**AGREEMENT TO IMPOSE SPECIAL ASSESSMENTS**

 **WHEREAS**, The [NAME OF BORROWER], a [TYPE OF BUSINESS] under the laws of the State of Ohio with offices at [ADDRESS OF COMPANY, CITY, STATE, ZIP] (“Company”), has made application to the Toledo Ohio Advanced Energy Improvement Corporation (“the Corporation”) for financing a certain special energy improvement project (“Energy Project”), more particularly described in Company’s application (“Application”); and

 **WHEREAS**, the Energy Project has an overall estimated cost of [SPELL AMOUNT] Dollars ($\_\_\_) (excluding interest and other transactional and carrying costs, all of which shall be included in the Special Assessments described below) as shown in Exhibit B which the Corporation has agreed to finance; and

 **WHEREAS**, Company requests that the Energy Project be financed through special assessments (“Special Assessments”) upon the real property upon which the Energy Project will be constructed and exist (“the Property”) as allowed under Ohio Revised Code Chapters 1710 and 727; and

 **WHEREAS**, the Corporation agrees to undertake the financing of the Energy Project through Special Assessments upon the condition that the Company agrees to impose the Special Assessments upon the Property and provide full cooperation with and assistance to the Corporation and other entities and institutions involved in the process of approving and imposing the Special Assessments; and

 **WHEREAS**, in order to induce the Corporation to provide financing for the Energy Project, Company agrees to provide all such cooperation and assistance necessary for the imposition of the Special Assessments upon the Property.

 **NOW THEREFORE**, in consideration of the mutual promises set forth herein, effective the [DAY] day of [MONTH], [YEAR], the Company and the Corporation do hereby enter into this Agreement to Impose Special Assessments (“Agreement”) as follows:

**1. Consent to Special Assessments.**  The Company consents to the imposition of Special Assessments upon the Property, which is commonly referred to as [ADDRESS OF COMPANY, CITY, STATE, ZIP], and which consists of the following county auditor parcel: Parcel: [ENTER PARCEL #]. A legal description of the Property is attached hereto as Exhibit A and incorporated herein by reference. In the event there are additional or other parcels of property that are not listed but which are benefitted by the Energy Project, the Company consents to the imposition of the Special Assessments with respect to those parcels as well. The Company acknowledges that the Special Assessments will constitute a lien upon the Property and may be enforced and collected in accordance with law, including the provisions of Chapter 727 of the Ohio Revised Code. The Special Assessments shall be in an amount sufficient to finance all of the cost of the Energy Project, as determined by and in the sole discretion of the Corporation, including but not limited to the cost of: labor, materials, equipment, engineering, design, audits, interest, carrying costs, taxes, filing fees, recording charges and all other costs incident to the Energy Project. Company acknowledges that the estimated cost of the Energy Project is only an estimate and that the actual cost of the Energy Project may be more or less than the estimate and that such estimate does not limit the amount of the Special Assessments; provided, however, that the sum total of all Special Assessments will not exceed the amount listed on Exhibit B. The Company agrees that one hundred percent (100%) of the Special Assessments shall be imposed upon the Property and that the Property is being specially benefitted to the full extent of the Special Assessments. The Special Assessments may continue for such period of time as allowed by law and shall continue for the full period of time required to pay the Corporation for all costs, including financing costs, for the Energy Project.

**2. Agreement to Cooperate.** Company agrees to provide full and timely cooperation to the Corporation and the agencies, entities and institutions involved in the special assessment process, including but not limited to: the Corporation, the Toledo-Lucas County Port Authority, the City of Toledo, the Lucas County Auditor, and the Lucas County Treasurer, so that the Special Assessments are imposed upon the Property and enforceable against the Property. The Company agrees to apply to the Corporation for approval of its Energy Project and for admission as a member of the Corporation. The Company shall cause a representative to appear at any necessary hearings or legal proceedings involving the Special Assessments and cooperate in such hearings or legal proceedings so that the Special Assessments are approved and become binding upon the Property. The Company agrees to provide on-going cooperation with the Corporation and all other agencies, entities and institutions involved in the special assessment process during the entire period of time any of the financing for the Energy Project remains outstanding. In the event the Property is located in a political subdivision that is not, as of the date of this Agreement, within the jurisdiction of the Corporation, the Company will cooperate with the Corporation in seeking to expand that jurisdiction of the Corporation to include the political subdivision in which the Property is located, including petitioning for such expansion.

**3. Execution of Documents; Appointment of Agent.** Upon the request of the Corporation, the Company shall execute or cause to be executed by appropriate Company officials, all applications, petitions for special assessments, waivers, acknowledgements, and other instruments, documents and papers (“Documents”) necessary or helpful to impose the Special Assessments upon the Property and to acknowledge the validity and binding nature of such Special Assessments. To facilitate that process, the Company hereby irrevocably appoints the Corporation’s Chairperson, or such other individual as the Corporation may name from time to time, as the Company’s attorney-in-fact and agent with full and complete authority to execute all such Documents, including but not limited to the petition for Special Assessments, on behalf of the Company and to bind the Company and the Property to the Special Assessments, including making all waivers of hearings and notices concerning the Special Assessments.

Without limiting the generality of the foregoing grant of authority, the Company grants the Corporation full irrevocable power and authority in the place of Company and in the name of Company or in Corporation’s own name, for the purpose of carrying out the terms of this Agreement, to perform, at any time and from time to time, each agreement contained in this Agreement that is on Company's part to be complied with, and to take any and all actions and to execute and deliver any and all Documents which may be necessary or desirable to give Corporation the full benefit of this Agreement, in each case as Corporation may from time to time deem advisable, Company hereby agreeing that Corporation shall owe no duty whatever to Company to perform any such agreement, to take any such action, or to execute or deliver any such Document or, having done so any one or more times, to thereafter continue doing so. Without limiting the generality of the foregoing, Company hereby irrevocably authorizes Corporation, at any time and from time to time, to (a) fill in any blank space contained in this Agreement or another Document, (b) correct patent errors, to complete and correct the description of the Property, and to complete the date herein or therein, (c) file and sign, on Company's behalf, at Company's expense and without Company's signature, such petitions for special assessments, waivers, affidavits, assignments, financing statements, endorsements of specific items of collateral, mortgages, powers of attorney, security agreements, or other Documents as Corporation may from time to time deem advisable for the better evidencing, perfection, protection, or validation of, or realization of the benefits of this Agreement, and (d) to the extent Corporation filed any such petitions for special assessments, waivers, affidavits, assignments, financing statements, endorsements of specific items of collateral, mortgages, powers of attorney, security agreements, or other Documents prior to the date of this Agreement, all such actions and Documents are hereby ratified by Company.

**4. Waiver of Certain Rights**. The Company acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Chapter 727 of the Ohio Revised Code, the Toledo City Charter and the Toledo Municipal Code (collectively, “Assessment Rights”). The Company hereby irrevocably waives all Assessment Rights and consents to the imposition of the Special Assessments immediately or at such time as the Corporation determines to be appropriate, and the Company expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessment upon the Property. The Company further waives: any and all questions as to the constitutionality of the law under which the Energy Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council acting thereunder; and the right to file a claim for damages as provided in Revised Code section 727.18 and Toledo Charter section 201.

**5. Representations and Warranties.** The Company represents and warrants that:

1. The Company is a duly organized and validly existing [TYPE OF BUSINESS] under the laws of the State of Ohio;
2. The Company is the owner of the Property with the legal authority to subject the Property to the Special Assessments;
3. The Company and the individual executing this Agreement on behalf of the Company is duly authorized to enter into this Agreement;
4. Entering into this Agreement will not result in the breach of any other agreement to which the Company is a party; and
5. All of the factual statements concerning the Company contained in the Application and in this Agreement are true and accurate to the best of the Company’s knowledge and belief and if there is a material change in the accuracy or truthfulness of any such factual statement, the Company will promptly disclose the same to the Corporation.

**6. Assignment; Third Party Beneficiaries.** The Company may not assign this Agreement without the consent of the Corporation, which consent shall not be unreasonably withheld. The Corporation may assign this Agreement, or any portion of its benefits or obligations, freely to another party, with or without the consent of the Company.

**7. Default.** If any of the following events shall occur, it shall be deemed a default (“Default”) under this Agreement and the Corporation shall be entitled to avail itself of any rights or remedies under this Agreement and any rights or remedies provided under law:

1. The Company fails to pay an installment of any Special Assessment when due.
2. The Company fails to perform any other obligation under this Agreement and the failure continues for a period of ten (10) days after written notice from the Corporation.
3. The Company is in breach of any of its representations or warranties under this Agreement.
4. The Company abandons the Property.
5. The Company commits waste upon the Property.
6. The Company becomes bankrupt or insolvent or files or has filed against it a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes an assignment for the benefit of creditors.

In the event of a Default, then, in addition to any other remedy the Corporation may have, the Corporation may recover from Company all damages it incurs by reason of the Default, including its reasonable attorneys’ fees and expenses.

**8. General.**

1. If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, such provision shall to that extent be deemed to be omitted, and the remaining provisions of this Agreement shall not be affected in any way.
2. The Company acknowledges that it has read and understands this Agreement and is bound by its terms. This Agreement contains the entire understanding and agreement of the parties with respect to the matters contained herein, and supersedes all prior proposals and understandings between the parties.
3. This Agreement shall not be modified or altered except as by a written instrument duly executed by both parties.
4. The Company acknowledges that it has had an opportunity to review this Agreement and to be advised by an attorney of its choosing as to the Agreement’s terms, conditions and provisions. The Company is entering into this Agreement knowingly and voluntarily.
5. The Corporation and the Company are, in relation to one another, independent contractors and not agents of one another, except to the extent the Corporation is authorized to act on behalf of the Company in accordance with paragraph 3 above. The parties have no fiduciary obligations to one another and are not, by entering into this Agreement, assuming any such fiduciary obligations.
6. The Company acknowledges that the Corporation is has been created under provisions of the Revised Code and that and that the Corporation’s authority, as well as the authority of its employees, agents and representatives is limited under law.
7. The Corporation may cause this Agreement to be recorded in the office of the Lucas County Recorder. The obligations created by this Agreement shall run with and be binding upon the land regardless of the owner of Property until duly released by the Corporation.
8. The Company shall disclose the existence of this Agreement to any purchaser or transferee of the Property and inform such purchaser or transferee of the nature and extent of the Special Assessments before entering into a binding agreement for the sale or transfer of the Property.
9. The Company acknowledges that the Special Assessments, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance levying the final assessment if permitted by law and that if such Special Assessment is not paid in cash, the balance will be certified to the Auditor of Lucas County, as provided by law, to be placed by the Auditor on the tax list and duplicate and collected as other taxes are collected in such number of semiannual installments as determined by the Corporation and as allowed by law, together with interest at the same rate as shall be borne by the loans received or bonds issued to pay the costs of the Energy Project or in anticipation of the collection of the Special Assessments. Notwithstanding the foregoing, the Company waives and authorizes the Corporation to waive on its behalf, the right to pay the Special Assessments in cash.
10. At such time as the Special Assessments are no longer necessary to finance the Energy Project, the Corporation having recovered all of its costs, and all other requirements under this Agreement have been fulfilled, the Corporation will provide a release of this Agreement and cause the same to be recorded in the office of the Lucas County Recorder.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio, without regard to its conflict of laws principles.
12. Any legal proceeding, including any arbitration or litigation, concerning this agreement, directly or indirectly, shall be heard only in a state or federal court with proper jurisdiction in Lucas County, Ohio.

**COMPANY:**

**[BORROWER NAME]**

By:

 [LEGAL REPRESENTATIVE NAME]

Its: Owner

Date:

 On the [DAY] day of [MONTH, YEAR] personally appeared before me, a notary public in and for the State of Ohio, [LEGAL REPRESENTATIVE NAME], [TITLE], [BORROWER NAME], LLC, who acknowledged that he did execute the foregoing Agreement to Impose Special Assessments on behalf of [BORROWER NAME] and that the same was the free act and deed of [BORROWER NAME].

 Notary Public

**CORPORATION:**

**The Toledo Ohio Advanced Energy Improvement Corporation**

By:

 [NAME OF CHAIRPERSON]

Its: Chairperson

Date:

 On the [DAY] day of [MONTH, YEAR] personally appeared before me, a notary public in and for the State of Ohio, [NAME OF CHAIRPERSON], the Chairperson of the Toledo Ohio Advanced Energy Improvement Corporation who acknowledged that he did execute the foregoing Agreement to Impose Special Assessments on behalf of the Toledo Ohio Advanced Energy Improvement Corporation and that the same was the free act and deed of said Toledo Ohio Advanced Energy Improvement Corporation.

 Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**[ENTER LEGAL DESCRIPTION]**

**EXHIBIT B**

**Project Plan for [BORROWER NAME]**

The real property owned by the [BORROWER NAME] at [BORROWER ADDRESS, CITY, STATE, ZIP], serves as [TYPE OF BUSINESS]. The legal description of the property is set forth on the attached Exhibit A. The property will be subject to special assessments for energy improvements in accordance with Revised Code Chapter 1710.

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

[ENTER LIST IMPROVEMENTS AND ESTIMATED COST BELOW]

1. Electrical/Circuit improvements; estimated annual savings - $X.
2. Heating; estimated annual savings - $X (energy savings plus operational savings).
3. Weatherization/Insulation; estimated annual savings - $X.

Total cost including financing and other charges – [$\_\_\_\_\_]

Estimated annual special assessments for 14 years: [$\_\_\_\_\_]

Number of semi-annual installments: [# OF INSTALLMENTS]

First annual installment due: [YEAR FIRST INSTALLMENT DUE]