

**NORTHEAST OHIO BROWNFIELD PROGRAM
LOAN AGREEMENT**

by and between the Northeast Ohio Areawide Coordinating Agency

and

The City of Middleburg Heights, Ohio

THIS LOAN AGREEMENT (this "Agreement") is made and entered into effective as of MARCH 14, 2024 (the "Loan Closing Date") by and between the Northeast Ohio Areawide Coordinating Agency (NOACA), and the City of Middleburg Heights, Ohio ("Borrower"), System for Award Management ("SAM") Identifier TKYYFT9LKGK1, with an address at 15700 Bagley Rd., Middleburg Heights, Ohio 44130.

WHEREAS, the US Environmental Protection Agency ("EPA") is the Federal awarding agency of a grant of federal funds from the EPA's Brownfield Revolving Loan Fund (the "USEPA BRLF"), specifically Grant No. (FAIN) BF00E03225, dated September 28, 2022, (the "Grant") made available to NOACA in order to capitalize a revolving loan fund (the "Northeast Ohio Brownfield Program" aka the "NOACA-Vibrant NEO Brownfields Revolving Loan Fund") as authorized by CERCLA 104(k)(3) in Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull, and Wayne Counties, Ohio, under and pursuant to Public Law 107-118, known as the Small Business Liability Relief and Brownfields Revitalization Act, from which NOACA is authorized to make certain loans; and

WHEREAS, Borrower has applied to NOACA for a loan (the "Loan") to be used for environmental remediation of asbestos-containing building materials (the "Project") in the property located at 6950 W 130 St., Middleburg Heights, Ohio 44130 and encompassing permanent parcel numbers 372-31-006 and 372-31-009 (the "Project Site"); and

WHEREAS, NOACA, through its Brownfields Steering Committee, has determined that the Loan qualifies for funding through NOACA-Vibrant NEO Brownfields Revolving Loan Fund and that the NOACA Board of Directors has approved the Loan through its Resolution 2023-050; and

WHEREAS, the EPA Assistance Listing Number and Name for the Grant which supports the Loan is 66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements; and

WHEREAS, NOACA is the Fiscal Agent for the NOACA-Vibrant NEO Brownfields Revolving Loan Fund and a pass-through entity for purposes of 2 CFR 200.332 and the Grant; and

WHEREAS, NOACA desires to make the Loan to Borrower, and Borrower agrees to use the Loan for the Project, all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and NOACA agree as follows:

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Article 1. THE LOAN

1.1 Scope of Agreement.

- a. Borrower agrees to borrow from NOACA, and NOACA agrees to lend to Borrower, an amount not to exceed \$500,000 (five hundred thousand dollars), on the terms of and subject to the conditions of this Agreement, which include all recitals and all exhibits, all of which are fully incorporated into this Agreement, as well as the terms and conditions of the Cooperative Agreement between the United States Environmental Protection Agency ("USEPA") and NOACA (the "Cooperative Agreement") and the EPA General Terms and Conditions referenced therein, which are incorporated by reference in this Agreement as if fully restated herein.

- b. Funds available under this Agreement are subject to the Cooperative Agreement, which describes the NOACA-Vibrant NEO Brownfields Revolving Loan Fund as follows: Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Grant will provide funding for NOACA to capitalize a revolving loan fund as authorized by CERCLA 104(k)(3) in Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull, and Wayne Counties, Ohio. Specifically, the Grant will provide funding for NOACA to capitalize a revolving loan fund from which to make loans and subgrants to clean up brownfield site(s) and conduct other necessary activities to prudently manage the fund. Additionally, NOACA and Borrower will competitively procure (as needed) and direct a Qualified Environmental Professional (QEP) to oversee the environmental site activities. Further, NOACA and Borrower, as set forth in Section 1.2 of this Agreement, will create a community involvement plan and administrative record for each site that is remediated, and will report on program income, interim progress, and final accomplishments by completing and submitting relevant portions of the Property Profile Form and Brownfields RLF Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). Further, NOACA will issue loans subgrants to remediate brownfield sites. The number of loans and subgrants will depend upon the dollar amount of the loans and subgrants. At least 50% of the grant funding and associated cost share will be used for loans and associated eligible programmatic costs. NOACA and Borrower anticipate holding community meetings for each loan and subgrant. NOACA and Borrower will finalize an Analysis of Brownfield Cleanup Alternatives for each loan and subgrant and will submit 20 quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull, and Wayne Counties, Ohio. Subawards are included in the Grant for the remediation of eligible brownfields sites.

- c. Each exhibit attached hereto requiring execution shall represent the form of the stand-alone document that will be separately executed by the appropriate parties. The exhibits include the following:

- a. Exhibit 1 - Cognovit Promissory Note (the "Note")
- b. Exhibit 2 - Legal Description of the Premises
- c. Exhibit 3 - NOACA Board of Directors Resolution 2023-050
- d. Exhibit 4 - Loan Disbursement Request Form
- e. Exhibit 5 - USEPA Eligibility Determination
- f. Exhibit 6 - Budget
- g. Exhibit 7 - The Cooperative Agreement and EPA General Terms and Conditions

1.2 Loan Terms. This loan is conditioned upon the Borrower preparing an Analysis of Brownfield Cleanup Alternatives (ABCA); preparing a Community Involvement Plan (CIP, also known as a Community Relations Plan); establishing an administrative record documenting the selection of the cleanup plan; and providing a public comment period on the ABCA, with NOACA's concurrence. Upon completion of the public comment period the Borrower shall issue a decision document or equivalent (i.e., shall respond to public comments, consult with the NOACA and EPA to determine if the selected cleanup requires formal modification based on public comments or new information, and document any changes to the selected cleanup), with NOACA's concurrence.

1.3 Loan Documents. The "Loan Documents" shall include and be defined as fully-executed originals of the following documents:

- a. Loan Agreement and all Exhibits
- b. Note

1.4 Repayment. The payments of principal and accrued and unpaid interest on the Loan shall be due as set forth in the Note. Upon the occurrence and during the continuance of any Default, as that term is defined herein, the outstanding principal amount of the Loan shall bear interest at a rate of 0.00% per annum (the "Default Rate") until such Default has been cured. The entire outstanding principal balance of the Loan, together with all accrued and unpaid interest thereon, shall be due and payable in full on the 10th anniversary of the date of the initial Loan Disbursement (the "Maturity Date").

1.5 Term of Loan Agreement. This Agreement shall be and remain in full force and effect from the Loan Closing Date until (a) the termination of this Agreement by NOACA pursuant to its terms, or (b) such time as the Loan shall have been fully repaid and all other sums payable by Borrower under this Agreement or any other Loan Document shall have been paid and/or forgiven.

1.6 Prepayment. Borrower may prepay the Loan in whole or in part, without penalty, at any time. No partial prepayment shall relieve Borrower from the obligation to pay any installment when due, or to pay all outstanding principal and any accrued and unpaid interest due under the Note on or before the Maturity Date.

1.7 Use of the Loan. The Loan and all Loan Disbursements shall be used solely for the Project and in compliance with CERCLA Section 104(k) and applicable federal and state laws and regulations, including inspections, clearance sampling, reports, public notice items and all requirements of USEPA (the "Eligible Project Costs"). Borrower anticipates work on the Project will begin on April 15, 2024 and be completed on or

before April 15, 2027. The Eligible Project Costs and the indirect cost rate of 0% shall be detailed on a cost breakdown which includes all removal and disposal costs necessary to complete the Project by line item (the "Budget"), which Budget shall be prepared by the Borrower's QEP and reviewed by NOACA and its QEP. Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by Borrower to a broker. Eligible Project Costs are limited in type and amount by the terms and provisions of the Cooperative Agreement as applicable and shall not include the purchase of any covered telecommunications equipment or services as described in 2 CFR 200.216, nor any prohibited management or consulting fees. No amendment of the Budget shall be made without NOACA's prior written consent, and there shall be no reallocation of line items within the Budget unless Borrower can demonstrate, to NOACA's satisfaction, that (a) sufficient funds remain in the line item from which the amount is to be reallocated to pay all Eligible Project Costs which may be paid from that line item, and (b) no line item in the Budget (other than the line item to which the reallocation is sought) is required, in NOACA's judgment, to be increased. NOACA retains the right to request that Borrower alter or amend the Project and Budget if necessary due to public feedback or new information acquired during the course of the Project.

1.8 Loan Expenses.

a. "Loan Expenses" shall be defined as any interest, charges, reasonable out-of-pocket costs and expenses incurred by NOACA in connection with the Loan, including but not limited to (i) interest due on the Loan, loan fees, service charges, commitment fees, late charges or other fees due to NOACA in connection with the Loan; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the Loan Documents or any other document required in connection with the Loan; (iv) all appraisal fees; (v) all title, casualty liability, payment, performance or other insurance or bond premiums; (vi) all reasonable fees and disbursements for legal services including without limitation, counsel engaged in connection with the preparation, enforcement or administration of this Agreement, any of the other Loan Documents, or any other document required in connection with the Loan; and (vii) any amounts required to be paid by Borrower under any of the Loan Documents after the occurrence of a Default hereunder. Loan Expenses shall not include management fees as prohibited by the provisions of the Cooperative Agreement and EPA's General Terms and Conditions incorporated therein. Loan Expenses for consultant fees are limited by the provisions of 2 CFR 1500.10 and the consultant fee cap set forth in the Cooperative Agreement and EPA's General Terms and Conditions incorporated therein.

b. Borrower hereby requests and authorizes NOACA to make Loan Disbursements directly to or for the account of NOACA for payment and reimbursement of Loan Expenses. The total amount of Loan Expenses, together with all Loan Disbursements, shall not exceed the Loan Amount in the aggregate. Borrower acknowledges and agrees that NOACA's ability to make Loan Disbursements is subject to the requirements of EPA's General Terms and Conditions, incorporated into and made part of the Cooperative Agreement.

1.9 Borrower agrees to maintain documentation evidencing all payments of Eligible Project Costs in a form satisfactory and acceptable to NOACA and in compliance with the requirements of the Cooperative Agreement. Documentation requesting and acknowledging disbursements must reference the EPA Assistance Listing Number and Name for the Grant, which is 66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements.

1.10 Borrower shall comply with the cybersecurity provisions of 2 CFR 200.216 if any network or information system is connected to EPA networks to transfer data to EPA using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

1.11 Borrower agrees to comply with the internal control requirements specified at 2 CFR §200.303 and 2 CFR Part 200, Subpart F, Audit Requirements, and the financial management requirements specified at 2 CFR 200.302, and shall provide such information as required and requested by NOACA to satisfy NOACA's responsibility to oversee and manage the Loan pursuant to 2 CFR 200.330-332.

1.12 Borrower shall select contractors or subcontractors in compliance with applicable state and federal procurement requirements including 2 CFR Part 200 and 2 CFR Part 1500.10.

1.13 Borrower agrees to comply and shall cause its contractors and subcontractors to comply with 2 CFR Part 170, Reporting Subaward and Executive Compensation under the Federal Funding Accountability and Transparency Act (FFATA), as further required by the Cooperative Agreement, and shall provide NOACA with all documents, information or reports necessary for NOACA to comply with its reporting obligations under the Cooperative Agreement.

1.14 Borrower will comply and shall cause its contractor(s) to comply with the federal, state, and local statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability, which include, among others, Title VI of the Civil Rights Act of 1964 and Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4 relating to federally assisted construction contracts;

1.15 Borrower will undertake, and shall cause its contractor(s) and subcontractor(s) to undertake, good faith efforts to give opportunities for qualified Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies, and shall submit a report of such efforts within six months of the Loan Closing Date upon NOACA's request, in compliance with the EPA's programmatic regulations located in 40 CFR Chapter 1 Subchapter B, Participation by Disadvantaged Business Enterprises in United States Environmental Protection Agency Programs. Specifically, Borrower shall;

- a. execute an affidavit of non-discrimination in a form approved by NOACA upon NOACA's request;
- b. undertake, or cause its contractor(s) and subcontractor(s) to undertake, good faith efforts to hire and promote opportunities for qualified SBE, MBE and WBE;
- c. comply and cause its contractor(s) and subcontractor(s) to comply with all other federal cross cutting requirements applicable to NOACA pursuant to the Cooperative Agreement; and
- d. maintain all records that document compliance with the items set forth above for at least three years and submit such records to NOACA during the progress of the Project on a quarterly basis, as requested.

1.16 Borrower shall and shall require its contractors and subcontractors to comply with all "Cross-cutting Requirements," defined as all applicable cross-cutting requirements set forth in the Cooperative Agreement, including without limitation, OSHA Worker Health & Safety Standard 29 C.F.R. 1910.120; the Uniform Relocation Act; National Historic Preservation Act;

Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333t the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250;

1.17 Borrower shall ensure that no Loan Disbursements shall be applied to any costs or expenses for which Borrower has received funds from any other source, including the matching funds required to be contributed by Borrower to the Project Budget. Borrower shall also maintain documents separating expenses and reimbursements related to the Project from all other expenses or monies related to other renovation, rehabilitation or construction activities in or on the Project Site;

1.18 Borrower shall and shall require its contractors and subcontractors to complete the Project in accordance with the "Applicable Standards," defined as: a) the standards and criteria established in or pursuant to the Clean Air Act (42 U.S.C.A. Section 7401, et. seq.); the USEPA National Emissions Standards for Asbestos (40 C.F.R., Part 61, Subpart M) and all asbestos regulations, criteria and orders promulgated by: (i) the Occupational Safety & Health Administration (i.e., 29 C.F.R. 1926.1101 and 29 C.F.R. 1910.134); (ii) USEPA, (iii) United States Department of Transportation, (iv) the Ohio Environmental Protection Agency and (v) the Ohio Department of Health (i.e., Ohio Administrative Code 3745-20 and 3701-34); b) the standards and criteria established in or pursuant to the Toxic Substances Control Act and the regulations at 40 CFR 761, and regulations, criteria and orders promulgated by the USEPA Office of Resource Conservation and Recovery; and c) such other applicable standards and criteria as are established in connection with the USEPA BRLF Program and the Ohio Voluntary Action Program;

1.19 Borrower shall and shall require its contractors and subcontractors to comply with all applicable federal and state laws and regulations and to complete the Project in accordance with all applicable conditions and requirements imposed upon Borrower, in its capacity as a Borrower under the Cooperative Agreement, and where applicable, CERCLA, specifically CERCLA Section 104(k); the National Historic Preservation Act, 54 U.S.C. Section 300101 et seq.; Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal awards, 2 CFR Parts 200 and 1500, and the Office of Management and Budget guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities, 2 CFR Part 200 Subparts A through F.

1.20 Borrower shall require its QEP to perform all additional required environmental remediation oversight for the Project, including but not limited to: preparing and documenting all abatement plans, budgets and schedules; ensuring that the Project meets applicable federal, state and local laws and providing appropriate documentation; documenting and reporting to NOACA any deviations from the approved abatement plan, budget and schedule; providing its reliance letter to NOACA to be included as part of NOACA's final cleanup report to USEPA documenting Project completion, thus ensuring and certifying that the Project is completed in accordance with all Applicable Standards;

1.21 Borrower shall and shall require its contractors and subcontractors to cooperate with NOACA's QEP at all times as they provide environmental remediation oversight for the Project on behalf of NOACA, including but not limited to: performing site inspection visits; taking review samples; reviewing sample results, all specifications, health and safety plans, and all final abatement reports, and reporting to NOACA any deviations from the approved abatement plan, budget and schedule; providing its own reliance letter to NOACA to also be utilized as part of NOACA's final cleanup report to USEPA documenting Project completion; and ensuring and certifying that the Project is completed in accordance with all Applicable Standards. Borrower agrees that the Project shall be overseen by a licensed asbestos containing material ("ACM") removal professional and that the ACM removal professional certify the Project was completed in compliance with all applicable laws and regulations of the State of Ohio;

1.22 Borrower shall submit weekly reports to NOACA during the duration of environmental remediation. Weekly reports may be succinct and submitted by email to NOACA, and shall include updates on waste generated and its disposal, environmental results achieved, any public involvement activities, and any media attention generated by the project, along with photos illustrating the activities as appropriate. Borrower shall also submit quarterly financial and programmatic reports to NOACA demonstrating progress of the Project.

1.23 Borrower shall and shall require its contractors and subcontractors to cooperate with NOACA in arranging for inspections of the Project Site by NOACA and/or NOACA's QEP;

1.24 Borrower shall and shall require its contractors to comply with all applicable state requirements and with the EPA's cybersecurity requirements regarding the collection and management of environmental data under the Loan Agreement;

1.25 Borrower shall cause the Project to be completed (i) in compliance with CERCLA Sections 104(k) and 104(g), (ii) in a good and workmanlike manner with materials of high quality, (iii) strictly in accordance with applicable state and local building, zoning and other laws and ordinances as well as pollution control and environmental protection regulations, (iv) in accordance with any plans and specifications submitted to or approved by NOACA; and (v) in a manner that protects human health and the environment;

1.26 Borrower agrees that if a sign is developed as part of the Project, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA and NOACA) and/or the EPA and NOACA logos acknowledging that EPA and NOACA are sources of funding for the Project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/aboutepa/using-epa-seal-and-logo>. The NOACA logo should be in a form provided by and approved by NOACA.

1.27 Borrower shall provide NOACA at least ten (10) business days' notice of public or media events publicizing the Project. In addition, Borrower shall acknowledge EPA's and NOACA's financial assistance in all its publicity materials for the Project and when responding

to media coverage and shall include the statement: "Funding for this project was provided the United States Environmental Protection Agency under assistance agreement BF00E03225 to NOACA. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

1.28 Borrower shall comply with the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917), as required by the Cooperative Agreement and as may be applicable, to carry out the remediation of the asbestos-containing building materials.

1.29 Borrower and its contractors and subcontractors shall pay wages to laborers and mechanics employed on the Project at not less than the prevailing rates of wages for laborers and mechanics for the applicable class of work called for by the Project, which wages shall be determined in accordance with the requirements of CERCLA Sections 104(k) and 104(g) and the Davis- Bacon Act, as well as applicable United States Department of Labor regulations. All contractors and subcontractors must receive notification of changes in prevailing wage rates as required under Section 4115.05, Ohio Revised Code, and the Davis-Bacon Act;

1.30 If prevailing rates of wages are required under this Agreement, Borrower shall cause all contractors and all subcontractors to submit certified payroll reports documenting all construction worker hours performed on the Project electronically through LCPtracker and shall work with a person designated by NOACA to receive and review such information and evidence;

1.31 Borrower shall pay all premiums on all insurance policies required under this Agreement and when any policies of insurance may expire, furnish to NOACA, premiums prepaid, replacement or renewal insurance policies in companies, coverage and amounts satisfactory to NOACA, in accordance with the terms hereof;

1.32 Borrower agrees that NOACA may assign, negotiate, pledge or otherwise hypothecate any of the Loan Documents to any lender, participant or financial institution, and in case of such assignment, Borrower will accord full recognition thereto and agree that all rights and remedies of NOACA in connection with the interest so assigned shall be enforceable against Borrower by such lender, participant or financial institution with the same force and effect and to the same extent as the same would have been enforceable by NOACA but for such assignment;

Article 2. CONDITIONS TO LOAN CLOSING

2.1 Required Documents. The following must be received by NOACA prior to the Loan Closing Date, all of which must be strictly satisfactory to NOACA in form, content, and execution:

- a. The Loan Documents;
- b. The Budget and Eligible Project Costs.

2.2 Required Conditions. Each of the following conditions must be true prior to the Loan Closing Date:

- a. Borrower shall authorize the required local twenty percent (20%) matching funds (the "Match") for the Project;
- b. Borrower shall retain a Qualified Environmental Professional ("QEP") who shall, among other things, be responsible for providing required environmental oversight during the Project;
- c. Borrower shall cooperate with NOACA's QEP as they provide the necessary environmental oversight on behalf of NOACA;
- d. It shall have been determined that neither Borrower nor any contractor or subcontractor is a "Potentially Responsible Party," as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 107, nor are Borrower or any contractor or subcontractor affiliated with a "Potentially Responsible Party". Any such determination is not binding on the Federal Government.

2.3 Fees. The following must be paid by Borrower prior to the Loan Disbursement Date:

- Legal Fee of \$1,000;

2.4 Compliance. Borrower shall have completed and be in compliance with each provision of and every representation, warranty, covenant and promise made within this Agreement to the satisfaction of NOACA. There shall be occurring no Default, as defined herein.

Article 3. CONDITIONS TO LOAN DISBURSEMENT

3.1 Required Documents. The following must be received by NOACA prior to any Loan Disbursement, all of which must be strictly satisfactory to NOACA in form, content, and execution:

- a. Proof of insurance in conformity with the requirements set forth herein;
- b. Certified resolutions evidencing the authority of Borrower to enter into the Loan;
- c. The "Attorney's Opinion," which shall be defined as the opinion of Borrower's legal counsel covering certain matters regarding the Loan and the Loan Documents. The Attorney's Opinion shall set forth:
 - (i) Borrower is a political subdivision duly organized and validly existing under Title 7 of the Ohio Revised Code.
 - (ii) Borrower has full power and authority to execute and deliver the Loan Documents and to carry out and give effect to the transactions contemplated to be performed by it under the Loan Documents;

(iii) each of the Loan Documents has been duly executed and delivered and constitute legal, valid and binding obligations of Borrower, and are enforceable in accordance with their terms, subject to customary qualifications;

(iv) the execution and delivery of each of the Loan Documents and the performance and observance by Borrower of the covenants and agreements contained therein do not and will not conflict with or violate any provisions of or constitute a default under, conflict with or be a violation of any judgment, decree, indenture, mortgage, guaranty, agreement, or other instrument to which Borrower is a party or is bound;

(v) there is no action, temporary restraining order, injunction, suit, proceeding or inquiry before or by any judicial or administrative court or agency, pending or threatened against or affecting, or involving the properties, securities or businesses of Borrower; and

(vi) Borrower has obtained any and all requisite consents, permits, licenses and approvals necessary to enter into, execute and deliver the Loan Documents and to perform Borrower's obligations thereunder;

d. Executed copies of all documents and instruments entered into by Borrower with respect to any other financing being utilized for the Project;

e. Certified copy of a resolution or authorization of the commitment of the required Match in the amount of \$100,000.

f. Copies of all specifications, prepared by Borrower's QEP, necessary for completion of the Project;

g. A certification signed by Borrower's QEP that the specifications provided will, upon full implementation, be sufficient to complete the Project;

h. Executed copies of all contracts and subcontracts necessary for the completion of the Project or for the furnishing of labor or materials for all or any portion of the Project, which contracts shall include the requirement that all contractors and subcontractors shall comply with the internal control requirements for cybersecurity specified at 2 CFR Section 200.303 and acknowledging that such contractors and subcontractors are subject to the Audit Requirements of 2 CFR Part 200, Subpart F;

i. Evidence of all governmental approvals necessary for commencement of the Project;

j. Copies of all covenants, conditions, restrictions, easements and matters of record which affect the Project Site;

k. Documentation evidencing payment of expenses for Eligible Project Costs for the amount to be disbursed on a reimbursement basis, in a form satisfactory and acceptable to NOACA, invoiced in Borrower's name on or after the date that all conditions in this Article have been satisfied;

l. The Loan Disbursement Request Form in the form attached hereto as an exhibit, requesting a Loan Disbursement in an amount that, when taken together with all prior Loan Disbursements, does not exceed the Loan Amount;

m. Evidence of state prevailing wage rates or Davis-Bacon wage rates paid as applicable to the Project, as set forth herein;

n. A determination by NOACA that Borrower and its contractors and subcontractors are in compliance with applicable Federal laws and regulations, the terms of the Loan Agreement, and the requirements of the Cooperative Agreement, or, if NOACA determines that there is a risk that the Borrower and its contractors and subcontractors are not in compliance or are at risk of becoming noncompliant with applicable Federal laws and regulations, the terms of the Loan Agreement, and the requirements of the Cooperative Agreement, receipt by NOACA of such documents, reports, records or assurances as may be required by NOACA to satisfy its obligations under 2 CFR 200.332(b) and (c). Any determination under this subsection is not binding on the EPA or other branch of the federal government.

o. Any such other documents and information that NOACA may reasonably require, including but not limited to any lease agreements with tenants at the Project Site.

3.2 Required Conditions. Each of the following conditions must be true prior to any Loan Disbursement to the satisfaction of NOACA:

a. This Agreement is in full force and effect;

b. All conditions and requirements of the Loan Documents to be performed by Borrower or other party prior to any Loan Disbursements have been satisfied or performed;

c. Borrower and any contractor or subcontractor shall have complied and be in compliance with each provision of and every representation, warranty, covenant and promise made within this Agreement to the satisfaction of NOACA and there shall be occurring no Default, as defined herein;

d. No litigation, claims or proceedings are pending or threatened against Borrower or the Project Site which litigation, claims or proceedings, in the sole and exclusive judgment of NOACA, would materially affect Borrower's ability to perform any of its respective obligations under any of the Loan Documents;

e. No event, circumstance or condition exists or has occurred which could, in NOACA's sole judgment, delay or prevent the completion of the Project by the "Project Completion Deadline," which shall be defined as the date 36 months after the Loan Closing Date;

f. No adverse change, which in the sole and exclusive judgment of NOACA, has occurred or is threatened against the Project Site or the financial condition of Borrower which would

materially affect Borrower's ability to perform any of the obligations under any of the Loan Documents;

g. NOACA shall be satisfied that all Loan Disbursements disbursed to date have been applied only to the payment of Eligible Project Costs;

h. NOACA shall be satisfied as to the continuing accuracy of the Budget;

i. NOACA shall be satisfied that the Project is in conformity with applicable law and that the Project is being completed in accordance with any plans or specifications submitted to and/or approved by NOACA.

3.3 Final Loan Disbursement. Borrower shall submit its final Loan Disbursement Request Form no later than 18 months after the Project Completion Date, as that term is defined herein, and after that date NOACA shall be under no further obligation to make any Loan Disbursements.

Article 4. BORROWER'S REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties: General. To induce NOACA to execute and perform this Agreement, Borrower hereby represents, covenants, promises, and warrants to NOACA, and shall require any contractor or subcontractor using Cooperative Agreement funds similarly to represent, covenant, promise and warrant as follows:

a. Borrower is now and will remain throughout the Project Completion Date the owner of the Project Site;

b. Borrower has secured all funds necessary to complete the Project and is in compliance with all documents related to its other project financing;

c. The Project shall commence timely and shall be completed on or before the Project Completion Deadline;

d. Borrower has and will have during the term of this Loan Agreement all requisite power and authority to enter into this Agreement and to conduct Borrower's activities, as presently conducted, to complete the Project, and to own, or hold under lease, Borrower's assets and properties;

e. Execution of the Loan Documents and performance of Borrower's obligations have been duly authorized;

f. The Loan Documents to which Borrower is a party will constitute the duly authorized, valid and legally binding obligations of Borrower and will be enforceable against Borrower strictly in accordance with their respective terms, except as such enforceability may be limited or denied by (a) applicable bankruptcy, insolvency, reorganization, moratorium or similar governmental rule relating to or affecting the enforcement of creditors' rights and the

enforcement of debtors' obligations generally and (b) general principles of equity, regardless of whether enforcement is pursuant to a court proceeding in equity or at law;

g. No condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which could adversely affect the validity or enforceability of the Loan Documents, which could adversely affect the ability of Borrower to complete the Project, which could adversely affect the ability of Borrower to perform its respective obligations under the Loan Documents to which it is a party, which would constitute a Default, as that term is defined herein, under any of the Loan Documents, or which would constitute such a Default with the giving of notice or lapse of time or both;

h. The Project Site, the present use and occupancy of the Project Site, the completion of the Project and the intended use and occupancy of the Project Site will not violate or conflict with any contract, lease, any applicable law, statute, ordinance, rule, regulation or order of any kind, including without limitation zoning, building, environmental, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not;

i. The Loan Documents and other materials submitted to NOACA by or on behalf of Borrower in connection with or in furtherance of the Loan fully and fairly states the matters with which they purport to deal in all material respects, and neither misstates any material fact nor, separately or in the aggregate, fails to state any material fact necessary to make the statements made not misleading;

j. Borrower is, will remain, and will take all actions necessary to remain in compliance with in all matters, which matters include but are not limited to the receipt, expenditure, and use of the Loan, and shall cause its officers, agents, and employees to do the same;

k. Borrower does not have an identity of interest with any supplier, contractor, architect, subcontractor, laborer or materialman performing work or services or supplying materials or labor in connection with the Project or the Project Site;

l. Borrower has not made any contract or arrangement of any kind, other than the Loan Documents, which has given rise to, or the performance of which by the other party thereto would give rise to (with the exception of possible non-payment of construction costs), a lien or claim of lien on the Project Site while this Loan is outstanding in whole or in part, unless expressly consented to by NOACA;

m. All plans and specifications for the Project are complete in all respects, and upon completion of the Project, the Project Site shall be ready for the intended use thereof;

n. The Project Site is not listed, or proposed for listing, on the National Priorities List of USEPA;

o. The Project Site is zoned under zoning ordinances which permit the operation of the Project Site; and all utilities, including water, storm and sanitary sewer, gas, electric and telephone, and rights of access to public ways shall be available to the Project Site in sufficient locations and capacities to meet the requirements of operating the Project Site and of any applicable Governmental Authority;

4.2 Representations and Warranties: USEPA BRLF. To induce NOACA to execute and perform this Agreement, Borrower hereby represents, covenants, promises, and warrants to NOACA, and shall require any contractor or subcontractor using Cooperative Agreement funds similarly to represent, covenant, promise and warrant, as follows:

a. Borrower is not a Potentially Responsible Party and is eligible for one of the Landowner Liability Protections under CERCLA Section 107;

b. Borrower is not now, nor has it ever been, subject to any penalties resulting from non-compliance with any "Environmental Law," defined as any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions, including without limitation, CERCLA, as amended, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Hazardous Substances Account Act, the Hazardous Substances Act and the Underground Tank Act of 1984;

c. Borrower has not, in regard to the Project Site, used, generated, stored, transported, disposed of, or caused or contributed to the disposal of, placement of or release of any "Regulated Material," defined as any flammable explosives, radioactive materials, solid waste, hazardous substances, hazardous waste, hazardous materials, asbestos-containing materials, petroleum or any fraction thereof, pollutants, irritants, contaminants, toxic substances, or any other materials respectively defined as such in, or regulated by, any applicable Environmental Law;

d. Borrower will ensure that its contractors and subcontractors are not currently suspended; debarred, or otherwise declared ineligible for participation in the USEPA BRLF Program or from the receipt of funds therefrom;

e. No claim has been asserted against Borrower under Section 107 of CERCLA;

f. Borrower and, to its knowledge, its contractors and subcontractors:

i. are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local (hereafter "public") transactions;

ii. have not been convicted of or had a civil judgment rendered against them, within the three-year period immediately preceding the Loan Closing Date, for (A) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (B) violation of federal or state antitrust laws, or (C) embezzlement, theft, forgery,

- falsification or destruction of records, making false statements or receiving stolen property;
- iii. are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under item (ii) above; and;
 - iv. have not had a public transaction terminated for cause or default within the three-year period immediately preceding the Loan Closing Date.

4.3 Furnishing Information. Borrower shall furnish NOACA with the following information:

- a. On an annual basis, Borrower shall deliver to NOACA its duly executed City Certificate of Available Resources and any other financial documents of Borrower reasonably requested by NOACA;
- b. Borrower shall deliver to NOACA copies of all inspection reports delivered pursuant to the terms of the Loan Documents;
- c. Upon completion of the Project, Borrower shall submit evidence of completion, consisting of a certificate from the QEP certifying that the Project has been completed in accordance with all specifications and the ABCA and any other certificates or other assurances required by NOACA or any other applicable governmental department, agency or unit as part of the Project;
- d. Borrower shall deliver to NOACA, on or before the Project Completion Deadline, a certification by an ACM removal professional that the Project was completed in compliance with all applicable laws and regulations of the State of Ohio. The date of said certification is to be used to define the "Project Completion Date";
- e. Borrower shall submit to NOACA no less often than quarterly a report of its procedures and activities related to its compliance with the Cross-cutting Requirements;
- f. Borrower shall promptly notify NOACA of any condition or event which constitutes (or which with the giving of notice or lapse of time or both would constitute) a Default as defined herein, and of any material adverse change in the financial condition of Borrower, and of any material change in any of the Security;
- g. Borrower shall, and shall cause its contractors and subcontractors to, permit NOACA or its agents to have access to and to examine, copy and make abstracts of, all books, documents, papers and records regarding the Loan and the Project, upon reasonable prior notice during Borrower's normal business hours, and shall make the same available for a period of three (3) years from the date of the final payment under the Loan, provided however, that should Borrower be notified that an audit has been commenced pursuant to Ohio Revised Code 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

Borrower and its contractors and subcontractors shall also permit access to authorized federal officials during the record retention period pursuant to 2 CFR 200.337.

h. Borrower and its contractors and subcontractors shall maintain financial and programmatic records in accordance with generally accepted accounting principles and procedures and shall retain such records pertaining to the Project for a three-year period following the latest to occur of (i) Project Completion Date (ii) the termination of the Cooperative Agreement or (iii) the repayment of the Loan and satisfaction of the covenants, conditions and requirements to be performed hereunder, and if any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the three-year period, such records shall be retained until final resolution of all issues which arise from such litigation, claim, negotiation, audit or other action, or until the end of the three-year period, whichever is later, and all such records and supporting documents shall be made available by Borrower or its contractors and subcontractors, upon request, for inspection or audit by NOACA or its representatives, as well as by authorized federal officials pursuant to 2 CFR 200.337, and in no event shall Borrower or its contractors or subcontractors destroy any of these records or documents before first obtaining NOACA's permission;

i. Upon the request of NOACA, Borrower shall submit affidavits from Borrower and/or the contractor(s) stating that each person providing any material or performing any work in connection with the Project has been paid in full and that all withholding taxes have been paid;

j. Borrower shall provide written notice to NOACA describing the specifics of, and the actions being taken by Borrower with respect to, the following:

- (i) the occurrence of a Default, as that term is defined herein, or an event or circumstance which, with the passage of time or notice or both would constitute a Default;
- (ii) any action, suit or proceeding by or against Borrower, at law or in equity, or before any governmental instrumentality or agency, whether instituted or threatened, which, if adversely determined would materially impair the right or ability of Borrower to carry on its business or would materially impair the right or ability of Borrower to perform the transactions contemplated by the Loan Documents or under any other project financing.

k. Borrower shall cause its contractors or subcontractors to provide access to all records regarding the Loan and the Project necessary for NOACA to verify compliance with 2 CFR Part 200.331 as well as 2 CFR Part 200, Subpart D. Post Federal Award Requirements for Financial and Program Management and 2 CFR Part 200 Subpart F, which records may include, without limitation, financial statements and reports, programmatic reports including information on environmental results, and audit findings. Borrower shall also cause its contractors or subcontractors to provide access to such records to authorized federal officials during the record retention period pursuant to 2 CFR 200.337.

4.4 Continuation of Representations and Warranties. All representations, covenants, promises, and warranties shall be and shall remain true and correct so long as any part of the Loan remains outstanding.

Article 5. DEFAULT

5.1 Default Defined. A "Default" is hereby defined as the occurrence of any one or more of the following under any of the Loan Documents:

- a. Any failure by Borrower to make due and punctual payment on the Note when and as the same becomes due, which nonpayment continues for a period of five (5) business days after written notice thereof;
- b. Any failure of Borrower for a period of thirty (30) days (except elsewhere in this Section where a shorter period is specified) after written notice from NOACA to Borrower to observe or perform any covenant in this Agreement or any of the other Loan Documents; provided, however, that in the case of a non-monetary default not capable of cure within said thirty (30) day period, Borrower shall have such additional time as may be reasonably necessary to cure said Default provided that Borrower is continuously in good faith and diligently pursuing such cure;
- c. The disapproval by NOACA of any of portion of the Project and failure of Borrower to commence correction to the reasonable satisfaction of NOACA within thirty (30) days after NOACA's notification to Borrower of its disapproval and the specific reasons therefor that Borrower will need to correct, and diligently complete the same;
- d. An unreasonable delay in completion of the Project, or a discontinuance or abandonment of the Project for a period of any thirty (30) days whether consecutive or non-consecutive, or a material failure to adhere to any work schedule submitted to or agreed upon by NOACA, or any delay in completion of the Project so that the same may not, in NOACA's reasonable judgment, be completed on or before the Project Completion Deadline, which Borrower fails to correct to the reasonable satisfaction of NOACA within thirty (30) days after NOACA's notification to Borrower of such issue and the specific reasons therefor;
- e. Any material representation, statement, report or certificate made now or hereafter or in the materials submitted to NOACA for this Loan by Borrower that is not true and correct in all material respects;
- f. The occurrence of a Prohibited Transfer;
- g. The existence of any fraud or willful misconduct by or with the acquiescence of Borrower which in any way relates to or affects the Loan or the Project;
- h. Upon bankruptcy or insolvency of the general contractor for the Project and the failure of Borrower to thereafter cause the replacement of the general contractor in a diligent and timely manner;

- i. If Borrower is enjoined or restrained or in any way prevented by court order from performing or causing the performance of any material obligations hereunder or under any of the other Loan Documents or conducting all or a substantial part of its business affairs, and such court order is not vacated within thirty (30) days;
- j. Any default beyond any applicable periods of notice, cure and/or grace, under any of the Loan Documents or any other Project financing.

Article 6. NOACA'S REMEDIES UPON DEFAULT

6.1 Remedies Conferred Upon NOACA. Upon the occurrence of any Default, shall inform the EPA Project Officer and the State of Ohio of such Default. NOACA, Upon the occurrence and during the continuance of any Default, NOACA, in addition to all remedies conferred upon NOACA by law and by the terms of the other Loan Documents, may pursue, upon written notice, any one or more of the following remedies concurrently or successively, it being the intent hereof that all remedies shall be equally available to NOACA and no remedy shall be to the exclusion of any others:

- a. Withhold further Loan Disbursements and terminate any of its obligations to Borrower;
- a. Declare the Note to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, other than providing notice to Borrower of its decision to exercise this remedy;
- b. With or without entry upon the Project Site, cause the Project to be completed using all available materials and equipment located upon the Project Site, purchasing all other necessary materials, and employing contractors and other employees, with all such sums expended by NOACA for such purpose to constitute Loan Disbursements which shall be secured by the Loan Documents and shall forthwith be due and payable by Borrower to NOACA with interest thereon at the Interest Rate;
- c. Access and secure the Project Site to ensure public safety, unless or until Borrower cures any Default to NOACA's satisfaction or until NOACA chooses to pursue its remedy outlined in Section 6.1(a) above;
- d. Exercise or pursue any other remedy or cause of action permitted at law or at equity or under this Agreement or any other Loan Document, including but not limited to the initiation of proceedings, whether public or private, to enforce any security agreement or realize on any of the Collateral.

6.2 Right of NOACA to Make Advances to Cure Defaults: Obligatory Advances. If Borrower fails to perform any covenant or agreement contained in the Loan Documents, NOACA may (but shall not be required to) perform any such covenant or agreement, and any amounts expended by NOACA in so doing shall be deemed Loan Disbursements subject to all the Loan Documents and advanced by NOACA under an obligation to do so regardless of the identity

of the person or persons to whom said funds are disbursed, and any such funds advanced by NOACA in the exercise of its judgment to protect its Security are obligatory advances hereunder and shall constitute additional indebtedness payable on demand evidenced and secured by the other Loan Documents.

6.3 Attorneys' Fees. Borrower shall pay 0.5% of the loan or \$1000, whatever is lower. To cover NOACA's attorneys' fees and costs in connection with the negotiation, documentation, administration and enforcement of this Agreement.

6.4 No Waiver. No failure by NOACA to exercise, or delay by NOACA in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and in any of the other Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or equity. No notice to or demand on Borrower in any case shall, in itself, entitle Borrower to any other or further notice or demand in the same circumstances or constitute a waiver of the rights of NOACA to any other or further action in any circumstances without notice or demand.

6.5 Cure of Default. If Borrower cures all Defaults, NOACA may, in its sole, exclusive and reasonable discretion, allow Borrower to reinstate the Loan and the Loan Documents.

Article 7. INSURANCE REQUIREMENTS

7.1 Mandatory Insurance Requirements. Borrower shall procure, maintain and pay premiums for, or cause its contractors or subcontractors to procure, maintain and pay premiums for, the insurance coverage and limits of liability up to the full amount of coverages as stated in all existing policies issued to Borrower as of the Loan Closing Date and at least in the amounts indicated below with respect to the Project:

a. Worker's Compensation Insurance as statutorily required by the State of Ohio. For parties with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and federal laws as applicable including Employers' Liability coverage.

b. Commercial General Liability Insurance, which insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent, with limits of liability not less than:

- (i) \$1,000,000 each occurrence bodily injury & property damage;
- (ii) \$1,000,000 personal & advertising injury;
- (iii) \$2,000,000 general aggregate;
- (iv) \$2,000,000 products/completed operations aggregate.

c. Business Automobile Liability Insurance covering all owned, non-owned, hired, and leased vehicles, if any. Such insurance shall provide a limit of not less than \$1,000,000

combined single limit (bodily injury & property damage) each accident, and shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

d. Umbrella/Excess Liability Insurance to provide additional insurance limits for commercial general liability and/or automobile liability, which insurance shall be written on an occurrence basis and sit in excess of the limits and terms set forth for general, auto, and employers' liability insurance, with limits of liability not less than:

- (i) \$5,000,000 each occurrence;
- (ii) \$5,000,000 general aggregate;
- (iii) \$5,000,000 products/completed operations aggregate.

e. Professional Liability Insurance/Errors & Omissions Liability Insurance, providing coverage for claims arising out of the provision of design, architectural, engineering, consultants, counselors, medical professionals, legal and/or other professional services with a limit of liability not less than:

- (i) \$2,000,000 per claim;
- (ii) \$2,000,000 aggregate.

f. Commercial Pollution Legal Liability Insurance for the Project Site (including Contractors Pollution Liability Insurance, if applicable), with no asbestos or lead paint exclusions, and with a limit of liability not less than:

- (i) \$2,000,000 per occurrence;
- (ii) \$2,000,000 aggregate.

g. Builders Risk Insurance on an All Risks Property Coverage Form covering damage to all improvements while under construction or renovation, including materials and fixtures not yet incorporated into the improvements, or other casualty, vandalism or malicious mischief, bearing a replacement cost endorsement; provided however, that such insurance shall only be kept or caused to be kept during construction or such other times as are customary and usual in commercial property development. Such insurance shall be for the benefit of those project lenders with a mortgage or other security interest in the Project Site.

h. All Risk Property Insurance, for the full replacement cost thereof, including fire, hail, earthquake, wind damage, flood, lightning, mechanical or equipment breakdown, and vandalism with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as NOACA reasonably may require from time to time. Such insurance shall name NOACA as Loss Payee as its interest may appear.

i. If the Project Site is located in an area designated as "flood prone" or a "special flood hazard area," Borrower shall maintain at least the maximum coverage for the Premises available under the federal flood insurance plan. reserves the right to require additional flood insurance coverage, including related rent loss insurance.

7.2 Insurance Coverage Terms and Conditions.

a. The insurance policies of Borrower required for this Agreement, shall:

- (i) Name "NOACA and its employees" as an Additional Insured. This does not apply to Workers Compensation. NOACA and its employees shall be named as Additional Insured and/or loss payee to the extent of the full amount of coverages as stated in all existing policies issued to Borrower as of the Loan Closing Date and at least in the amounts and coverages indicated above.
- (ii) Contain a waiver of subrogation provision wherein the insurer(s) waives all rights of recovery against NOACA.
- (iii) Be primary and not in excess or contingent on any other basis;
- (iv) The Certificates of Insurance evidencing these coverages shall contain the following additional insured, loss payee and waiver of subrogation language where applicable:
 - (A) NOACA and its employees are additional insureds for purposes of Commercial General Liability";
 - (B) "Waiver of subrogation in favor of NOACA."

b. The insurance required for this Loan shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A-VII or above.

c. The terms of this Agreement shall be controlling and shall not be limited by any insurance policy provision.

d. These insurance provisions shall not affect or limit the liability of Borrower stated elsewhere in this Agreement or as provided by law.

e. Borrower shall require any and all contractors and subcontractors to procure, maintain and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.

f. NOACA reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of NOACA.

g. Where coverages are made on a claims-made basis the claims-made retroactive date on the policy shall be prior to the commencement of professional activity related to this Agreement.

h. Borrower shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by NOACA shall not constitute a waiver of any rights of the parties under this Agreement.

Article 8. MISCELLANEOUS

8.1 Absence of Relationships. The execution and delivery of the Loan Documents, the receipt by Borrower of the Loan, or the performance or observance by Borrower of its

obligations under the Loan Documents may not be deemed to create any relationship between Borrower and NOACA as a third-party beneficiary, partner, joint venture, shareholder, agent, trustee, principal or otherwise, nor shall NOACA be deemed to be in privity of contract with any contractor, subcontractor or provider of services on or in connection with the Project, nor shall any payment of funds by NOACA directly to a contractor, subcontractor or provider of services for completion of the Project be deemed to create any third party beneficiary status. NOACA is in no way lending its aid or credit to Borrower or any signatory for any of the Loan Documents. Borrower will make no such representations or statements.

8.2 Entire Agreement and Modification. This Agreement and the other Loan Documents, and any other document or instrument executed pursuant thereto or contemplated thereby, shall represent the entire, exclusive, integrated agreement between the parties with respect to its subject matter, and shall supersede all prior negotiations, representations, or agreements pertaining thereto, either oral or written. There are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed herein. This Agreement and any provision hereof shall not be modified, amended, waived or discharged in any manner other than by a written amendment executed by all parties to this Agreement. Borrower shall cause any material change in any of the Loan Documents to be cured to the reasonable satisfaction of NOACA

8.3 Assignability. Borrower shall not, without the prior written consent of NOACA, assign this Agreement or any of the Loan Documents or any part thereof.

8.4 Headings. The captions and headings of various Articles and Sections of this Agreement and exhibits pertaining hereto are included for convenience only and not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

8.6 Gender and Number. Any word herein which is expressed in the masculine or neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural number shall be deemed, whenever appropriate in the context, to include the singular and plural.

8.7 Contract Interpretation and Construction. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the items of this Agreement.

8.8 Governing Law and Jurisdiction. This Agreement has been negotiated, executed, and delivered in Cleveland, Ohio, and shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts.

8.10 Severability. If any provision of this Agreement is invalid or unenforceable, that provision will be changed and interpreted to accomplish the parties' objectives to the greatest

extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

8.11 Force Majeure. If a force majeure event occurs, which event is defined as a supervening condition beyond Borrower's reasonable control, including an act of God, civil commotion, strike, labor dispute, or governmental demand or requirement, and if such event prohibits Borrower from performing any non-monetary covenant or representation, then Borrower shall notify NOACA as soon as practicable and shall take all actions necessary to void or otherwise mitigate the effects of the event to the satisfaction of NOACA. This Section does not relieve Borrower of its obligations to repay the Loan.

8.13 No Apparent Authority/Proper Approvals. Borrower recognizes and agrees that no public official or employee of NOACA may be deemed to have apparent authority to bind NOACA to any contractual obligations not properly authorized pursuant to the Ohio Revised Code or NOACA's Code of Regulations.

8.14 Notices. Any notice, demand, or other communication required or permitted pursuant to the Loan Documents shall be in writing and shall be deemed given when personally delivered, or sent via certified mail with return receipt requested, or sent via overnight courier with signature required. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to NOACA herein is required to be given. Any notice shall be addressed as follows, unless the other party provides written notice of a new designated recipient or address:

If to NOACA:

Grace Gallucci (NOACA's Awarding Official for the Grant)
Executive Director & CEO
Northeast Ohio Areawide Coordinating Agency
1299 Superior Ave. E
Cleveland, OH 44114

With a copy to the Brownfields RLF Project Manager
Gina Beim, P.E.
Deputy Director, Integrated Project, Planning and Plan Advancement
Northeast Ohio Areawide Coordinating Agency
1299 Superior Ave. E
Cleveland, OH 44114

If to Borrower:

Mayor Matthew J. Castelli
City of Middleburg Heights
15700 Bagley Road
Middleburg Heights, Ohio 44130

With a copy to:
Charles Bichara
City of Middleburg Heights

15700 Bagley Road
Middleburg Heights, Ohio 44130

With a copy to Borrower's counsel:
Santo Incorvaia
Law Director
City of Middleburg Heights
15700 Bagley Road
Middleburg Heights, Ohio 44130

If to EPA

EPA Project Officer
Karla Auker
25063 Center Ridge Rd, LP-17J
Westlake, OH 44145
Email: Auker.Karla@epa.gov
Phone: 440-250-1741

EPA Grant Specialist
Latasha Kyles
Assistance Section, MA-10J
77 West Jackson Blvd
Chicago, IL 60604
Email: Kyles.Latasha@epa.gov
Phone: 312-353-2004

8.15 **Communications.** Borrower understands and agrees to allow its name, photographs, story and audio/video media to be used in any number or type of marketing materials and communication vehicles for promotion by NOACA, without the right of inspection or approval, and shall participate in any interviews related to this Loan. Any materials and photographs used shall remain the property of NOACA. Borrower releases NOACA from any and all liability for any violation of any personal or proprietary right Borrower may have in connection with any such marketing materials.

8.16 **Anti-Discrimination: Equal Employment Opportunity.** Borrower agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and that Borrower will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders. A violation of this term shall be deemed a material breach of this Agreement.

8.17 **Conflicts of Interest.** Borrower will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under Borrower's control, if such an interest would conflict with that official's or employee's duties. Borrower will disclose to NOACA knowledge of any such

person who acquires an incompatible or conflicting personal interest related to this Agreement and shall take all legal steps to ensure that such a person does not participate in any action affecting the Loan or this Agreement.

8.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

8.19 Electronic Signature. The parties agree that any of the Loan Documents or any related transaction may, at the direction of NOACA, be conducted by electronic means and that the electronic signatures affixed to any such Loan Document or transaction shall have the same legal effect as if that signature was manually affixed to a paper version of that document. The parties also agree to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions.

(Signature page to follow.)

IN WITNESS WHEREOF, NOACA and Borrower have executed this Agreement effective as of the Loan Closing Date.

NOACA

BY:  3/14/24
Grace Gallucci, Executive Director

The legal form and correctness of this Agreement is hereby approved on behalf of NOACA by:


Counsel for NOACA

City of Middleburg Heights

BY: 

Name: Matthew J. Castelli

Its: Mayor

The legal form and correctness of this Agreement is hereby approved on behalf of the City of Middleburg Heights by:


