

EPAD PROGRAM FINANCING AGREEMENT

This EPAD Program Financing Agreement (“Agreement”), is made and entered into this ____ day of _____, 2020 by and among (i) Lexington Fayette Urban County Government, a Kentucky urban county government (“LFUCG”), RainMaker Holdings VII LLC, a Kentucky limited liability company (“Property Owner” or “Borrower”), SSHCOF III PACE Lexington, LLC, a Georgia limited liability company (“Lender”), and the Fayette County Sheriff (“Sheriff”), and is made a part of that certain PACE Agreement dated as of March ____, 2020 by and between Property Owner and Lender, such PACE Agreement hereafter referred to as the “PACE Agreement.”

WITNESSETH:

WHEREAS, the General Assembly enacted KRS Sections 65.205 – 65.209 (the “Act”) authorizing urban county governments in Kentucky to establish a program to advance the conservation and efficient use of energy and water resources by allowing for energy projects to be financed by assessments imposed upon the real property being improved;

WHEREAS, 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 (“Ordinance”);

WHEREAS, LFUCG Council designated the entire jurisdictional boundaries of Fayette County (“Fayette County”) as an EPAD;

WHEREAS, the EPAD Program allows for eligible Property Owners to apply to LFUCG to participate in the EPAD Program;

WHEREAS, upon qualifying for the EPAD Program, an eligible Property Owner must enter into an Agreement with LFUCG and the Lender;

WHEREAS, the Property Owner is the Property Owner of certain real property located at 1810 Bryant Road, in Lexington (“Property”), further described in Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, the Property Owner wants to implement an energy efficiency, water conservation, and/or renewable energy improvement project on the Property (“Project”) and has applied to LFUCG for inclusion in the EPAD Program;

WHEREAS, as certified in the Formal Program Application (“Application”) attached hereto as Exhibit B and incorporated herein by reference, the Property Owner meets all of the eligibility requirements and has obtained prior written consent from all persons or entities, if any, that currently hold mortgage liens on the Property to subordinate their liens to the PACE Agreement;

WHEREAS, LFUCG approved Property Owner’s Application for inclusion in the EPAD Program and, as such, Lender has agreed to make a loan to Property Owner in the amount of One Million Dollars [\$1,000,000.00] (“Loan”), as evidenced by the PACE Agreement and other Related

Documents, to be used to finance the Project; and

WHEREAS, LFUCG has agreed to levy special assessments in order to pay down the Loan and wishes to memorialize this arrangement by entering into this Agreement;

NOW, THEREFORE, for and in consideration of the making of the Loan, LFUCG's approval of the Project and the financing and collection arrangements between Lender, Property Owner, LFUCG, and the Sheriff and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, LENDER, PROPERTY OWNER and LFUCG agree as follows:

The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

1. Defined Terms. The following capitalized terms used in this Agreement shall have the meanings defined or referenced below, in the Recitals above, in the Act, or in the Ordinance:

"Annual Assessment" means the amount that is due in a particular year as more fully described in Section 5 hereof.

"Assessment Certification" shall have the meaning set forth in Section 5(d) hereof.

"County Clerk" means the Fayette County Clerk's Office.

"Disbursement Amount" shall have the meaning set forth in Section 6(a) hereof.

"EPAD Assessment" means the aggregate amount of all Annual Assessments, which Annual Assessments shall be levied by LFUCG pursuant to KRS 65.207.

"Foreclosure Proceeds" means the proceeds resulting from the disposition of the Property by LFUCG in an in rem tax foreclosure.

"Installment Payment" means the annual amount of the Loan due in a particular year as more fully described in Section 2 hereof.

"Liabilities" shall have the meaning set forth in Section 13(c) hereof.

"Loan" shall have the meaning set forth in the Recitals above.

"Loan Amount" means the outstanding amount of all principal under the PACE Agreement, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the Loan.

"Maximum Disbursement Amount" shall have the meaning set forth in Section 6(a) hereof.

"LFUCG Annual Administrative Fee" means the annual amount charged by the LFUCG to administer the program, which shall be \$250.00

"PACE Agreement" shall have the meaning set forth in the Preamble above.

“Property” shall have the meaning set forth in the Recitals above.

“Related Document(s)” shall mean any instrument, agreement or document executed in connection with the Loan by either the Borrower, the Lender or both.

“Sheriff” means the Fayette County Sheriff.

“Sheriff’s Commission” means the commission charged by the Fayette County Sheriff to collect the Annual Assessment and shall equal 1% of the Installment Payment.

“Tax Year” means the period from July 1 through the following June 30.

2. Installment Payments. The Loan Amount shall be payable in Installment Payments, based on a twenty (20) year amortization schedule. The Loan shall bear interest, including default interest, at the rates set forth in the PACE Agreement and payments shall be due under the PACE Agreement as more fully described therein and in Section 5 of this Agreement, ending upon payment in full of the Loan Amount and all other charges, fees, commissions, penalties, expenses and other amounts due under this Agreement, the PACE Agreement. The amounts of the Installment Payments are based on a Loan Amount of [\$1,000,000.00]. The Loan shall be fully amortized over the twenty year term of the Loan, and shall be repaid pursuant to the terms set forth in this Agreement, the PACE Agreement, and all other Related Documents or instruments.

3. Consent to EPAD Assessment.

(a) By entering into this Agreement, LFUCG hereby agrees to enforce the EPAD Assessment and levy and impose the Annual Assessments in the same manner as the property tax bill of the Property as provided in the Ordinance and in Section 5 below. Upon execution of this Agreement, LFUCG will cause the EPAD Assessment and Annual Assessments to be recorded in the office of the County Clerk against the Property, as more particularly described in the Ordinance.

(b) Property Owner hereby agrees and acknowledges that the Property is subject to the EPAD Assessment and consents to the levy of the Annual Assessments. Property Owner further agrees and acknowledges that Annual Assessments of the EPAD Assessment are a lien on the Property as provided in the Act and the Ordinance and failure to pay the EPAD Assessment may result in foreclosure of the Property in accordance with the terms of the Ordinance and this Agreement.

4. Term. This Agreement shall remain in full force and in effect until the Loan Amount and all other charges, fees, commissions, penalties, expenses and other amounts due under this Agreement, the PACE Agreement have been paid in full.

5. Annual Assessments.

(a) During the term of this Agreement, the Annual Assessments will be issued separately from, but in the same manner as, the property tax bill for the Property and collected as more particularly described below.

(b) The Annual Assessment shall equal the sum of the Installment Payment, the Sheriff's Commission, and the LFUCG Administrative Fee. LFUCG shall calculate the Annual Assessments and shall, by September 1st, inform the Sheriff of the Annual Assessment of the Property for each year of the term of this Agreement.

(c) The estimated amount of the initial Annual Assessment is set forth in Exhibit C attached hereto and incorporated herein by reference. That estimate is based on the assumptions set forth in Exhibit C, including the assumption that the Maximum Disbursement Amount has been disbursed to Borrower. The parties anticipate that some or all of the Loan proceeds will be disbursed prior to July 1, 2020, so that the 2020 assessment for the Property shall include the actual amount of the initial Annual Assessment.

(d) No later than July 1 in each year during the term of this Agreement, Lender shall confirm and certify to LFUCG the amount of the Installment Payment that will be due in the following year for the Property and the then outstanding Loan Amount (the "Assessment Certification"). The Assessment Certification shall be in form substantially similar to Exhibit D, which is attached hereto and incorporated herein by reference. Upon receipt of the Assessment Certification, LFUCG shall cause the appropriate Annual Assessment to be calculated and issued to the Sheriff, in accordance with section (b) above.

(e) Property Owner hereby agrees to pay the Annual Assessment bill for the Property during the term of this Agreement in a timely fashion and in any event no later than January 1st as set forth in Section 7(a) hereof. Property Owner agrees that all property tax bills in addition to the Annual Assessment, will be timely paid so as to avoid any default or delinquency in such payment.

(f) In the event Property Owner fails to pay all or part of any Annual Assessment when due, the parties hereto acknowledge and agree that (i) late payment charges and default interest on the unpaid amounts of the Installment Payment shall accrue in favor of Lender as set forth in the Pace Agreement, (ii) such late payment charges and default interest shall be added to the EPAD Assessments and shall be included as part of the Annual Assessments due thereafter unless and until all such accrued and unpaid default interest is paid in full, and (iii) such default interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of LFUCG as a result of Property Owner's failure to pay real estate or other property taxes or other assessments on the Property. In addition, Annual Assessments shall continue to be issued in September of each year notwithstanding Property Owner's failure to pay all or part of any past Annual Assessment, such that LFUCG shall continue to levy Annual Assessments, including default interest to be paid to Lender, until either the Loan Amount, including all accrued and unpaid interest, is paid in full or either LFUCG or Lender has acquired title to the Property pursuant to Section 8 or Section 9 of this Agreement.

(g) Property Owner hereby acknowledges and agrees that failure to pay any Annual Assessment of the EPAD Assessments, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing in favor of LFUCG. In addition, LFUCG and Lender may have the right to initiate a foreclosure action on the Property as a result of any delinquent Annual Assessments of the EPAD Assessments, as set forth in Sections 8 and

9 below, as LFUCG's or Lender's sole remedy for failure to pay the EPAD Assessments, except as otherwise expressly provided in the PACE Agreement. Neither LFUCG nor Lender waive in any respect any right each of them may have to seek personal liability for any other liens of any kind or nature due to either of them by Property Owner.

6. Adjustments and Prepayment.

(a) Subject to the terms and conditions in the PACE Agreement, Lender agrees to disburse to Property Owner an amount equal to the actual cost of the Project (the "Disbursement Amount"); provided the Disbursement Amount shall not exceed One Million Dollars [\$1,000,000.00] (the "Maximum Disbursement Amount"). If the Disbursement Amount is less than the Loan Amount, Lender shall recalculate the Installment Payment amounts based on the remaining amortization term and so notify LFUCG. If any payments have been made in excess of the amount disbursed, LFUCG may make an appropriate refund by crediting the refund amount against the next Annual Assessment of the EPAD Assessments.

(b) Property Owner may prepay the Loan in full, but not in part, by paying the outstanding principal amount of the Loan together with all accrued and unpaid interest, penalties, fees and other charges, plus any prepayment premium due Lender, all as more fully set forth in the PACE Agreement. Lender shall certify to Property Owner and LFUCG the aggregate amount due on the Loan, including principal, interest, and fees and any prepayment premium, within thirty (30) days of receipt of a written request therefor from Property Owner.

(c) Without the prior written consent of Lender, which consent may be given or withheld in Lender's sole reasonable discretion, the Loan may not be prepaid in part and, if such consent is given, any such partial prepayment must be made in strict compliance with the terms and conditions set forth in such written consent, which terms and conditions may include a prepayment penalty. Any partial prepayment in violation of this provision will not be accepted by Lender.

7. Collection of Annual Assessments; Payments to Lender.

(a) Sheriff shall collect the Annual Assessments, including assessing penalties and charging interest, in accordance with the Ordinance. Upon receiving an Annual Assessment from LFUCG, Sheriff shall prepare the bill and mail such bill to the Property Owner by September 30th. Property Owner shall pay the Annual Assessment amount to Sheriff by January 1st in accordance with the Ordinance. Failure to pay Sheriff the Annual Assessment within such time frame shall result in the accrual of penalties as detailed in the Ordinance.

(b) Sheriff agrees to separately account for any Annual Assessment payments collected or otherwise received for the Property. Sheriff shall remit the collected Annual Assessment less the Sheriff's Commission to LFUCG separately from any other tax revenue remitted to the LFUCG by the Sheriff and in accordance with the Ordinance as in effect on the date of this Agreement.

(c) Upon receipt of the Annual Assessment less the Sheriff's Commission, LFUCG shall remit to Lender, or its heirs, successors or assigns, the Installment Payment amount.

8. Delinquent Annual Assessment; In Rem Foreclosure. If Property Owner becomes delinquent in the payment of an Annual Assessment, they shall bear the same penalty as general state and local ad valorem taxes.

9. LFUCG Representations regarding Loan and Loan Documents. LFUCG hereby represents to Lender and to Property Owner that (i) it is and will be duly authorized under all applicable laws to execute this Agreement, (ii) this Agreement is and will be the valid and legally enforceable obligation of LFUCG, enforceable in accordance with its terms except to the extent that enforcement thereof may be subject to bankruptcy and other similar laws affecting creditors' rights generally, and (iii) this Agreement and the dollar amount and all other terms and conditions of the Loan as set forth herein, the PACE Agreement, and all other Related Documents and instruments are in compliance with the provisions of the Act and the Ordinance. LFUCG shall at all times, to the extent permitted by law, defend, preserve and protect the EPAD Assessments created by this Agreement and all the rights of Lender hereunder against all claims and demands of all other persons whomsoever.

10. Other Obligations Payable from EPAD Assessments. LFUCG will not issue or incur any obligations payable from the proceeds of the EPAD Assessments nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge upon the EPAD Assessments or the Annual Assessments, except for administrative fees and commissions as provided in this Agreement and the fees, commissions, penalties, costs and other charges payable for the collection of delinquent Annual Assessments provided in the Ordinance.

11. Re-Levy of Annual Assessment. If LFUCG omits to make, assess or collect any Annual Assessment when it is required by this Agreement or by the Ordinance to have done so, then LFUCG shall take all necessary steps to cause a new Annual Assessment (equal in amount to those not assessed, levied or collected plus interest and penalties, if any, thereon) to be levied against the Property in addition to that Annual Assessment otherwise to be levied or assessed against the Property.

12. No Guaranty by LFUCG of Repayment of Loan. LFUCG does not assume any responsibility for or guarantee in any manner whatsoever, in whole or in part, the repayment of the Loan between Property Owner and Lender or the payment of the EPAD Assessment or any Annual Assessment. In no event shall LFUCG ever be required to expend its own funds directly or indirectly on the Project.

13. Property Owner Responsibility; Indemnification.

(a) Property Owner acknowledges that LFUCG has established the Program solely for the purpose of facilitating loans arranged by eligible Property Owners located in Lexington for the purpose of making energy-efficient renovations by treating principal and interest repayments, fees and other charges for these loans as assessments administered through a bill separate from, but in the same manner as, a tax bill for such properties. The Program is a collection program only. Neither LFUCG nor Lender nor any of their respective officers, officials, agents, employees, attorneys or representatives are responsible for selection, management or supervision of the Project or the Project's performance and, further, will have

no liability to Property Owner for any matters related to the Project and its performance. Any issues related to performance of the Project should be discussed with chosen contractors or installers, and the manufacturer or distributor of the Project.

(b) Property Owner acknowledges that, pursuant to the Ordinance, the Project shall be permanently affixed to the Property and shall be transferred with the Property upon sale or transfer of title.

(c) To the extent permitted by law, Property Owner shall indemnify, defend, protect and hold harmless LFUCG, Lender, and any and all officers, officials, agents, employees, attorneys and representatives of LFUCG and Lender (collectively, the "LFUCG Parties") from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever the presence of Hazardous Substances (hereinafter defined) on the Property or arising out of any circumstance that results in a material, adverse devaluation of the Property as the result of any act or omission of the Property Owner (collectively, the "Liabilities"), regardless of whether such Liabilities shall accrue or are discovered before or after the disbursement of the Loan Amount or any portion thereof. "Hazardous Substance" means any substance, whether solid, liquid or gaseous which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law (hereinafter defined); or which causes or poses a threat to cause a contamination on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. "Environmental Law" means any federal, state, county or municipal statute, ordinance, regulation, rule, order, judgment, permit or decree or common law, now or hereafter in effect, relating to pollution or protection of human health, safety or the environment (including but not limited to ambient air, surface water, ground water, land surface or subsurface strata), or relating to waste disposal, or relating to worker safety, emissions, discharges, releases or threatened releases of Hazardous Substances or other environmental matters.

(d) The indemnity obligations described in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

14. Lender to Notify LFUCG of Transfer or Assignment. Lender shall send notice to LFUCG Government immediately upon the transfer or assignment of the Loan to any heirs, successors or assignees.

15. Waiver of Claims.

(a) For and in consideration of LFUCG's, the Sheriff's, and Lender's execution and delivery of this Agreement, Property Owner, for itself and for its assignees or successors-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives

the right to recover from LFUCG, the Sheriff, and Lender, and fully and irrevocably releases LFUCG, the Sheriff, and Lender from any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of LFUCG, the Sheriff, and Lender, and accruing from or related to (i) this Agreement, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Assessments, (iv) the imposition of the lien of the EPAD Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project, (xii) the workmanship of any third parties, and (xiii) any other matter with respect to the Program (the "Waived Claims"). This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of LFUCG. Notwithstanding the foregoing, Property Owner's release under this Section shall not extend to Waived Claims arising from LFUCG's or Lender's intentional default, fraud or willful misconduct.

(b) The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

16. Administrative Fees. The Annual Assessments shall include an LFUCG Annual Administrative Fee to be collected by LFUCG in the amount of two hundred fifty dollars (\$250). This fee shall be included, on an annual basis, in the Annual Assessments to be set forth in Assessment Certification attached hereto as Exhibit D and incorporated herein by reference.

17. Notices. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by registered or certified mail, return receipt requested, postage prepaid; or (c) sent to the parties at their respective addresses indicated herein by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Property Owner, to: RainMaker Holdings VII LLC, 2240 Executive Dr., Suite 201, Lexington, KY 40505 or to such other person or address as Property Owner shall furnish to Lender and LFUCG in writing.

(b) If to Lender, to: SSHCOF III PACE Lexington, LLC, c/o Stonehill Strategic Capital, One Alliance Center, 3500 Lenox Road, Suite 625, Atlanta, GA 30326, Attention: Kevin Cadin, Esq. or to such other person or address as Lender shall furnish to Property Owner and LFUCG in writing.

(c) If to LFUCG, to: Lexington Fayette Urban County Government, 200 East Main St.,

Lexington, KY 40507 Attention: Dale Morgan or to such other person or address as LFUCG shall furnish to Property Owner and Lender in writing.

(d) If to the Sheriff, to: Fayette County Sheriff's Office, 150 N Limestone #265, Lexington, KY 40507, or to such other person or address as the Sheriff shall furnish to Property Owner and Lender in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier pursuant to this Section, such communication shall be deemed delivered upon receipt. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

18. Supremacy. In the event of any conflict, inconsistency or ambiguity between the provisions of this Agreement and the provisions of the PACE Agreement, the provisions of this Agreement shall control.

19. Application Compliance. In applying for the Loan, Property Owner represents and warrants that it has fully complied with the loan application process as set forth in the Ordinance.

20. Compliance with Laws. Lender and Property Owner hereby agree to comply with all applicable federal, state and local laws, including lending and disclosure requirements and the provisions of the Ordinance.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.

22. Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

23. Severability. If any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect or to any extent, such finding shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

24. Transferability. Lender and LFUCG agree that this Agreement shall run with the land and that upon any transfer of the Property, "Property Owner" shall become the transferee and the transferor shall be released from any obligation or liability hereunder.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the

Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

26. Headings. The headings and captions of the sections in this Agreement are incorporated only for reference and are not to be read or construed into this Agreement.

27. Authority. The parties, by execution of this Agreement, do hereby warrant and represent that they are qualified to do business in the Commonwealth of Kentucky, and have full right, power and authority to enter into this Agreement.

28. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

29. Errors and Omissions. The undersigned parties agree that if requested by either Lender, the Sheriff, or LFUCG, in their respective sole reasonable discretion, it/they will fully cooperate and adjust for clerical errors on any or all documents, agreements and instruments related to the Project and/or the Loan as deemed necessary. Further, the undersigned parties will comply with all such requests within thirty (30) days of same being made.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT

By: _____
Name: _____
Title: _____

Approved as to Form and Legality:

Lexington-Fayette Urban County Government
Department of Law

By: _____

LENDER: SSHCOF III PACE LEXINGTON, LLC

By: _____
Name: _____
Title: _____

PROPERTY OWNER: RAINMAKER HOLDINGS VII LLC

By: _____

FAYETTE COUNTY SHERIFF

By: _____
Kathy H. Witt, Sheriff