
PACE AGREEMENT

Between

RAINMAKER HOLDINGS VII LLC
(Owner)

And

SSHCOF III PACE LEXINGTON, LLC
(Investor)

Dated as of _____, 2020

BRICKER & ECKLER LLP

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PACE AGREEMENT

RainMaker Holdings LLC (the **Owner**) and SSHCOF III PACE Lexington, LLC (the **Investor**) make this PACE Agreement (the **Agreement**) as of _____, 2020. All terms that are used in this Agreement with initial capital letters where the rules of grammar would not otherwise require capitalization and that are not otherwise defined in this Agreement have the meanings given to them on **Exhibit A**, which is attached to, and incorporated into this Agreement.

BACKGROUND

1. The Lexington Fayette Urban County Government (the **LFUCG**) created an Energy Project Assessment District (**EPAD**) and authorized the establishment of an EPAD Program when the Legislative Council of Lexington Fayette Urban County Government (**LFUCG Council**) enacted Ordinance No. 24-2018 of the Lexington-Fayette County, Kentucky Code of Ordinances (**EPAD Ordinance**).

2. The Owner owns certain real property located at 1810 Bryant Road, Lexington, Kentucky 40509, which real property is located within the EPAD and more fully described on **Exhibit B**, which is attached to, and incorporated into, this Agreement (the **Property**). The Owner is authorized to petition for and request the levy of assessments on the Property for purposes of KRS 65.205, *et. seq.* (the **Act**).

3. Under the Act, the Owner may petition for and request the levy of assessments on the Property and has agreed to acquire, construct, equip, improve, and install an “energy improvement” within the meaning of the Act on the Property (the **Energy Project**).

4. In order for the LFUCG to impose the assessments, a petition was signed and delivered to the LFUCG by the owners of the real property subject to the petition to participate in the Lexington EPAD program. The petition represents that at the time the petition was filed there were no existing mortgage liens on the Property, but also that the Owner is required obtain the written consent of the holder of any mortgage lien holder on the Property prior to the recordation of the assessments stating that the lien holder does not object to the imposition of the assessments and lien.

5. The LFUCG, the Investor, the Owner, and the Fayette County Sheriff (the **Sheriff**) have entered into an EPAD Program Financing Agreement, dated as of the date of this Agreement (the **Tri-Party Agreement**) to accept the Energy Project into the Lexington EPAD program and establish the terms and conditions of the Energy Project and the assessments to be imposed.

6. The Investor desires to provide funding to the Owner to finance the costs of the Energy Project under this Agreement.

7. The Investor and the Owner have agreed in the Tri-Party Agreement to provide for repayment of the Investor’s financing of the costs of constructing the Energy Project by cooperating with the LFUCG to impose assessments on the Property and further cooperating with

the LFUCG to assign and pay the assessments collected by the LFUCG (or its collection agent acting on behalf of the LFUCG) to the Investor.

8. The Investor, the Owner, and the LFUCG have agreed in the Tri-Party Agreement to a foreclosure process to enforce the lien of the assessments as a covenant running with the Property binding on the Owner and all future owners of the Property.

9. In order to accomplish the goals described above, and in consideration of the agreements contained in this Agreement and other consideration the Investor and the Owner (the **Parties** and each a **Party**) agree to the following terms and conditions of this Agreement.

ARTICLE I INTERPRETATION

Section 1.1. Defined Terms. All terms that are used in this Agreement with initial capital letters where the rules of grammar would not otherwise require capitalization and that are not otherwise defined in this Agreement have the meanings given to them on **Exhibit A**, which is attached to, and incorporated into this Agreement.

Section 1.2. Parties. Any reference in this Agreement to the LFUCG, the Owner, or the Investor or to any member or officer of any of them includes successor entities or officials under or by operation of law or lawfully performing their functions.

Section 1.3. Statutes. Any reference in this Agreement to a chapter, section, or provision of the Constitution of the Commonwealth, the Act, the Kentucky Revised Statutes, or any other legislation of the Commonwealth or the United States of America includes that chapter, section, or provision as amended, modified, revised, supplemented, or superseded from time to time. But if any amendment, modification, revision, supplement, or superseding chapter, section, or provision would constitute an impairment of the rights or obligations of the Parties under this Agreement, this Section shall not apply.

Section 1.4. Article and Section References. Any reference to any Article or Section in this Agreement refers to that Article or Section of this Agreement unless otherwise stated.

Section 1.5. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference. They 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 REPRESENTATIONS AND WARRANTIES

Section 2.1. 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 good standing under the laws of the Commonwealth. 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 Assessments shall be assessed, due, and payable.

(b) It, by proper action, duly has authorized, executed, and delivered this Agreement, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms.

(c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an **Action**), and during the term of this Agreement, the Owner shall promptly notify the Investor of any Action commenced or to its knowledge threatened against it.

(d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Assessments or under any agreement or instrument related to the Assessments which has not been waived or allowed.

(e) Except for payments in lieu of taxes owed by the Owner to the LFUCG and except for any financing of the Property and the lien related thereto that Owner has previously disclosed in writing, it has made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on its Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, installing, equipping and improving of its Project. Owner agrees to execute and deliver to the LFUCG a subsequent consent relating to the tax increment finance area within which the Property is located, if any.

(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 (a **Certificate**) submitted to the Investor by it or on its behalf contained, as of the date it was submitted, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained in this Agreement or that Certificate not misleading.

(g) Since the date of the most recent financial statements of the Owner provided to the Investor, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Investor in writing, and the financial statements which have been delivered to the Investor prior to the date of this Agreement are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.

(h) The Energy Project complies in all material respects with all applicable zoning, planning, building, environmental, and other regulations of each Governmental Authority having jurisdiction over the Energy Project, and all necessary permits, licenses, consents, and permissions necessary for the Energy Project have been or will be obtained.

(i) The plans and specifications for the Energy Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Energy 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 Energy 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 Energy Project, if any, already performed on the Property has been performed on the Property in accordance with the approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Energy Project or violations of any requirement of any Governmental Authorities with respect to the Energy Project; the planned use of the Energy 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

(j) 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 Assessments remain to be paid.

(k) Each Application for Payment presented to the Investor, and the receipt of the funds requested by Application for Payment, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Application for Payment and the receipt of the funds requested by the Application for Payment.

(l) Each of the Property and the Energy 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 Assessments remain to be paid, used solely for commercial purposes.

(m) Each of the components of the Energy Project is a qualified “energy improvement” under the definition of that term in KRS 65.205(1).

(n) Owner has good and marketable fee simple title to the Property.

(o) All real property taxes and assessments are current and there has been no occurrence of delinquency.

(p) Owner is not insolvent, and the consummation of the financing described in the PACE Documents 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 Assessments remain to be paid, the Owner shall cause the Energy Project to remain qualified as an “energy improvement”, the Owner shall comply in all respects with the Act, and the Owner shall take any and all actions necessary to remain in compliance with the Act.

(r) All statements set forth in this Section 2.1 are true and correct in all material respects.

Section 2.2. 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 or the Energy Project, except after giving prompt notice of any transfer or conveyance to the Investor, and upon receiving written consent from the Investor, to be granted at the Investor’s sole discretion.
- (b) Before or simultaneous with any transfer or conveyance of any right, title or interest in or to the Property or the Energy Project, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Investor and the LFUCG, a fully executed “Assignment and Assumption of PACE Agreement” in the form attached to, and incorporated into, this Agreement as **Exhibit F**; and (ii) execute and cause the transferee or purchaser to execute an assignment of all construction contracts related to the Energy Project and deliver a copy of that assignment to the Investor. The Parties acknowledge and agree that the Assignment and Assumption of PACE Agreement includes the assignment and assumption of the Notice of Assessment.
- (c) 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, imposed, 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.

- (d) The Owner shall furnish the Investor, upon written request, with proof of payment satisfactory to the Investor 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 Assessment.
- (e) It shall not, without the prior written consent of the Investor, cause or agree to the imposition of any assessments, other than the Assessments, on the Property for the purpose of paying the costs of "energy improvements" and "energy projects" as those terms are defined in KRS 65.205.
- (f) It shall promptly pay and discharge all claims for labor performed and material and services furnished in connection with the acquisition, construction, equipping, installation, and improvement of the Energy Project.
- (g) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate stating all sources and uses of funds for the Energy Project.
- (h) It shall promptly notify the Investor of any material damage or destruction to the Property or the Energy Project.
- (i) The Owner shall provide the Investor with quarterly unaudited financial statements within forty-five (45) days after the end of each calendar quarter. The Owner shall also provide the Investor with annual audited financial statements within ninety (90) days after the end of each fiscal year. The financial statements shall include the balance sheet, income statement, and statement of cash flows, or such other similar financial statements as the Investor, in its sole discretion, may determine.
- (j) Upon the reasonable request of the Investor, the Owner shall take any actions and execute any further certificates, instruments, agreements, or documents as are reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.
- (k) The Owner shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of Fayette County, Kentucky.
- (l) 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.
- (m) There are no underground storage tanks located on the Property.

- (n) There is no past or present non-compliance with environmental laws or with permits issued under any environmental laws in connection with the Property which has not been fully remediated under the applicable environmental laws.
- (o) There is no environmental remediation required (or anticipated to be required) with respect to the Property.
- (p) 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 under any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the above.

ARTICLE III ASSESSMENTS

Section 3.1. Notice of Assessment. On the date of this Agreement, the LFUCG shall file a written Notice of Assessment (the **Notice of Assessment**) in the form attached to, and incorporated into this Agreement as **Exhibit C** in the Fayette County, Kentucky real property records. The Notice of Assessment shall describe the amount of the Assessments, the legal description of the Property, the name of each owner of record of the Property, and a reference to the statutory assessment lien provided under KRS Section 65.207(4)(c). All costs of recording the Notice of Assessment shall be paid out of the Project Advance or by the Owner.

Section 3.2. Status of Assessments. The Assessments shall be billed by the LFUCG as described in and pursuant to the Tri-Party Agreement. Under the EPAD Ordinance and the Tri-Party Agreement the Assessments shall be collected by the LFUCG in the same manner as other taxes, and unpaid assessments shall bear the same penalty as general state and local ad valorem taxes. Under the EPAD Ordinance and the Tri-Party Agreement, the LFUCG may authorize an agent or designee to send property tax bills for the Assessments and to collect the Assessments. The Owner agrees to pay any property tax bill for the Property received by the Owner from the LFUCG or any agent or designee of the LFUCG.

The LFUCG and the Sheriff each may impose an annual collection fee or commission as described in the Tri-Party Agreement, which amount shall be included on the tax bill for the Property and shall constitute a part of the Assessments. The LFUCG and the Sheriff each may alter the annual collection fee as permitted under the Tri-Party Agreement.

The Assessments, together with any interest and penalties, shall constitute a first and prior lien against the Property from the date the Notice of Assessment is recorded until paid. That lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the Property.

Section 3.3. Transfer of Assessments to the Investor. Under the EPAD Ordinance and the Tri-Party Agreement the Sheriff and the LFUCG have established its funds for the collection of the Assessments as separate funds maintained on the Sheriff and the LFUCG's respective books

and records and to be held in the custody of a bank with which the Sheriff and the LFUCG maintain a depository relationship, respectively.

The LFUCG and the Sheriff further shall transfer, set over, and pay the Assessments and Delinquency Amounts to the Investor in accordance with this Agreement and the Tri-Party Agreement. The Parties acknowledge and agree that the Investor intends that amounts collected by the LFUCG in respect of the Assessments (including any Delinquency Amounts) that are payable to the Investor are “special revenues” as defined in Section 902(2) of the United States Bankruptcy Code.

Section 3.4. Place of Payments. The Investor shall provide payment instructions to the LFUCG in order to allow the LFUCG to transfer the Assessments under the Tri-Party Agreement in a timely manner.

Section 3.5. Prepayment and Reduction of Assessments. If the Owner prepays any Assessments under Section 4.9 of this Agreement, under the Tri-Party Agreement the LFUCG shall file a new written notice of assessment in the form attached to, and incorporated into this Agreement as **Exhibit C** in the Fayette County, Kentucky real property records reducing the amount of Assessments to be collected by the LFUCG. All costs of recording a new notice of assessment under this Section shall be paid out of the Project Advance or by the Owner.

ARTICLE IV PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. On the date of this Agreement, the Investor shall make the Project Advance in the amount of \$[1,000,000.00] available to the Owner on the terms and subject to the conditions of this Agreement and the Loan Documents. Subject to the terms and conditions of this Agreement and the PACE Financing Disbursement Agreement, upon the written direction of the Owner, the Investor shall disburse amounts representing the Project Advance to the Owner or the other parties named by the Owner in order to pay or reimburse the costs of the Energy Project.

If the amount of the Project Advance is insufficient to pay the costs of the Energy Project, the Owner nevertheless shall complete the Energy Project as proposed in the petition and shall pay all additional costs of the Energy Project from its own funds. The Owner shall not be entitled to reimbursement for any additional costs of the Energy Project exceeding the amount of the Project Advance. The Owner shall not be entitled to any abatement, diminution, or postponement of Assessments because the costs of the Energy Project exceed the amount of the Project Advance.

Section 4.2. Disbursements. Disbursements shall be made under the PACE Financing Disbursement Agreement. The Investor shall provide copies of all information provided to the Investor under the PACE Financing Disbursement Agreement to Energize Kentucky in order to fulfill their responsibilities with respect to the Energy Project, including qualifying the Energy Project as an eligible “energy improvement”, under the Act.

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

In addition, on the date of this Agreement, the Investor shall disburse to the parties stated on Exhibit E attached to, and incorporated into this Agreement the amounts stated as closing costs associated with the Project Advance. The amounts stated on Exhibit E shall not exceed \$25,895.00.

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 a Casualty, and upon agreement between the Owner and the Investor, the insurance proceeds shall be applied to pay the costs of the restoration of the Energy Project or to the repayment of the outstanding balance of the Assessments, and in which case the Investor shall remain obligated to continue making disbursements of up to the Project Advance in accordance with this Agreement, but is not obligated to make distributions in excess of the Project Advance. In the event the Owner and the Investor choose to apply the insurance proceeds to the repayment of the outstanding balance of the Assessments, such repayment shall include all fees, costs and other charges associated with the Assessments, including any prepayment premiums set forth in Section 4.7 of this Agreement.

In the event restoration of the Energy Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Energy 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 Energy 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"), and the Property or the Energy Project is not restored, the Investor's obligation to make disbursements under this Agreement shall be terminated. If the Investor determines to restore the Property and the Energy Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications.

The Investor's obligation to make disbursements under this Agreement shall be terminated unless the Property and the Energy Project can be replaced and restored in a manner which will enable the Energy Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Energy Project can be so restored, the Owner shall immediately proceed with the restoration of the Energy 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.

In the event that a Taking occurs after the Project is complete and the Investor's obligation to make disbursements under this Agreement have been completed, the Taking proceeds available to the Owner shall be used (i) first, to repay the Project Advance, and (ii) second, to other purposes for use by the Owner.

Section 4.4. Eligible Costs. The costs of the Energy 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 Energy Project, including, without limitation, costs incurred 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 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 the Energy Project is final and complete;

(d) taxes, assessments, and other governmental charges in respect of the Energy Project that may become due and payable until the date on which the Energy 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 Energy Project; and

(f) any other incidental or necessary costs, expenses, fees, and charges properly chargeable to the cost of the acquisition, construction, equipment, installation, and improvement of the Energy Project.

Section 4.5. Completion of the Energy Project. The Owner shall:

(a) Acquire, construct, equip, install, and improve the Energy Project with all commercially reasonable dispatch in accordance with the approved plans and specifications for the Energy Project, which plans and specifications shall not be materially revised without the prior written approval of the Investor and Energize Kentucky, which approval shall not be unreasonably withheld;

(b) Subject to the Owner's right to contest any disputed work, pay when due all fees, costs, and expenses incurred or payable by the Owner in connection with the acquisition, construction, equipping, installation, and improvement from funds made available for those purposes under this Agreement or otherwise; and

(c) Ask, demand, sue for, levy, recover, and receive all sums of money, debts, and other demands which may be due, owing, and payable to the Owner under the terms of any contract, order, receipt, writing, or instruction in connection with the acquisition, construction, equipping, installation, and improvement of the Energy 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 Energy Project is to be owned by the Owner and any contracts made by the Owner for the Energy Project or any work to be done by the Owner on, or for, the Energy Project are made or done by the Owner on its own behalf and not as agent or contractor for Energize Kentucky or the Investor.

The Owner shall notify the Investor and Energize Kentucky of the Completion Date by a certificate in the form attached as **Exhibit D** to this Agreement, signed by the Owner stating: (a) the date on which the acquisition, construction, equipping, installation, and improvement of the Energy Project was substantially completed by the general contractor for the Energy Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Energy Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Energy Project approved by the Investor; (c) that the Owner has complied, and will continue to comply, with all applicable statutes, regulations, and ordinances in connection with the Property and the construction of the Energy Project; (d) that the Owner holds leasehold ownership of the Property; (e) that the general contractor for the Energy Project has not offered the Owner any payment, refund, or any commission in return for completing the Energy Project; and (f) that all funds provided to the Owner by the Investor for the Energy Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date but in no event more than 15 days thereafter.

Section 4.6. Inspection. During the period of construction, acquisition, equipping, installation, and improvement of the Energy Project, the Investor and its agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Energy Project. The Investor and its agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any inspection.

The Investor reserves the right to deny the request for any disbursement of the Project Advance under Article IV if an 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:

(a) Request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, and if the Owner fails to do so, the Owner shall be in default under this Agreement;

(b) Utilize funds to continue construction of the Energy Project, and those funds shall be considered Project Advances; or

(c) Deny any disbursement of the Project Advance until the construction resumes proceeding with reasonable dispatch.

Section 4.7. Repayment. The Owner agrees to pay, as and when due, all Assessments with respect to the Property. The Parties acknowledge that under this Agreement, the Project Advance shall be repaid by the Assessments. The Parties agree that the Assessments have been imposed in amounts necessary to amortize the Project Advance, together with interest at the annual rate of [6.05]%, over 20 annual payments to be collected beginning approximately on January 1, 2022 and continuing through approximately January 1, 2041 (the **Payment Dates**, and individually, a **Payment Date**). Interest shall accrue on the entire amount of the Project Advance from the date of this Agreement. 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 Assessments is paid to the Investor by the LFUCG.

Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that, under the laws of the Commonwealth, the Assessments to be collected by the LFUCG that, as of any date, are not yet due and payable never shall be accelerated, and the lien of the Assessments never shall exceed the amount of Assessments, any interest, fees, expenses, and penalties, which, as of that date, are due and payable but remain unpaid.

Section 4.8. Prepayment. On any payment date on which the semi-annual assessments are due to the Investor after the date of this agreement and prior to the fifth anniversary of the date of this Agreement, the Owner may not prepay the full amount of the principal of the Project Advance to the Investor. On any Payment Date after the fifth anniversary and prior to the tenth anniversary of the date of this Agreement, the Owner may prepay the full amount of the principal of the Project Advance to the Investor by paying, in immediately available funds, 103% of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. On any Payment Date after the tenth anniversary of the date of this Agreement, the Owner may prepay the full amount 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. In addition to the amounts set forth above, the Investor may require the Owner to pay a prepayment fee of up to \$2,500.00 for its fees and expenses in connection with any prepayment.

Immediately upon any prepayment under this Section, the Investor shall notify the LFUCG of the prepayment, and the LFUCG, the Investor, and the Owner shall comply with the applicable provisions of the Agreement and the Tri-Party Agreement to adjust the amount of Assessments.

Section 4.9. Payment of Fees and Expenses. If an Event of Default by the Owner occurs under this Agreement that causes the LFUCG or the Investor to incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement or the collection of any amounts due under this Agreement, the Owner shall reimburse the LFUCG and the Investor, as applicable, for all expenses incurred upon demand. If any of those expenses are not reimbursed, the amount of the expenses, together with interest from the date of demand for payment at an annual rate equal to the lesser of 17% or the maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the Investor and the LFUCG, as applicable, shall be entitled to seek the recovery of those expenses except as limited by law or by judicial order or decision.

Section 4.10. 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 occurs it shall be an **Event of Default** under this Agreement:

- (a) The Owner fails to pay an installment of the Assessments when due, after taking into account all applicable extensions;
- (b) The LFUCG shall fail to transfer, or cause the transfer of, any of the Assessments and Delinquency Amounts actually received by the LFUCG to the Investor within the time specified in the Tri-Party Agreement;
- (c) The Sheriff shall fail to transfer, or cause the transfer of, any of the Assessments or Delinquency Amounts actually received by the Sheriff on behalf of the LFUCG within the time specified in the Tri-Party Agreement.
- (d) 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;
- (e) The Owner shall fail to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the Owner by the Investor, or for such longer period to which the Investor 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 Owner institutes curative action within the applicable period and diligently pursues that action to completion;

- (f) An Event of Default occurs or is continuing under any other Loan Document;
- (g) The Owner abandons its Property or its Project;
- (h) The Owner commits waste upon its Property or its Project;
- (i) 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
- (j) Any workmanship or materials constituting a portion of the Project or incorporated into the Project shall be materially defective and shall not be corrected within 30 days after notice.

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

If any Party becomes aware that an Event of Default has occurred or that any fact, condition, or event, that, with the giving of notice, the passage of time, or both, would be an Event of Default has occurred, that Party shall promptly deliver notice to each other Party under Section 6.4.

Section 5.2. Remedies on Default. When an Event of Default has occurred and is continuing, any one or more of the following remedies 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 LFUCG.
- (b) The Parties, together or separately, may pursue all remedies now or after the date of this Agreement 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 of the lien of the Assessments under the Act but only against the Party or Parties responsible for the particular Event of Default; and
- (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 Investor 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.

(d) The Investor, in its sole discretion, may choose to perform any or all of the Owner's obligations on the Energy Project on the Owner's behalf, and the Owner shall reimburse the Investor within 30 days after written demand for reimbursement from the Investor for all costs and expenses, including any reasonable attorneys' fees, that the Investor may incur in performing those obligations, together with interest on those sums from and after the dates they are incurred at the rate of interest equal to the lesser of either 17% plus the rate of interest specified in this Agreement or the maximum rate of interest allowed by law (the **Default Interest Rate**). If any amount due under this Agreement from the Owner to the Investor is not paid as and when due, interest at the Default Interest Rate shall accrue on such amount from the date on which it was due through the date on which payment is made; provided, however, that if any installment of the Assessments is not timely paid to the Investor through no fault of the Owner, interest at the Default Interest Rate shall not accrue on any such amount.

Section 5.3. Foreclosure and Lien Enforcement Actions. Upon the Owner's failure to pay any installment of the Assessment such that the installment of the Assessment becomes delinquent, the County Attorney and County Clerk shall enforce the lien of the Assessments pursuant to the Tri-Party Agreement, including, without limitation, Section 8 of the Tri-Party Agreement.

Section 5.4. No Remedy Exclusive. No remedy granted to any Party under this Agreement is intended to exclude any other available remedy or remedies, and every remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or after the date of this Agreement existing at law, in equity, or by statute. This Agreement does not give any Party the right to take any action or exercise any remedy against the Property, the Energy Project, or the Owner except to collect or remedy any outstanding damages or liability due to an Event of Default arising out of this Agreement for which the Owner is responsible.

Section 5.5. Delay, Omission, Waiver. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair the right or power and shall not be construed to be a waiver of any right or power. Every right or power accruing upon any Event of Default may be exercised from time to time and often as may be expedient.

In order to entitle any Party to take any remedy granted to it under this Article, it shall not be necessary to give any notice, other than any notice required by law or expressly required under this Agreement.

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 that 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 strictly observe or comply with any provision of this Agreement.

ARTICLE VI MISCELLANEOUS

Section 6.1. Term of Agreement. This Agreement shall be and remain in full force and effect from the date stated on the first page until the entire aggregate amount of the Assessments shall have been paid to the Investor in full or another time as the Parties agree in a writing signed by each of the Parties to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Assessments which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.2. 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 materially impair the right or ability of the Party to perform its obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement describing the details of the action, suit, or proceeding and any responsive actions in the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.3. Indemnification. The Owner shall indemnify and hold harmless the Investor including any member, officer, director, or employee of the Investor (collectively, the **Indemnified Parties**) against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and expenses) imposed upon, incurred by, or asserted against an Indemnified Party arising or resulting from (a) the Owner's financing, acquisition, construction, installation, operation, use, or maintenance of the Energy Project, or any failure of the Owner or the Energy Project to comply with the requirements of the Act or the EPAD Ordinance, (b) 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 Assessments resulting in material actual damages, or (c) (i) 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, (ii) 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, (iii) 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, (iv) 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, (v) 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, (vi) 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 under any environmental law, or (vii) any misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, the Indemnified Party will promptly give written notice 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 case the defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume the defense, it shall reimburse the Indemnified Party for the reasonable fees and expenses of any counsel retained by the 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 each Indemnified Party shall have the right to employ counsel in any action and the fees and expenses of that counsel shall be at the expense of the Owner, if: (a) the employment of counsel by the Indemnified Party has been authorized by the Owner; (b) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of the action (in which case the Owner shall not have the right to direct the defense of the action on behalf of the Indemnified Party); or (c) the Owner or 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 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.

The Investor shall have no liability to the Owner or any other Person on account of (a) the Owner engaging a contractor from the list of contractors submitted by the LFUCG or the Investor to the Owner, (b) the services performed by the contractor, or (c) any neglect or failure on the part of the contractor to perform or properly perform its services. The Investor assumes no obligation to the Owner or any other Person concerning contractors, the quality of construction of the Energy Project or the absence of defects from the construction of the Energy Project. The making of any disbursement of the Project Advance by the Investor shall not constitute the Investor's approval or acceptance of the construction completed prior to that disbursement. 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 any inspection and approval is to make the Project Advance 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 6.4. 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 6.5. Extent of Obligations; No Personal Obligation. No obligation or agreement shall be deemed to be an obligation or agreement of any present or future member, officer, agent, or employee of the Owner or the Investor in other than his or her official capacity, and none of the members, officers, agents, or employees of the Owner 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 obligations and agreements of the Owner or the Investor contained in this Agreement.

Section 6.6. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding under its terms upon, the Parties. Except as specifically provided in Section 6.7, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Assessments. This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Section 6.7. Assignment. Notwithstanding anything in this Agreement to the contrary, the Owner may freely sell the Property and the Energy Project or any portion of the Property and the Energy Project from time to time. Notwithstanding anything in this Agreement to the contrary, the Owner may assign this Agreement to an arms-length, good faith purchaser of the Property, but only after notice of the assignment is given to the Investor, and only upon (i) payment by the Owner of all due but unpaid Assessments, (ii) delivering to the Investor a signed "Assignment and Assumption of PACE Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit F**, (iii) the Owner and the transferee or purchaser's execution of an assignment of all construction contracts related to the Energy Project and the delivery of copies of that assignment to the Investor, and (iv) compliance by the Owner with all terms and conditions related to the transfer or assignment under the Tri-Party Agreement. The Parties acknowledge and agree that the Assignment and Assumption of PACE Agreement includes the assignment and assumption of the Notice of Assessment. Following any assignment by the Owner as described above, all obligations of the Owner contained in this Agreement 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 consent of the Owner or the LFUCG, 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 LFUCG 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 those rights and obligations have been assigned by the Investor under the assignment documentation between the Investor and the Investor Assignee. 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 give prompt notice of the assignment to the other Parties. Upon the effectiveness of any such assignment, 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.

In addition, the Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice to the Owner or the LFUCG, to grant to one or more Persons (each, a **Participant**) participating interests in Investor's obligation to make disbursement of the Project Advance under this Agreement or to any or all of the rights to payment held by Investor under this Agreement. Upon any grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner or the LFUCG, 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.

Section 6.8. Estoppel Certificates. Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by any other Party, execute, acknowledge, and deliver to the requesting Party a statement in writing certifying that: (a) this Agreement is unmodified and in full force and effect, or, if there has been any modification of this Agreement, that this Agreement is in full force and effect as modified and stating the modifications; (b) to the best of the certifying 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 the Event of Default; (c) to the best of the certifying 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 the damages or liability; (iv) if the certificate is being delivered by the Owner, the dates to which the Assessments have been paid; and (v) if the certificate is being delivered by the Investor, the dates to which the Assessments have been received by the Investor. The Parties agree that any certificate delivered under this Section may be relied upon by any prospective assignee of the Owner or any prospective Investor Assignee or Participant.

Section 6.9. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered, or terminated except by unanimous written agreement signed by each of the Parties materially affected by the proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party for which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.10. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

Section 6.11. Severability. If any provision of this Agreement, or any 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, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. Any invalidity or unenforceability shall not affect any valid and enforceable application of the provision, obligation, or agreement, and each provision, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 6.12. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the Commonwealth and for all purposes shall be governed by and construed in accordance with the laws of the Commonwealth. Any litigation regarding this Agreement shall be in a court of competent jurisdiction in Fayette County, Kentucky.

[Signature Pages Immediately Follow]

EXHIBIT A

Defined Terms

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

Act means KRS 65.205, *et. seq.* as in effect on any date.

Agreement means this PACE Agreement dated as of _____, 2020 between the Owner and the Investor, as it may be amended, modified, or supplemented from time to time under its terms.

Application for Payment means an Application for Payment, in the form attached to, and incorporated into, the PACE Financing Disbursement Agreement as Exhibit B, submitted under the PACE Financing Disbursement Agreement.

Assessments means (a) the assessments to be imposed on the Property by the LFUCG under the Act, the EPAD Ordinance, this Agreement, the Tri-Party Agreement, and the Notice of Assessment, a list of which is attached to the Notice of Assessment, plus, if any installment of those assessments shall at any time remain unpaid for 30 days after it becomes due and payable, and (b) a 10% penalty applied upon delinquency and interest at the rate of 0.50% per month.

Commonwealth means the Commonwealth of Kentucky.

Completion Date means the latest date on which substantial completion of the Energy Project occurs as established by the Completion Certificate attached to this Agreement as **Exhibit D** and submitted to the Investor and Energize Kentucky under this Agreement.

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

Energize Kentucky means the Greater Cincinnati Energy Alliance, an Ohio nonprofit corporation, doing business as Energize Kentucky, as the program administrator for the Lexington EPAD, together with an successor program administrator.

Energy Improvements means the energy improvements, within the meaning of the Act to be acquired, constructed, installed, equipped, and improved on the Property under the Act, the EPAD Ordinance, this Agreement, the Notice of Assessment, and the petition submitted to the LFUCG, which energy improvements are described specifically in the petition.

Energy Project means the acquisition, construction, installation, equipping, and improvement of the Energy Improvements under this Agreement.

EPAD means an energy project assessment district established under the Act.

EPAD Ordinance means the legislation enacted pursuant to Ordinance No. 24-2018 of the Lexington-Fayette County, Kentucky Code of Ordinances.

Governmental Authority means the government of the United States of America, any other nation or any political subdivision of the United States of America, 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 SSHCOF III PACE Lexington, LLC, a Georgia limited liability company authorized to conduct business in the Commonwealth, together with any Investor Assignee.

KRS means the Kentucky Revised Statutes.

Lexington EPAD means the EPAD containing the entire territory of the LFUCG created by the LFUCG by the adoption of the EPAD Ordinance.

LFUCG means the Lexington Fayette Urban County Government, a Kentucky urban county government.

Loan Documents means this Agreement, the PACE Financing Disbursement Agreement, and any other documents and instruments to be executed and delivered in connection with the Assessments, as they may be amended, modified, and supplemented from time to time under their terms.

Notice Address means:

- | | | |
|-----|---------------------|---|
| (a) | As to the LFUCG: | Lexington Fayette Urban County Government 200 East Main Street Lexington, KY 40507 Attention: Dale Morgan |
| (b) | As to the Owner: | RainMaker Holdings VII LLC 2240 Executive Dr., Suite 201 Lexington, KY 40505 Attention: Prakash Maggan |
| (c) | As to the Investor: | SSHCOF III PACE Lexington c/o Stonehill Strategic Capital, LLC One Alliance Center 3500 Lenox Road, Suite 625 Atlanta, GA 30326 Attention: Kevin Cadin, Esq. |

| | |
|-----------------|--|
| With a Copy To: | Bricker & Eckler LLP 100 South Third Street |
|-----------------|--|

Columbus, Ohio 43215
Attention: J. Caleb Bell

Notice of Assessment means the notice of assessment attached to this Agreement as **Exhibit C**, which shall be filed in the records of Fayette County, Kentucky with respect to the Property.

Owner means RainMaker Holdings VII LLC, a Kentucky limited liability company.

PACE Financing Disbursement Agreement means the PACE Financing Disbursement Agreement dated as of _____, 2020 by and among the Owner, National Energy Control, First American Title Insurance Company, and the Investor, as it may be amended, modified, or supplemented from time to time under its terms.

Parties means the Owner and the Investor.

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.

Prepaid Principal means the principal amount of the Project Advance to be prepaid under Section 4.9.

Prepayment Date means, for any Prepaid Principal, the date on which the Prepaid Principal is to be prepaid under Section 4.9.

Project Advance means the amount of immediately available funds to be transferred, set over, paid to, and held by First American Title Insurance Company under the PACE Financing Disbursement Agreement on the date of this Agreement for the benefit of the Owner.

Property means the real property described on **Exhibit B** to this Agreement.

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 Commonwealth in the minimum amount the aggregate amount of not less than one hundred percent (100%) of one (1) year's Assessments, which insurance coverage shall name the Investor as lender loss payee.

Required Flood Insurance Coverage means, as applicable, (a) 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: (i) 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 Advance if replacement cost coverage is not available for the type of building insured); or (ii) 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 (b) 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, (a) must provide for 30 days' notice to the Investor in the event of cancellation or nonrenewal and (b) must name as an additional insured (mortgagee/loss payee) the Investor.

Required Property Insurance Coverage means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the Commonwealth in the amount of (a) the then full replacement value of the Energy Project and Property, insuring the Energy 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 maintained with generally recognized, responsible insurance companies qualified to do business in the Commonwealth with coverage limits in the minimum amount of \$3,000,000 per occurrence for death or bodily injury and \$1,000,000 per occurrence for property damage liability, with loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as an additional insured.

Tri-Party Agreement means the EPAD Program Financing Agreement dated as of the date of this Agreement between the LFUCG, the Owner, the Investor, and the Sheriff as it may be amended, modified, or supplemented from time to time under its terms.

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EXHIBIT B

Property

Parcel Information:

ID: 202002130321

Property Address: 1810 Bryant Road, Lexington, Kentucky 40509

EXHIBIT C

Notice of Assessment

PROPERTY ADDRESS: [_____]

PIDN: [_____]

GROUP NO: [_____]

The undersigned official charged with the duty of collecting real property taxes of the Lexington Fayette Urban County Government (the LFUCG) with an office at 200 East Main Street, Lexington, Kentucky 40507, for and on behalf of the Urban County acting under Kentucky Revised Statutes Section 65.205 through 65.209, inclusive, as amended (the **Act**), the Ordinance under Ordinance No. 24-2018 (the **Program Ordinance**), and HEREBY LEVIES AN ASSESSMENT AGAINST AND LIEN UPON certain real property as described more particularly in the attached **Attachment A** (the **Property**) owned by RainMaker Holdings VII LLC (the **Owner**), and situated in the Urban County to pay the costs of an “energy project” (as defined in the Act) made or to be made on the Property.

The amount and repayment of the levy and lien, as determined by the Owner, verified by the LFUCG are as follows: an installment payment plan is in effect for payment of the assessment, and the installments are calculated in order to repay the principal amount of \$[1,000,000.00] with interest at an annual fixed rate equal to [6.05]% plus any capitalized interest, the LFUCG annual administrative fee of lesser than \$200 or 1% of the total amount due with respect to the financing described above in the relevant year (each an **Installment Amount**) and an annual collection commission of 1% of the Installment Amount, or any additional fees and expenses payable under the petition for assessments and the related EPAD Program Financing Agreement (the **Tri-Party Agreement**) between the LFUCG, the Owner, and SSHCOF III PACE Lexington, LLC (the **Investor**) and the PACE Agreement (the **PACE Agreement**) between the Owner, and the Investor. The installments described above and their due dates are stated on the attached **Attachment B**.

If any installment shall remain unpaid for 30 days after it becomes due and payable, interest and other charges shall be charged upon the unpaid installments with a 10% penalty applied upon delinquency and then assessed at the rate of 0.50% per month. The LFUCG shall pay such portion of the penalty and interest described in the preceding sentence to the Investor as may be available under law to be paid to the Investor.

When each installment of the assessments has been paid in full and satisfied, a release of this Notice of Assessment shall be filed in the Fayette County, Kentucky Records.

This Notice of Assessment constitutes a certificate of lien and is filed under the Act to evidence a lien for the assessments imposed on the Property for the benefits conferred upon the

Property by the energy project constructed on the Property. Under the Act, the assessments, together with any interest and penalties, shall constitute a first and prior lien against the Property from the date on which this Notice of Assessment is recorded until paid. Under the Act, the lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the Property. The lien and the assessments have been assigned by the LFUCG to the Investor to secure the financing provided by it to the Owner.

The portion of this Notice of Assessment which constitutes a notice of the levy of the assessment and notice of installment payment of assessments is filed under the provisions of the Act, the Program Ordinance, and the Kentucky Revised Statutes, as amended.

[Signature Page Follows]

By order of the LFUCG, I have executed this Notice of Assessment.

By: _____

Name: _____

Title: Mayor

Dated at Lexington, Kentucky this _____ day of _____, 2019.

Received for Record: _____, 2019

Recorded in the Fayette County, Kentucky Real Estate Records at Volume _____, Page _____

ATTACHMENT A
to
NOTICE OF ASSESSMENT

Property

[Insert Legal Description of Property]

ATTACHMENT B
to
NOTICE OF ASSESSMENT

Installment Schedule

[Insert Installment Schedule]

EXHIBIT D

Completion Certificate

[See Attached]



Financing Energy Projects
to Create Jobs and
to Save Businesses Money

Energy Project Completion Certificate

DO NOT SIGN THIS FORM UNTIL WORK IS COMPLETED

| | |
|--|--------------------------------------|
| (EPAD Program Administrator) | (Physical Address of Energy Project) |
| EPAD Registered Contractor, Description of Work, Invoice # and/or Purpose for Payment Authorization: | |

Buyer/Customer Certification

Notice to Customer: You must execute this certificate when the work is completed to your satisfaction as a condition of us providing any payment to a contractor or other party.

I/We certify that: (1) I/We have installed the improvements in accordance with the Energy Project Improvement Summary furnished to us by my/our EPAD Registered Contractor which are qualifying improvements under the EPAD Program. (2) The property improvements have been completed, or, in the case of a deposit or progress payment, are in the process of completions in accordance with the contractor or cost estimate and to my/our satisfaction. If applicable, I/we authorize the EPAD Program to disburse the proceeds to the EPAD Registered Contractor or party to the transaction.

I/We understand that the selection of the EPAD Registered Contractor and the acceptance of the materials used and the work performed is my/our responsibility, and neither the EPAD Program nor EPAD Lender guarantee the quality or workmanship of the qualifying improvements.

CUSTOMER: DO NOT SIGN THIS CERTIFICATE UNTIL THE WORK HAS BEEN COMPLETED TO YOUR SATISFACTION.

| | |
|-----------------------|----------------------|
| | |
| Signature of Customer | Print Name and Title |
| | Date |

Contractor Certification to Lender & Mechanics Lien Waiver

Notice to EPAD Registered Contractor: Proper execution of this form is a condition of disbursement of funds. Any Contractor who knowingly submits false information in connection with the origination of a loan shall be subject to the imposition of civil monetary penalties.

The undersigned EPAD Registered Contractor certifies that: (1) The installed property improvements are in accordance with the Energy Project Improvement Summary as furnished to the customer and EPAD Program. (2) The installed property improvements have been completed in accordance with the contract or cost estimate and to the satisfaction of the customer. (3) The customer(s) signed this certificate after completion of the installed property improvements, and all signatures on this certificate are genuine.

The undersigned EPAD Registered Contractor, in consideration of final payment authorized by this document hereby waives and releases its right to claim a lien for labor, services, or materials furnished to the above customer(s) with regard to the above contract on the above property.

| | |
|---|----------------------|
| | |
| Signature of EPAD Registered Contractor | Print Name and Title |
| | Date |

EXHIBIT E

Closing Costs

Under Section 4.2 of the foregoing PACE Agreement, the Investor, on the date on which the PACE Agreement becomes effective, shall disburse to the Persons stated below, the following closing costs:

| | |
|------------------------------|--------------------|
| EPAD Legal Fee | \$15,000.00 |
| FRM Report | 2,395.00 |
| Plan and Cost | 3,900.00 |
| Insurance (Bearden & Foshee) | 850.00 |
| Tax Estimates | 750.00 |
| Due Diligence Fees Lender | 3,000.00 |
| TOTAL: | \$25,895.00 |

EXHIBIT F

Form of Assignment and Assumption of PACE Agreement

ASSIGNMENT AND ASSUMPTION
OF
PACE 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 PACE Agreement (**Assignment**), assigns, transfers, sets over, and conveys to [_____] (**Assignee**) all of Assignor's right, title, and interest in and to that certain PACE Agreement dated as of [_____] 2019 (the **PACE Agreement**) between [_____] (the **Owner**), and SSHCOF III PACE Lexington, LLC (the **Investor**).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor's duties and obligations under, the PACE Agreement. Assignee further represents and warrants that it has taken title to the **Property**, as that term is defined in the PACE Agreement, subject to the Notice of Assessment dated as the date of the PACE Agreement and filed in the Fayette County, Kentucky real property records 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 Notice of Assessment.

By executing this Assignment, Assignee further accepts the assignment of, and assumes all of the Assignor's duties and obligations under, the PACE Agreement from RainMaker Holdings VII LLC to the Investor.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the Investor all under Sections 2.3(d) and 6.7 of the PACE Agreement.

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this _____ day of _____, 2019, 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: _____