

19-277

EXHIBIT A

STANDING PACE SPECIAL ASSESSMENT AGREEMENT

*(ORC Sections 9.482, 4582.17, and 5721.33)*

By and Among

THE COUNTY OF SUMMIT, OHIO

And

AKRON, BARBERTON, BATH TOWNSHIP, COPLEY TOWNSHIP, COVENTRY TOWNSHIP, CUYAHOGA FALLS,  
FAIRLAWN, GREEN, LAKEMORE, NEW FRANKLIN, NORTON, RICHFIELD, SPRINGFIELD TOWNSHIP,  
TALLMADGE ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

And

TOLEDO-LUCAS COUNTY PORT AUTHORITY

Dated as of \_\_\_\_\_, 2019

## STANDING PACE SPECIAL ASSESSMENT AGREEMENT

THIS STANDING PACE SPECIAL ASSESSMENT AGREEMENT (this **Agreement**) is made effective as of \_\_\_\_\_, 2019, by and among the County of Summit, Ohio (the **County**), through its Executive for and on behalf of the County and the County Fiscal Officer) the Akron, Barberton, Bath Township, Copley Township, Coventry Township, Cuyahoga Falls, Fairlawn, Green, Lakemore, New Franklin, Norton, Richfield, Springfield Township, Tallmadge Energy Special Improvement District, Inc., doing business as the Akron-Summit County Energy Special Improvement District, Inc. (the **ESID**), and the Toledo-Lucas County Port Authority (together with its permitted successors and assigns, the **Program Port Authority**).

### BACKGROUND:

A. The ESID was created under Ohio Revised Code (**RC**) Chapters 1702 and 1710 as an energy special improvement district and nonprofit corporation to further the public purpose of implementing special energy improvement projects, as defined in RC Section 1710.01(I) (as it may be amended from time to time), pursuant to the authority in RC Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution (**Energy Projects**).

B. Certain municipal corporations and townships (each a **Participating Political Subdivision**, and collectively the **Participating Political Subdivisions**) located within the County have and may from time to time continue to allow the owners of real property located within their boundaries to add their property to the territory of the ESID in order to allow the owners to implement Energy Projects.

C. Each Participating Political Subdivision has adopted legislation approving the inclusion of certain parcels of real property within its boundaries and within the territory of the ESID, approving the articles of incorporation of the ESID, and approving the ESID's Residential Program Plan (the **Residential Program Plan**) as a plan for public improvements and public services under RC Chapter 1710. The list of Participating Political Subdivisions that have approved the Residential Program Plan is set forth on **Exhibit A** to this Agreement, which, as updated from time to time, is incorporated into this Agreement by reference.

D. Under the Residential Program Plan, the ESID, among other services, shall assist property owners who own residential real property within each of the ESID's Participating Political Subdivisions (each an **Owner** and collectively the **Owners**) obtain financing for Energy Projects that benefit or will benefit their real property.

E. The Program Port Authority, with the agreement and consent of each Participating Political Subdivision pursuant to one or more cooperative agreements (each a **Residential PACE Cooperative Agreement**), will from time to time provide financing to pay the costs—including, without limitation, all permitted costs of plans for public improvements and for public services under RC Section 1710.06(A) and 1710.07 and all permitted costs of permanent improvements

under RC Section 133.15(B)—of Energy Projects (**Energy Projects Costs**) undertaken by the Owners within the ESID in furtherance of the public purposes set forth in Article VIII, Sections 20, 13 and 16 of the Ohio Constitution and RC Sections 4582.01 through 4582.20, both inclusive.

F. In order to implement Energy Projects with the cooperation of the ESID, obtain financing for Energy Projects, and create special assessment revenue available to pay and repay the Energy Project Costs, Owners will submit petitions (each a **Petition**) to the Participating Political Subdivision in which their real property is located and to the Program Port Authority requesting approval of the acquisition, installation, equipment, and improvement of one or more Energy Projects on their real property (the **Assessed Property**) and the levying of special assessments in amounts necessary to pay the Energy Project Costs on that Assessed Property, all subject to and in accordance with the terms and conditions of the Residential Program Plan (those special assessments, together with all amounts representing or collected in respect of those special assessments, including, without limitation, any delinquent special assessments, interest, penalties, and proceeds from enforcement of the lien of any special assessments are referred to in this Agreement as **PACE Special Assessments**).

G. Each Participating Political Subdivision, in cooperation with the Program Port Authority and the ESID, has agreed to take all the necessary actions required by law, including, without limitation, RC Chapter 727 for the levying of the PACE Special Assessments and will cause the PACE Special Assessments to be certified to the County Fiscal Officer (the **Fiscal Officer**) for collection by the County through the Fiscal Officer in semi-annual installments.

H. The County, through the Fiscal Officer, has, under RC Section 727.36, the authority to impose a collection fee in order to defray the cost of collecting special assessments certified to the Fiscal Officer for collection, including PACE Special Assessments, and the Program Port Authority, on behalf of all Participating Political Subdivisions within the County, and the County agree that the County, through the Fiscal Officer, will charge a specific fee designated as a percentage of each semi-annual installment of PACE Special Assessments for all PACE Special Assessments within the County.

I. Under the terms and conditions of Residential PACE Cooperative Agreements, each Participating Political Subdivision has assigned all of its right, title, and interest in and to the PACE Special Assessments to the Program Port Authority in order to provide revenues sufficient to pay and secure the Energy Project Costs financed by the Program Port Authority.

J. Under the terms and conditions of the Residential PACE Cooperative Agreements, each Participating Political Subdivision may direct the County, through the Fiscal Officer, to transfer, set over, and pay the Special Assessments directly to the Program Port Authority or its designee, and the form of agreement for each Participating Political Subdivision to so direct the County, through the Fiscal Officer, is set forth on **Exhibit B** to this Agreement.

K. RC Chapters 323 and 5721 describe certain parameters and timing requirements for the foreclosure of real property on “taxes,” as defined in RC Section 323.01(C) (as it may be amended from time to time) (**Taxes**), including the PACE Special Assessments, when the same are due and owing and remain unpaid, and upon the failure of any Owner to pay any installment of the PACE Special Assessments as and when due, it may be necessary for the Program Port Authority to foreclose on the lien of the PACE Special Assessments with respect to the Owner’s Assessed Property.

L. In consideration of the Program Port Authority’s financing of the Energy Project Costs, each Owner shall deliver a recordable consent given with respect to the Owner’s Assessed Property (each an **Owner Consent**) by which the Owner shall irrevocably agree to the covenants contained in its Petition, the levy of PACE Special Assessments, and the foreclosure of PACE Special Assessments as soon as possible as described in this Agreement; such agreements shall be covenants running with the Owner’s Assessed Property and shall be binding upon the Owner and upon future owners of the Owner’s Assessed Property until the PACE Special Assessments on the Owner’s Assessed Property are paid in full.

M. In consideration of each Owner Consent and the requests of the Participating Political Subdivisions and the Program Port Authority, upon the Owner’s failure to pay any installment of the PACE Special Assessments as and when due, the County, through the Fiscal Officer, by this Agreement, has agreed to foreclose the lien of the PACE Special Assessments as soon as possible as described in this Agreement.

N. Pursuant to RC Sections 5721.30 through 5721.41 (the **Delinquent Tax Lien Sale Act**), specifically RC Section 5721.33, the County, through the Fiscal Officer, in his or her discretion, may sell any number of tax certificates (**Tax Certificates**) which evidence the liens (the **Tax Liens**) of the State of Ohio (the **State**) and its applicable taxing districts for such delinquent Taxes, including PACE Special Assessments, on such Assessed Property.

O. If any Taxes, including, without limitation, the PACE Special Assessments levied on the Assessed Property are not paid when due and remain delinquent, the County, through the Fiscal Officer, pursuant to the Delinquent Tax Lien Sale Act, may, in his or her discretion, but is not required to, negotiate with one or more persons the sale of Tax Certificates, and may sell Tax Certificates at a discount from the full amount of the general Taxes, including the PACE Special Assessments, and penalties and interest that have become delinquent.

P. If the County, through the Fiscal Officer, were to sell Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of the sale representing the delinquent PACE Special Assessments might be insufficient to pay the Energy Project Costs associated with the Assessed Property for which the Tax Certificates were sold.

Q. The County has agreed to remit to the Program Port Authority, following the failure of any Owner to pay any installment of PACE Special Assessments as and when due,

amounts collected by the County, through the Fiscal Officer, and relating to the PACE Special Assessments, including without limitation amounts collected by the County, through the Fiscal Officer, as a result of foreclosure of the lien of the PACE Special Assessments on the Owner's Assessed Property and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act.

R. The County does not desire to take any action with respect to the collection of the PACE Special Assessments that might adversely affect the repayment of the Energy Projects Costs without the consent of the Program Port Authority or adversely affect the payment of the Energy Project Costs without the consent of the Program Port Authority.

NOW, THEREFORE, in consideration of the promises and of the mutual representations, warranties, and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and with the intention to be legally bound by this Agreement, the parties to this Agreement agree as follows:

#### Section 1. Authority for Agreement.

1.1 Each of the parties to this Agreement has requested the assistance of the other parties to facilitate financing of Energy Projects on residential property within the territory of the County and the boundaries of the Participating Political Subdivisions. For the reasons stated in this Agreement's Recitals—which are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the parties—the parties have agreed to cooperate to facilitate financing of Energy Project within the territory of the County and the boundaries of the Participating Political Subdivisions upon the terms and conditions of this Agreement.

1.2 The parties intend this Agreement to be, and it shall be, an agreement among the parties under RC Sections 9.482 and 4582.17(B) to cooperate in the financing, acquisition, construction, equipping, improvement, and installation of "special energy improvement projects" as defined in RC Section 1710.01, and of "port authority facilities," as defined in RC Section 4582.01. The parties agree that the Program Port Authority has authority under RC Sections 9.482, 4582.17(B), and 5721.33 to enter into this Agreement. The parties agree that the County, its Executive, and the Fiscal Officer each have authority under RC Sections 9.482, 4582.17(B), and 5721.33 to enter into this Agreement. The parties intend this Agreement to be, and it shall be construed as, an agreement to take effective cooperative action and to safeguard the parties' interests in furtherance of these purposes.

#### Section 2. PACE Special Assessments; Collection; Payment.

2.1 Each Owner shall sign and deliver to the Program Port Authority a Petition for the acquisition, installation, equipment, and improvement of the Owner's Energy Project and evidencing the agreement of the Owner to the levy of the PACE Special Assessments to pay the Energy Project Costs and as security for the repayment of the Energy Project Costs. Each Owner shall execute and deliver an Owner Consent by which the Owner shall irrevocably

agree to the covenants contained in its Petition, the levy of PACE Special Assessments, and the foreclosure of PACE Special Assessments as soon as possible as described in this Agreement; such agreements shall be covenants running with the Owner's Assessed Property and shall be binding upon the Owner and upon future owners of the Owner's Assessed Property until the PACE Special Assessments on the Owner's Assessed Property are paid in full. Based on the Petitions, the Owner Consents, and the Residential PACE Cooperative Agreements, the Program Port Authority and each Participating Political Subdivision shall take all necessary actions required by RC Chapter 727 to levy and collect PACE Special Assessments with respect to Assessed Property.

2.2 The Program Port Authority and each Participating Political Subdivision shall cause the PACE Special Assessments, as set forth in the Assessment Schedule included within each Petition and each Owner Consent, to be certified to the County, through the Fiscal Officer, on or before the last date for the certification of special assessments to the County, through the Fiscal Officer, of each year during which the PACE Special Assessments are to be levied pursuant to the Assessment Schedule. The parties acknowledge that pursuant to such certification, the PACE Special Assessments are expected to be collected by the Fiscal Officer pursuant to RC Chapters 319, 321, 323, and 727.

2.3 The Program Port Authority, on behalf of all Participating Political Subdivisions within the County, and the County, through the Fiscal Officer, agree that the County, through the Fiscal Officer, will charge a fee of 1.25% of each semi-annual installment of PACE Special Assessments for all PACE Special Assessments collected within the County. In accordance with RC Section 727.36, such fee shall be calculated, charged, billed, and collected by the County, through the Fiscal Officer, as an addition to the amount of PACE Special Assessments levied by a Participating Political Subdivision, and the County, through the Fiscal Officer, shall not retain any portion of the PACE Special Assessments levied by a Participating Political Subdivision. The proceeds of such fee representing 1.00% of each semi-annual installment of the PACE Special Assessments shall be used by the County, through the Fiscal Officer, to defray the cost of collecting special assessments or for any other lawful purpose. The proceeds of such fee representing 0.25% of each semi-annual installment of the PACE Special Assessments shall be paid by the County, through the Fiscal Officer, to the ESID, to defray the ESID's cost of administering the Residential Program Plan.

2.4 Under RC Chapter 321, the County, through the Fiscal Officer, is obligated to settle accounts semi-annually for all Taxes, including all PACE Special Assessments, that have been collected by the County, through the Fiscal Officer, as of the date of each semi-annual settlement. Following each semi-annual settlement, the County, through the Fiscal Officer, is obligated to pay the amounts collected as PACE Special Assessments to each Participating Political Subdivision for application in accordance with RC Chapters 727 and 1710. Under the terms and conditions of the Residential PACE Cooperative Agreements, each Participating Political Subdivision may direct the County, through the Fiscal Officer, to transfer, set over, and pay the PACE Special Assessments directly to the Program Port Authority or its designee. The County shall execute a payment agreement substantially in the form attached to

this Agreement as **Exhibit B** (each a **Payment Agreement**) promptly upon receipt of an executed form of Payment Agreement from any Participating Political Subdivision intending to direct the County, through the Fiscal Officer, to pay the PACE Special Assessments directly to the Program Port Authority or its designee. In accordance with this Agreement and each Payment Agreement, the County, through the Fiscal Officer, agrees to pay or cause payment of any PACE Special Assessments collected for any Participating Political Subdivision that has agreed to a Payment Agreement to the Program Port Authority or its designee. The Program Port Authority shall provide the County, through the Fiscal Officer, with written instructions for the County, through the Fiscal Officer, to pay to the Program Port Authority or its designee any PACE Special Assessments collected for any Participating Political Subdivision that has agreed to a Payment Agreement. The Program Port Authority may modify its written instructions for payments to be made by the County, through the Fiscal Officer, under any or all Payment Agreements at any time and from time to time by providing written notice to the County, through the Fiscal Officer,.

2.5 Pursuant to Section 4.1 of each Residential PACE Cooperative Agreement, each Participating Political Subdivision assigned to the Program Port Authority all of its right, title, and interest in and to the PACE Special Assessments, the funds of the Participating Political Subdivision established to collect and hold the PACE Special Assessments, and any other property received or to be received by the Participating Political Subdivision under the Residential PACE Cooperative Agreement. The County, the ESID, and the Program Port Authority each hereby acknowledges, agrees with, and consents to those assignments.

2.6 Pursuant to Section 4.4 of each Residential PACE Cooperative Agreement, the ESID assigned to the Program Port Authority any and all of its right, title, and interest it may have in and to the PACE Special Assessments. The County, the ESID, and the Program Port Authority each hereby acknowledges, agrees with, and consents to those assignments.

### Section 3. Foreclosure Process.

3.1 The County, through the Fiscal Officer, the ESID, and the Program Port Authority each acknowledge that the PACE Special Assessments are to secure payments relating to the financing of Energy Project Costs under the Residential PACE Cooperative Agreements. The County, through the Fiscal Officer, agrees that so long as any amounts under the Residential PACE Cooperative Agreements (the **PACE Amounts**) are outstanding and are secured, at least in part, by the revenues derived from the PACE Special Assessments, upon the County's receipt, through the Fiscal Officer's receipt, of written notice from the Program Port Authority that any amounts due under the Residential PACE Cooperative Agreement have not been paid in full as and when due and which notice directs the County, through the Fiscal Officer, to foreclose on the lien of the PACE Special Assessments, the County, through the Fiscal Officer, will, as soon as permitted under law, take all actions necessary to commence and diligently pursue a foreclosure action against any Assessed Property which has not paid as and when due all PACE Special

Assessments in full, following the procedures for lien foreclosures established in RC Section 323.25 and related sections. The foreclosure action shall be to collect all Taxes, including PACE Special Assessments, then due and owing on such Assessed Property. Without the prior written consent of the Program Port Authority, the County, through the Fiscal Officer, will not confirm the sale of any Assessed Property for an amount less than 100% of the amount of the Taxes, including PACE Special Assessments, then due and owing with respect to the Assessed Property, as shall be certified by the Program Port Authority to the County, through the Fiscal Officer, pursuant to the records of the County, through the Fiscal Officer. All fees and expenses of the County, through the Fiscal Officer, in collecting PACE Special Assessments are to be included in the costs of any such action and paid for by the Owner of the relevant Assessed Property.

3.2 The County hereby agrees that so long as any PACE Amounts are outstanding and are secured, at least in part, by the revenues derived from the PACE Special Assessments, the County, through the Fiscal Officer, will not sell or negotiate the sale of one or more Tax Certificates related to any Assessed Property for an amount less than 100% of the amount of PACE Special Assessments levied and certified for collection with respect to that Assessed Property without the prior written consent of the Program Port Authority.

3.3 The County hereby covenants and agrees that if any Taxes, including the PACE Special Assessments, on any Assessed Property are delinquent and the Delinquent Tax Lien Sale Act would permit the Fiscal Officer to negotiate the sale of Tax Certificates with respect to such amounts, the County, through the Fiscal Officer, will, prior to giving any notice under the Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to any Assessed Property, give written notice to the Program Port Authority regarding the same and state therein whether the County, through the Fiscal Officer, reasonably anticipates receiving no less than 100% of the Taxes, including the PACE Special Assessments, penalties and interest, originally levied and certified for collection plus other charges, including attorney's fees, with respect to that Assessed Property or whether the County, through the Fiscal Officer, reasonably expects to receive less than 100% of the Taxes, including the PACE Special Assessments, penalties and interest, levied and certified for collection plus other charges, including attorney's fees, with respect to that Assessed Property, and in accordance with this Agreement is requesting the consent of the Program Port Authority for such a sale.

3.4 Nothing in this Agreement shall, or shall be construed to, prevent the County, through the Fiscal Officer, from selling one or more Tax Certificates with respect to the Assessed Property to a third party without the consent of the Program Port Authority if the price received for the Tax Certificate or Tax Certificates equals or exceeds 100% of the Taxes, including the PACE Special Assessments, penalties and interest on the Assessed Property outstanding against the Assessed Property at the time of such sale.

3.5 The Program Port Authority hereby agrees that upon written notice from the County, through the Fiscal Officer, pursuant to Section 3.1 of this Agreement, it, within 30 days of receipt of the County's notice, shall give a written response to the County, through the Fiscal Officer, indicating therein whether it consents to the request for sale of a Tax Certificate



or Tax Certificates. No delay or failure of the Program Port Authority to give a written response shall be construed to be a consent to such request or to be a waiver of the right to give such consent. No consent or refusal thereof by the Program Port Authority in response to a request by the County, through the Fiscal Officer, shall extend to or affect any subsequent request of the County, through the Fiscal Officer, or shall impair the rights of the County, through the Fiscal Officer, with respect any such subsequent request.

3.6 So long as PACE Amounts are outstanding, the County, through the Fiscal Officer, shall not waive any otherwise applicable penalties and interest for delinquent Taxes, including PACE Special Assessments, with respect to Assessed Property and deduct a like amount of any such penalties and interest from amounts collected as Taxes, including PACE Special Assessments, but shall allow any and all applicable penalties and interest for delinquent Taxes, including PACE Special Assessments, to accrue and be paid in full in accordance with this Agreement.

3.7 So long as PACE Amounts are outstanding, the County hereby covenants and agrees (a) to remit to the Program Port Authority, as appropriate and as provided for herein, not more than 30 days from the date of collection by the County, through the Fiscal Officer, any amounts collected with respect to any Assessed Property as payment for delinquent PACE Special Assessments, including any amounts collected from Tax Certificates; and (b) to the extent the County, through the Fiscal Officer, seeks and is appointed as receiver for the Assessed Property, as provided for in RC Chapter 323, after payment of reasonable fees and expenses of the County, through the Fiscal Officer, all amounts collected by the County, through the Fiscal Officer, as receiver for any Assessed Property and collected as a result of any delinquent PACE Special Assessments, shall be remitted to the Program Port Authority.

3.8 The County agrees not to utilize the authority contained in RC Chapter 5722 to transfer any Assessed Property to the county land reutilization corporation, to sell or convey any Assessed Property to any political subdivision under the authority contained in RC Chapter 5722, or to clear the liens and encumbrances applicable to the Assessed Property under the authority contained in RC Chapter 5722 without the express written consent of the Program Port Authority.

3.9 Notwithstanding anything in this Agreement to the contrary, the obligations of the County and the Fiscal Officer under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County and are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the County and the Fiscal Officer under this Agreement shall be limited to the moneys levied, collected, and received in respect of the PACE Special Assessments and any related collection fees, charges, or penalties available to the County and the Fiscal Officer.

#### Section 4. Indemnification by Owners

4.1 The parties acknowledge that, by each Petition each Owner has released the ESID, the relevant Participating Political Subdivision, the County, the Executive, the Fiscal

Officer, the Program Port Authority, and their respective officers, directors, and employees (the **Indemnified Parties**), from, agreed that the Indemnified Parties shall not be liable for, and indemnified the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipment, improvement, maintenance, operation, and use of the Owner's Energy Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation, or agreement of the Owner under its Petition, or arising from any act or failure to act by the Owner, or any of the Owner's agents, contractors, servants, employees, or licensees; (iii) the Owner's failure to comply with any requirement of its Petition; (iv) the efforts of the relevant Participating Political Subdivision, the Program Port Authority, the ESID, and the County, through the Fiscal Officer or otherwise, to collect PACE Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the relevant Participating Political Subdivision, the Program Port Authority or the ESID specifically related to additional approvals or actions that may be required by the relevant Participating Political Subdivision, the Program Port Authority or the ESID arising after the date of the Petition (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the relevant Participating Political Subdivision, the Program Port Authority or the ESID, as applicable); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Residential PACE Cooperative Agreement of the Indemnified Parties.

4.2 The parties acknowledge that, each Owner has further agreed to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys' fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Owner's Assessed Property of Hazardous Materials, which in any way result from any act of omission or commission of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants. For purposes of this paragraph, Hazardous Materials means hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations.

## Section 5. Additional Agreements and Covenants.

5.1 The agreements of the parties in this Agreement with respect to the foreclosure process shall be deemed to be covenants running with the Assessed Properties and, so long as PACE Amounts are payable from or secured, at least in part, by the revenues derived from the PACE Special Assessments, such covenant shall be binding upon the Assessed Property (except as released as provided in the Owner Consents), the Owner and any future owner of all or any portion of the Assessed Property. The Owner Consents, and all other required documents

and agreements, shall be recorded with the Fiscal Officer, so that the agreements of the Owners with respect to the Petitions, the PACE Special Assessments, and the foreclosure process established pursuant to this Agreement are covenants running with and are enforceable against the Assessed Property.

5.2 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

If to the County:	Summit County Fiscal Officer The County of Summit, Ohio 175 S. Main Street, Fourth Floor Akron, Ohio 44308
With a Copy To:	Summit County Executive Attn: Director of Law 175 S. Main St., Eighth Floor Akron, Ohio 44308
If to the ESID:	Akron-Summit County Energy Special Improvement District, Inc. c/o Development Finance Authority of Summit County 47 North Main Street, Suite 407 Akron, Ohio 44308 Attention: Chairperson
If to the Program Port Authority:	Toledo-Lucas County Port Authority One Maritime Plaza, Seventh Floor Toledo, Ohio 43604 Attention: President and CEO
With a Copy To:	J. Caleb Bell, Esq. Bricker & Eckler LLP

100 South Third Street  
Columbus, Ohio 43215

5.4 The Program Port Authority shall have the unrestricted right at any time or from time to time, and without the consent of the County or the ESID, 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 Participating Political Subdivisions to any person (each, an **Program Port Authority Assignee**). Any Program Port Authority Assignee shall automatically become a party to this Agreement and shall have all of the rights and obligations of the Program Port Authority under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Program Port Authority pursuant to the assignment documentation between the Program Port Authority and such Program Port Authority Assignee, and the Program Port Authority 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.

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

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

(Signature Pages Immediately Follow)

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

Approved as to form on behalf of  
The County of Summit, Ohio:

**COUNTY**  
THE COUNTY OF SUMMIT, OHIO

\_\_\_\_\_  
Deborah S. Matz, Director of Law

\_\_\_\_\_  
Kristen M. Scalise CPA, CFE, Fiscal Officer

\_\_\_\_\_  
Ilene Shapiro, Executive

**ESID**

AKRON, BARBERTON, BATH TOWNSHIP, COPLEY TOWNSHIP, COVENTRY TOWNSHIP, CUYAHOGA FALLS, FAIRLAWN, GREEN, LAKEMORE, NEW FRANKLIN, NORTON, RICHFIELD, SPRINGFIELD TOWNSHIP, TALLMADGE ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., D/B/A:

AKRON-SUMMIT COUNTY ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PROGRAM PORT AUTHORITY**  
**TOLEDO-LUCAS COUNTY PORT AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the Toledo-Lucas County Port Authority, hereby certifies that the Toledo-Lucas County Port Authority has established a fund, into which the PACE Special Assessments (as that term is defined in the foregoing Agreement) received by the Toledo-Lucas County Port Authority shall be deposited, free from any previous encumbrances. The Toledo-Lucas County Port Authority shall use the moneys deposited in such fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Fiscal Officer  
Toledo-Lucas County Port Authority



**EXHIBIT A**

**LIST OF PARTICIPATING POLITICAL SUBDIVISIONS**

**EXHIBIT B**

**FORM OF PAYMENT AGREEMENT FOR PARTICIPATING POLITICAL  
SUBDIVISIONS**

This Payment Agreement (**Payment Agreement**) is entered into as of [DATE], between the [PARTICIPATING POLITICAL SUBDIVISION], an Ohio [municipality][township] (the **Participating Political Subdivision**), and the County of Summit, Ohio (the **County**), through its Executive for and on behalf of the County and the County Fiscal Officer, with all capitalized terms used in this Payment Agreement where the rules of grammar would not otherwise require capitalization and not defined in this Payment Agreement having the meanings given to them in the Standing PACE Special Assessment Agreement, by and among the County of Summit, Ohio (the **County**), through its Executive for and on behalf of the County and the County Fiscal Officer, the Akron, Barberton, Bath Township, Copley Township, Coventry Township, Cuyahoga Falls, Fairlawn, Green, Lakemore, New Franklin, Norton, Richfield, Springfield Township, Tallmadge Energy Special Improvement District, Inc., doing business as the Akron-Summit County Energy Special Improvement District, Inc., and the Toledo-Lucas County Port Authority, dated as of [\_\_\_\_], 2019 (**Standing Agreement**).

In accordance with the Standing Agreement, the Participating Political Subdivision hereby directs the County, through the Fiscal Officer, to recognize the Toledo-Lucas County Port Authority as its designated agent for receipt of all PACE Special Assessments to be paid to the Participating Political Subdivision. The Participating Political Subdivision authorizes the County, through the Fiscal Officer, to transfer, set over, and pay the PACE Special Assessments directly to the Program Port Authority or its designee in accordance with written instructions for payment provided to the County, through the Fiscal Officer, by the Program Port Authority.

This Payment Agreement shall remain in effect for as long as any PACE Special Assessments are to be paid by the County, through the Fiscal Officer, to the Participating Political Subdivision. This Payment Agreement may only be amended by written agreement of the Participating Political Subdivision and the County, through the Fiscal Officer.

The Participating Political Subdivision's Notice Address for all purposes of this Payment Agreement is:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Email: [\_\_\_\_\_]

As evidence of its intent to be bound by this Payment Agreement, the authorized representative of the Participating Political Subdivision has signed this Payment Agreement as of the date first stated above.

**[PARTICIPATING POLITICAL SUBDIVISION]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

As evidence of its intent to be bound by this Payment Agreement, and as authorized and directed under the Agreement, the County, through its Executive and for and on behalf of the County and the County Fiscal Officer, has executed this Payment Agreement.

Approved as to form on behalf of  
The County of Summit, Ohio:

**COUNTY**  
THE COUNTY OF SUMMIT, OHIO

\_\_\_\_\_  
Deborah S. Matz, Director of Law

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Kristen M. Scalise CPA, CFE, Fiscal Officer

\_\_\_\_\_  
Ilene Shapiro, Executive