APPLICABLE LOCAL FLOODPLAIN MANAGEMENT RESOLUTION OR ORDINANCE AS REQUIRED BY OHIO REVISED CODE SECTION 1521.13. THIS INCLUDES, BUT IS NOT LIMITED TO:

- 1. DEVELOPMENT ACTIVITIES IN AN EXISTING OR PROPOSED MANUFACTURED HOME PARK THAT ARE UNDER THE AUTHORITY OF THE OHIO DEPARTMENT OF COMMERCE AND SUBJECT TO THE FLOOD DAMAGE REDUCTION PROVISIONS OF THE OHIO ADMINISTRATIVE CODE SECTION 4781-12.**
- 2. MAJOR UTILITY FACILITIES PERMITTED BY THE OHIO POWER SITING BOARD UNDER SECTION 4906 OF THE OHIO REVISED CODE.**
- 3. HAZARDOUS WASTE DISPOSAL FACILITIES PERMITTED BY THE HAZARDOUS WASTE SITING BOARD UNDER SECTION 3734 OF THE OHIO REVISED CODE.**

C. DEVELOPMENT ACTIVITIES UNDERTAKEN BY A FEDERAL AGENCY AND WHICH ARE SUBJECT TO FEDERAL EXECUTIVE ORDER 11988 – FLOODPLAIN MANAGEMENT.

- 1. EACH FEDERAL AGENCY HAS A RESPONSIBILITY TO EVALUATE THE POTENTIAL EFFECTS OF ANY ACTIONS IT MAY TAKE IN A FLOODPLAIN; TO ENSURE THAT ITS PLANNING PROGRAMS AND BUDGET REQUEST REFLECT CONSIDERATION OF FLOOD HAZARDS AND FLOODPLAIN MANAGEMENT; AND TO PRESCRIBE PROCEDURES TO IMPLEMENT THE POLICIES AND REQUIREMENTS OF EO 11988.**

25.03.101. Map maintenance activities.

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Athens, Ohio's flood maps, studies and other data identified in Section 25.01.07 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(A) Requirement to submit new technical data.

- (1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within

six months of the date such information becomes available. These development proposals include:

- a. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
 - b. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
 - c. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
 - d. Subdivision or **OTHER NEW** ~~large-scale~~ development proposals requiring the establishment of base flood elevations in accordance with Section 25.04.03.
- (2) It is the responsibility of the applicant to have technical data, required in accordance with subsection 25.03.10(A), prepared in a format required for a conditional letter of map revision or letter of map revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (3) The floodplain administrator shall require a conditional letter of map Revision prior to the issuance of a floodplain development permit for:
- a. Proposed floodway encroachments that increase the base flood elevation; and
 - b. Proposed development which increases the base flood elevation by more than one foot in **RIVERINE** areas where FEMA has provided base flood elevations but no floodway.
- (4) Floodplain development permits issued by the floodplain administrator shall be conditioned upon the applicant obtaining a letter of map revision from FEMA for any development proposal subject to subsection 25.03.10(A)(1).
- (B) Right to submit new technical data. The floodplain administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Athens, Ohio, and may be submitted at any time.
- (C) Annexation/detachment. Upon occurrence, the floodplain administrator shall notify FEMA in writing whenever the boundaries of the City of Athens, Ohio, have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the city's flood insurance rate map accurately represent the city boundaries, include within such notification a copy of a map of the city suitable for reproduction, clearly showing the new corporate limits or the new area for which the city has assumed or relinquished floodplain management regulatory authority.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.112. Data use and flood map interpretation.

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

- (A) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

- (B) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the floodplain administrator.

~~(C) When preliminary flood insurance rate maps and/or flood insurance study have been provided by FEMA:~~

~~(1) Upon the issuance of a letter of final determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.~~

~~(2) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.~~

- (DC) The floodplain administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Chapter 25.05, "Appeals and variances."

~~(ED) WHERE AN EXISTING OR PROPOSED STRUCTURE OR OTHER DEVELOPMENT IS AFFECTED BY MULTIPLE FLOOD ZONES, BY MULTIPLE BASE FLOOD ELEVATIONS, OR BOTH, THE DEVELOPMENT ACTIVITY MUST COMPLY WITH THE PROVISIONS OF THIS ORDINANCE APPLICABLE TO THE MOST RESTRICTIVE FLOOD ZONE AND THE HIGHEST BASE FLOOD ELEVATION AFFECTING ANY PART OF THE EXISTING OR PROPOSED STRUCTURE; OR FOR OTHER DEVELOPMENTS, AFFECTING ANY PART OF THE AREA OF THE DEVELOPMENT. Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.13. USE OF PRELIMINARY FLOOD INSURANCE RATE MAP AND/OR FLOOD INSURANCE STUDY DATA.

A. ZONE A:

1. WITHIN ZONE A AREAS DESIGNATED ON AN EFFECTIVE FIRM, DATA FROM THE PRELIMINARY FIRM AND/OR FIS SHALL REASONABLY UTILIZED AS BEST AVAILABLE DATA.

2. WHEN ALL APPEALS HAVE BEEN RESOLVED AND A NOTICE OF FINAL FOOD ELEVATION DETERMINATION HAS BEEN PROVIDED IN A LETTER OF FINAL DETERMINATION (LFD), BFE AND FLOODWAY DATA FROM THE PRELIMINARY FIRM AND/OR FIS SHALL BE USED FOR REGULATING DEVELOPMENT.

B. ZONES AE, A1-30, AH, AND AO:

1. BFE AND FLOODWAY DATA FROM A PRELIMINARY FIS OR FIRM RESTUDY ARE NOT REQUIRED TO BE USED IN LIEU OF BFE AND FLOODWAY DATA CONTAINED IN AN EXISTING EFFECTIVE FIS AND FIRM. HOWEVER,

A. WHERE BFES INCREASE IN A RESTUDIED AREA, COMMUNITIES HAVE THE RESPONSIBILITY TO ENSURE THAT NEW OR SUBSTANTIALLY IMPROVED STRUCTURES ARE PROTECTED. COMMUNITIES ARE ENCOURAGED TO REASONABLY UTILIZE

PRELIMINARY FIS OR FIRM DATA IN INSTANCES WHERE BFES INCREASE AND FLOODWAYS ARE REVISED TO ENSURE THAT THE HEALTH, SAFETY, AND PROPERTY OF THEIR CITIZENS ARE PROTECTED.

B. WHERE BFES DECREASE, PRELIMINARY FIS OR FIRM DATA SHOULD NOT BE USED TO REGULATE FLOODPLAIN DEVELOPMENT UNTIL THE LFD HAS BEEN ISSUED OR UNTIL ALL APPEALS HAVE BEEN RESOLVED.

2. IF A PRELIMINARY FIRM OR FIS HAS DESIGNATED FLOODWAYS WHERE NONE HAD PREVIOUSLY EXISTED, COMMUNITIES SHOULD REASONABLY UTILIZE THIS DATA IN LIEU OF APPLYING THE ENCROACHMENT PERFORMANCE STANDARD OF SECTION 4.9(B) SINCE THE DATA IN THE DRAFT OR PRELIMINARY FIS REPRESENTS THE BEST DATA AVAILABLE.

C. ZONES B, C, AND X:

1. USE OF BFE AND FLOODWAY DATA FROM A PRELIMINARY FIRM OR FIS ARE NOT REQUIRED FOR AREAS DESIGNATED AS ZONE B, C, OR X ON THE EFFECTIVE FIRM WHICH ARE BEING REVISED TO ZONE AE, A1-30, AH, AO, VE, OR V1-30. COMMUNITIES ARE ENCOURAGED TO REASONABLY UTILIZE PRELIMINARY FIS OR FIRM DATA TO ENSURE THAT THE HEALTH, SAFETY, AND PROPERTY OF THEIR CITIZENS ARE PROTECTED.

25.03.124. Substantial damage determinations.

Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the floodplain administrator shall:

- (A) Determine whether damaged structures are located in special flood hazard areas;
- (B) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
- (C) **REQUIRE OWNERS OF SUBSTANTIALLY DAMAGED STRUCTURES TO OBTAIN A FLOODPLAIN DEVELOPMENT PERMIT PRIOR TO REPAIR, REHABILITATION, OR RECONSTRUCTION.**~~Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.~~

Additionally, the floodplain administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with increased cost of compliance insurance claims.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.04. Use and Development Standards for Flood Hazard Reduction

Note(s)—The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in Section 25.01.07 or 25.03.112(A), **25.03.13.**

25.04.01. Use regulations.

- (A) Permitted uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Athens, Ohio, are allowed provided they meet the provisions of these regulations.

~~(B) Prohibited uses:~~

- ~~(1) Private water supply systems in all special flood hazard areas identified by FEMA, permitted under Section 3701 of the ORC.~~
- ~~(2) Infectious waste treatment facilities in all special flood hazard areas, permitted under Section 3734 of the ORC.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.02. Water and wastewater systems.

The following standards apply to all water supply, sanitary sewerage and waste disposal systems ~~not otherwise regulated by the ORC~~ **IN THE ABSENCE OF ANY MORE RESTRICTIVE STANDARD PROVIDE UNDER THE OHIO REVISED CODE OR APPLICABLE STATE RULES:**

- (A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
- (B) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (C) Onsite waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.03. Subdivisions and ~~large~~ **OTHER NEW** developments.

- (A) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations as well as the standards in Athens City Subdivision Regulations, Sections 21.04.03 "Suitability of land" and 21.04.17, "Drainage."
- (B) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **OR ELIMINATE** flood damage.
- (C) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall have adequate drainage provided to reduce exposure to flood damage.
- (D) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or five acres, whichever is less.
- (E) The applicant shall meet the requirement to submit technical data to FEMA in subsection 25.03.10(A)(1)d. when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by subsection 25.04.03(D).
- ~~(F) All proposals for residential subdivisions, including those for manufactured home subdivisions, shall include provisions for a buildable area on each lot to be elevated (naturally or by means of fill) to the base flood level prior to sale of the lot. All lots must meet the compensatory storage requirements in Section 25.04.11 when elevating with fill.~~

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- ~~(G) For subdivisions or portions of subdivisions within the 20-year floodplain, each lot must have a naturally elevated (to the base flood level) buildable area in order for a structure to be erected on it.~~
- ~~(H) For subdivisions or portions of subdivisions within the 20-year floodplain, residential structures are not permitted unless there is access to the structure in the event of a base flood.~~
- ~~(I) Each new nonresidential subdivision with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.04. Residential structures.

THE REQUIREMENTS OF THIS SECTION APPLY TO NEW CONSTRUCTION OF RESIDENTIAL STRUCTURES AND TO SUBSTANTIAL IMPROVEMENTS OF RESIDENTIAL STRUCTURES IN ZONES A, A1-30, AE, AO, AND AH, WHEN DESIGNATED ON THE COMMUNITY'S EFFECTIVE FIRM, AND WHEN DESIGNATED ON A PRELIMINARY OR FINAL FIRM ISSUED BY FEMA UNDER THE CIRCUMSTANCES PROVIDED IN SECTION 25.03.13.

- (A) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (subsection 25.04.04(A)) and construction materials resistant to flood damage (subsection 25.04.04(B)) are satisfied.
- (B) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
- (C) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (D) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. Support structures and other foundation members shall be certified by a registered professional engineer or architect as designed in accordance with ASCE 24, Flood-Resistant Design and Construction.
- (E) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings ~~sufficient to allow unimpeded movement of floodwaters~~ **TO ALLOW THE AUTOMATIC EQUALIZATION OF HYDROSTATIC PRESSURE** may have an enclosure below the lowest floor provided the enclosure meets the following standards:
- (1) Be used only for the parking of vehicles, building access, or storage;
 - (2) Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters;
 - (3) Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 - (4) Upon initial construction or transfer of property, owners are required to sign a nonconversion agreement. The existence of a nonconversion agreement will be filed as a marginal notation on the

deed, and would be a covenant running with the land. The nonconversion agreement can be found at the code enforcement office and on the City of Athens website.

- (F) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- (G) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of Section 25.04.04.

~~(H) Each new residential site with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.05. Nonresidential structures.

THE REQUIREMENTS OF THIS SECTION APPLY TO NEW CONSTRUCTION AND TO SUBSTANTIAL IMPROVEMENTS OF NONRESIDENTIAL STRUCTURES IN ZONES A, A1-30, AE, AO, AND AH, WHEN DESIGNATED ON THE COMMUNITY'S EFFECTIVE FIRM, AND WHEN DESIGNATED ON A PRELIMINARY OR FINAL FIRM ISSUED BY FEMA UNDER THE CIRCUMSTANCES PROVIDED IN SECTION 25.03.13.

- (A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of subsections 25.04.04(A)—(C) and 25.04.04(E)—(G).
- (B) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or together with attendant utility and sanitary facilities, shall meet all of the following standards:
 - (1) Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (3) Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with subsections (B)(1) and (2).

~~(C) Each new nonresidential site with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.06. Accessory structures.

STRUCTURES THAT ARE 600 SQUARE FEET OR LESS WHICH ARE USED FOR PARKING AND STORAGE ONLY ARE EXEMPT FROM ELEVATION OR DRY FLOODPROOFING STANDARDS WITHIN ZONES A, A1-30, AE, AO, AND AH DESIGNATED ON THE COMMUNITY'S FIRM. SUCH STRUCTURES MUST MEET THE FOLLOWING STANDARDS: Relief

~~to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. The floodplain administrator shall inform the applicant for such exemption that construction of such accessory structure without elevating or dry floodproofing to the flood protection elevation level may result in increased insurance premiums. Such structures must meet the following standards:~~

- (A) They shall not be used for human habitation;
- (B) They shall be constructed of flood-resistant materials;
- (C) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
- (D) They shall be firmly anchored to prevent flotation;
- (E) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
- (F) They shall meet the opening requirements of subsection 25.04.04(E)(3).

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.07. Recreational vehicles.

Recreational vehicles **ON SITES WITHIN ZONES A, A1-A30, AE, AO, OR AH** must meet at least one of the following standards:

- (A) They shall not be located on sites in special flood hazard areas for more than 180 days;
- (B) They must be fully licensed and ready for highway use; or
- (C) They must **BE PLACED ON THE SITE PURSUANT TO A FLOODPLAIN DEVELOPMENT PERMIT ISSUED UNDER SECTIONS 3.3 AND 3.4, AND** meet all standards of Section 25.04.04.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.08. ~~Above-ground~~ Gas or liquid storage tanks.

WITHIN ZONE A, A1-A30, AE, AO, OR AH, NEW OR SUBSTANTIALLY IMPROVED-AH aboveground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.09. Assurance of flood-carrying capacity.

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood-carrying capacity of watercourses is minimized:

- (A) Development in floodways.
 - (1) Prohibited uses. The following uses are prohibited from the floodway district, regardless of their effect on flood levels:
 - a. No structure shall be designed, constructed, altered, enlarged, or used for human habitation.

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- b. There shall be no manufacture or storage of materials that are buoyant, flammable, toxic, or explosive.
 - c. Fill is prohibited in the floodway.
Exception: If an existing legal nonconforming structure is substantially damaged, fill may be used to bring an existing basement to original grade as part of bringing the structure into compliance.
- (2) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
- (3) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:
- a. Meet the requirements to submit technical data in subsection 25.03.10(A);
 - b. An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
 - c. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
 - d. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
 - e. Concurrence of the Mayor of the City of Athens, Ohio, and the chief executive officer of any other communities impacted by the proposed actions.
- (4) Floodway nonconforming uses. Any lawful use of land or buildings existing on the effective date of this chapter, and located in a floodway district in which such would not be permitted as a new use under the provisions of this chapter, is hereby declared to be a nonconforming use. Nonconforming uses may be continued, subject to the following conditions:
- a. No such use, nor any structure or premises put to such use, may be expanded or enlarged; nor may such use, structure, or premises be changed or altered in a way which increases the nonconformity.
 - b. If such use is discontinued for 12 or more consecutive months, any future use of the building premises shall conform to this chapter.
 - c. Uses or adjuncts thereof that are declared nuisances shall not be entitled to continue as nonconforming uses.
 - d. Over the lifetime of a nonconforming use, no structural alterations or repairs to any structure that houses such use shall exceed 50 percent of the structure's assessed value at the time of its use becoming a nonconforming use, unless the structure is permanently changed to a conforming use, or unless the degree of nonconformity is significantly reduced as a result of the changes.
 - e. If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its assessed value, it shall not be reconstructed except in conformity with the provisions of this chapter.

(B) Development in riverine areas with base flood elevations but no floodways.

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- (1) In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than one foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or
 - (2) Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:
 - a. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
 - b. Subsections (A)(3)a. and c.—e.
 - (C) Alterations of a watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a federal, state, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:
 - (1) The bankfull flood-carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
 - (2) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
 - (3) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood-carrying capacity will not be diminished. The floodplain administrator may require the permit holder to enter into an agreement with the City of Athens, Ohio, specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
 - (4) The applicant shall meet the requirements to submit technical data in subsection 25.03.10(A)(1)c. when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.10. Fill.

The following standards apply to all fill activities in special flood hazard areas:

- (A) ~~Fill sites, upon which structures will be constructed or placed, must be compacted to 95 percent of the maximum density obtainable with the standard proctor test method or an acceptable equivalent method;~~
- (B) ~~Fill slopes shall not be steeper than one foot vertical to two feet horizontal;~~
- (C) ~~Fill shall be composed of clean granular or earthen material;~~
- (D) ~~Fill shall extend a minimum of 30 feet from the base of the structure to provide access by fire equipment, with a grade not more than two percent for new construction or substantial damage or improvement, on any lots greater than 200 feet wide.~~

(Ord. No. 0-100-09, § 1, 9-12-2009)

25.04.11. Compensatory storage.

Compensatory storage required for fill.

- (A) ~~When fill is used during development on the 20- or 50-year floodplain, prior to issuance of a floodplain development permit, a plan and calculations prepared by a professional engineer shall be submitted for approval. This plan shall be based on a field survey, shall show the existing and proposed grades of the development and compensatory storage areas, and shall be accompanied by calculations which demonstrate that the proposed stage vs. storage volume relationship of the compensatory storage area would meet the storage volume requirements outlined in subsection 25.04.11 (D)–(F) at each stage of the proposed development.~~
- (B) ~~Where the applicant proposes compensatory storage on property owned by others, the applicant shall submit a written agreement between such landowner and the applicant wherein the landowner agrees to convey an easement or other property interest or right to the applicant allowing compensatory storage, and to permanently maintain such area for flood storage purposes.~~
- (C) ~~After the development and compensatory storage areas are complete, an as-built topographic survey of the development area and the compensatory storage area shall be prepared and stamped by a professional surveyor and submitted to the Floodplain Administrator. This survey shall be accompanied by as-built stage vs. storage volume calculations prepared by a professional engineer as described in subsection (A) above.~~
- (D) ~~Twenty-year floodplain:

Lots one acre or larger: development within the special flood hazard area shall result in no net loss of natural floodplain storage. The volume of the loss of floodwater storage due to filling in the special flood hazard area shall be offset by providing an equal or greater volume of permanent flood storage by excavation or other compensatory measures at a hydraulically connected site which is preferably at, adjacent to, or on the opposite side of the stream across from the development area.

Lots smaller than one acre: less than one cubic foot of fill per square foot of property may be imported without compensation.~~
- (E) ~~Fifty-year floodplain:

Lots one acre or larger: less than one-half cubic feet of fill per square foot of property may be imported without compensation.

Lots less than one acre: less than two cubic feet per square foot of property may be imported without compensation.~~

(F) ~~Parking lots within the special flood hazard area (20-, 50-, and 100-year floodplains) may not be elevated with fill, with the exception of a minimal amount of material, such as gravel and asphalt, needed for the construction of the parking surface. All material brought on-site shall be compensated by material removed from site. Up to one inch of asphalt for parking lot maintenance may be allowed without compensation. Parking lots also may be filled to meet Americans with Disabilities Act (ADA) requirements for pedestrian access, using on-site material.~~

(G) ~~Within the 100-year floodplain area, a minimal amount of fill should be used to elevate any structures.~~

(H) ~~Exception: If an existing legal non-conforming structure is substantially damaged, fill may be used to bring an existing basement to original grade as part of bringing the structure into compliance.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.12. Establishment of a riparian setback.

(A) ~~Riparian setbacks are established as provided in this section.~~

(B) ~~Streams addressed by this title are those which meet the definition of "stream" in Chapter 25.02 of these regulations and are indicated on at least one of the following maps:~~

(1) ~~USGS topographical map;~~

(2) ~~Currently adopted City of Athens Flood Insurance Study and Flood Insurance Rate Map.~~

(C) ~~Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:~~

(1) ~~A minimum of 75 feet on each side of all streams draining an area 100 square miles or greater.~~

(2) ~~A minimum of 30 feet on each side of all streams draining an area between 15 and 100 square miles.~~

(3) ~~A minimum of 15 feet on each side of all streams draining an area of 15 or less square miles.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.13. Critical facilities.

~~New critical facilities are prohibited on the five percent annual chance (20-year) floodplain. Existing facilities are allowed to perform any maintenance necessary to continue operation, but are prohibited from expanding unless the facility has direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route leads directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.14. Hazardous materials.

(A) ~~There shall be no manufacture or storage of hazardous materials above a baseline quantity threshold (BQT) within the 20-year floodplain. Both the BQT and hazardous materials are defined in Section 39.01.05.~~

(B) ~~The city shall maintain public information in the office of code enforcement providing residents and businesses within the 100-year floodplain instructions on the proper storage of hazardous materials above the base flood elevation (BFE).~~

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.05. Appeals and Variances

25.05.01. Appeals board established.

- (A) The Athens City Council shall appoint a board of zoning appeals as described in Section 23.07.01.
 - (B) The organization of the board of zoning appeals is described in Section 23.07.05.
- (Ord. No. 0-100-09, § I, 9-12-2009)

25.05.02. Powers and duties.

- (A) The board of zoning appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the floodplain administrator in the administration or enforcement of these regulations.
 - (B) Authorize variances in accordance with Section 25.05.04 of these regulations.
- (Ord. No. 0-100-09, § I, 9-12-2009)

25.05.03. Appeals.

- (A) Appeals from decisions of the floodplain administrator. Any person affected by any notice and order, or other official action of the floodplain administrator may request and shall be granted a hearing on the matter before the board of zoning appeals provided that such person shall file, within 20 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the floodplain administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the floodplain administrator.
- (B) Information required in appeals. The following information, submitted in writing, shall accompany any appeal, and no appeal shall be complete, nor shall it be scheduled for hearing, until all such required information shall have been submitted:
 - (1) All of the material required in Section 25.03.04, "Application required," of this chapter;
 - (2) A copy of the floodplain administrator's refusal, order, determination, or decision from which the appeal is taken; and
 - (3) Where an appellant alleges error in an order, requirement, decision, determination, or refusal made by the floodplain administrator, a written statement of the section of this title for which the alleged erroneous ruling is being appealed, and of the reasons why the appellant believes the ruling to be erroneous. Upon receipt of the appeal, the floodplain administrator shall transmit said notice and all pertinent information on which the floodplain administrator's decision was made to the board of zoning appeals.
- (C) Filing fee. Each appeal shall be accompanied by a check, payable to the Treasurer of the City of Athens, or cash payment that is sufficient in amount to cover the cost of publishing and mailing the notices of the hearing, but in no event shall it be less than \$15.00. Where an appeal under these regulations is submitted together with an application or appeal pertaining to the same property under the zoning ordinance, and both are to be considered at the same hearing, only one filing fee need be paid.

Upon receipt of the notice of appeal, the board of zoning appeals shall fix a reasonable time for the appeal, give ten days' public notice thereof, as well as notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted. At the hearing, any party may appear in person or be represented by an authorized agent or attorney. Testimony shall be conducted under oath.

(Ord. No. 0-100-09, § 1, 9-12-2009)

25.05.04. Variances.

Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The board of zoning appeals shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(A) Application for a variance.

- (1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the floodplain administrator, who upon receipt of the variance shall transmit it to the board of zoning appeals.
- (2) Such application at a minimum shall contain the following information:
 - a. All of the material required in Section 25.03.04, "Application required," of this chapter;
 - b. A copy of the floodplain administrator's refusal, order, determination, or decision from which the appeal is taken; and
 - c. A written statement in the terms of subsection 25.05.04(C) of the reasons why a variance should be granted.
- (3) Each variance appeal shall be accompanied by a check, payable to the Treasurer of the City of Athens, or cash payment, that is sufficient in amount to cover the cost of publishing and mailing the notices of the hearing, but in no event shall it be less than \$15.00. Where an appeal under these regulations is submitted together with an application or appeal pertaining to the same property under the zoning ordinance, and both are to be considered at the same hearing, only one filing fee need be paid.

(B) Notice for public hearing. Upon receipt of the notice of appeal, the board of zoning appeals shall fix a reasonable time for the appeal, give ten days' public notice thereof, as well as notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

(C) Public hearing. At such hearing the applicant shall present such statements and evidence as the board of zoning appeals requires. In considering such variance applications, the board of zoning appeals shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed facility to the community.
- (5) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.

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- (6) The necessity to the facility of a waterfront location, where applicable.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Variances shall only be issued upon:

- (1) A showing of good and sufficient cause.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
- (3) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
- (4) A determination that the structure or other development is protected by methods to minimize flood damages.
- (5) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the board of zoning appeals may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

(D) Other conditions for variances.

- (1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection (C)(1) to (11) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (4) Any variance to permit encroachment within a designated floodway shall be conditioned upon approval by FEMA.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.05. Procedure at hearings.

- (A) All testimony shall be given under oath.
- (B) A complete record of the proceedings shall be kept, except confidential deliberations of the board, but including all documents presented and a verbatim record of the testimony of all witnesses.
- (C) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.
- (D) The administrator may present evidence or testimony in opposition to the appeal or variance.
- (E) All witnesses shall be subject to cross-examination by the adverse party or their counsel.
- (F) Evidence that is not admitted may be proffered and shall become part of the record for appeal.
- (G) The board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
- (H) The board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.06. Stay of proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the floodplain administrator certifies to the board after notice of appeal shall have been filed with them, that, by reason of acts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by the court of common pleas on application, on notice of the floodplain administrator, or by judicial proceedings, and on due cause shown.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.05.07. Decisions of the appeals board.

The board shall decide all appeals within 30 days after the final hearing thereon. A certified copy of the board's decision shall be transmitted to the appellant, and to the floodplain administrator. Such decision shall be binding upon the floodplain administrator and shall be observed by them, and they shall incorporate the terms and conditions of the same in the permit to the appellant, whenever a permit is authorized by the board.

A decision of the board shall not become final until the expiration of five days from the date such decision is made, unless the board shall find the immediate taking effect of such decision to be necessary for the preservation of property or personal rights and shall so certify on the record.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.05.08. Appeal to the court.

Those aggrieved by the decision of the board of zoning appeals may appeal such decision to the Athens County Court of Common Pleas, as provided in Chapter 2506 of the ORC. Such appeal petition shall be presented to the court within 30 days after the day upon which written notification of the appeals board's decision is mailed to the applicant or appellant.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.06. Enforcement

25.06.01. Compliance required.

- (A) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in Section 25.03.09.
- (B) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Section 25.06.03.
- (C) Floodplain development permits issued on the basis of plans and applications approved by the floodplain administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with Section 25.06.03.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.06.02. Notice of violation.

Whenever the floodplain administrator determines that there has been a violation of any provision of these regulations, they shall give notice of such violation to the person responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

- (A) Be put in writing on an appropriate form;
- (B) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;
- (C) Specify a reasonable time for performance;
- (D) Advise the owner, operator, or occupant of the right to appeal;
- (E) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.06.03. Violations and penalties.

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a first degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Athens, Ohio. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Athens, Ohio, from taking such

other lawful action as is necessary to prevent or remedy any violation. The City of Athens, Ohio, shall prosecute any violation of these regulations in accordance with the penalties stated herein.

(Ord. No. 0-100-09, § I, 9-12-2009)

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Introduced by Solveig Spjeldnes, Chair
Transportation Committee

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE AND
AMENDING ORDINANCE 51-23; AUTHORIZING THE PURCHASE OF A NEW
DUMP TRUCK.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2024 Appropriation Ordinance 130-23 is hereby amended by appropriating from the unappropriated balance the sum of Six Thousand Dollars (\$6,000.00) to Sewer Fund, 750, T.C. 500, and increasing the total appropriations by said amount.

SECTION II: Section II of Ordinance 51-23 is hereby amended to read as follows:

Section II: The Service-Safety Director is hereby authorized to expend up to One Hundred Seventy-~~Six~~ Thousand Dollars (~~\$170,000.00~~ **\$176,000.00**) from Sewer Fund, 750, T.C. 500, for the purchase of a dump truck.

SECTION III: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor