

## SEWER ASSESSMENT AND FINANCING AGREEMENT

THIS SEWER ASSESSMENT AND FINANCING AGREEMENT (the “*Agreement*”) is made and entered into this \_\_\_\_ day of July, 2016 (the “*Effective Date*”), by and between the CITY OF POWELL, OHIO (“*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter, VERONA LLC, an Ohio limited liability company (“*Developer*” together with the City, the “*Parties*”), and those Persons executing this Agreement by Lot Owner Joinder attached hereto as the fee simple owners of certain designated Lots developed, constructed and platted to date as a part of the Private Improvements (“*Joinder Lot Owners*”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof).

### RECITALS:

**WHEREAS**, Developer originally acquired approximately 113.53 acres of real property on the north side of Powell Road that has been annexed to the City, and Developer is in the process of developing and constructing a 166 lot residential subdivision thereon known as “*Verona*” as generally depicted on the attached **EXHIBIT A** (the “*Private Improvements*”); and

**WHEREAS**, the Parties have determined that certain public infrastructure improvements (the “*Public Infrastructure Improvements*”) as generally described on Exhibit B attached hereto and incorporated herein need to be constructed to facilitate the development of the Private Improvements, as well as commercial development in the Sawmill Parkway Corridor; and

**WHEREAS**, the Parties desire to enter into the Agreement to provide generally for the construction and financing of the Public Infrastructure Improvements; and

**WHEREAS**, the City has determined that it would be in the best interests of the City to contract with the Developer to provide for the construction and installation of the Public Infrastructure Improvements in the manner described herein; and

**WHEREAS**, the Joinder Lot Owners are executing this Agreement by Joinder solely for the purpose of subjecting their respective Lots constituting a part of the Private Improvements to the Owner Special Assessments provided in Section 6.1 hereof and for no other purpose; it being expressly agreed that the Joinder Lot Owners shall not be considered the Developer hereunder;

**NOW, THEREFORE**, in consideration of the premises and covenants contained herein, the Parties hereto agree and obligate themselves as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1. Use of Defined Terms.** In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth

in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

**Section 1.2. Definitions.** As used herein:

“**Agreement**” means this Sewer Assessment and Financing Agreement by and among the City and the Developer and dated as of the Effective Date, including the Joinder Lot Owners for the limited purposes stated in the Joinders.

“**Authorized City Representative**” means the City Manager of the City. The City may from time to time provide a written certificate to the Developer signed on behalf of the City by the City Manager designating an alternate or alternates who shall have the same authority, duties and powers as the Authorized City Representative.

“**Authorized Developer Representative**” means Vincent Romanelli or, in the event Vincent Romanelli is unavailable, David W. Fisher. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by the Managing Member of the Developer designating an alternate or alternates or a substitute who shall have the same authority, duties and powers as the Authorized Developer Representative.

“**City**” means the City of Powell, Ohio, an Ohio municipality.

“**City Council**” means the City Council of City.

“**Code**” means the Internal Revenue Code of 1986, as amended, applicable Treasury Regulations (whether temporary or final) under the Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding the foregoing, all as and to the extent applicable.

“**Construction Documents**” means this Agreement and the Drawings and Specifications as such documents may be revised or supplemented from time to time with the approval of the Authorized City Representative and the Authorized Developer Representative, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Infrastructure Improvements and when completed, will be placed on file with the Authorized City Representative on behalf of the City.

“**County**” means the County of Delaware, Ohio.

“**Developer**” means Verona LLC, an Ohio limited Liability Company, including any successors or assigns thereof permitted under this Agreement.

“**Developer’s Completion Certificate**” shall have the meaning set forth in Section 4.3(a) hereof.

**“Developer Reimbursement Amount”** means the amount of the cost to construct the Public Infrastructure Improvements.

**“Drawings and Specifications”** shall have the meaning set forth in Section 5.1 hereof.

**“Effective Date”** means the date as defined in the preambles of this Agreement.

**“Engineer”** means Stantec Consulting Services, Inc., or any other architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by Authorized Developer Representative, with the consent of the City which consent shall not be unreasonably withheld or delayed.

**“Engineer’s Completion Certificate”** shall have the meaning set forth in Section 4.3(b) hereof.

**“Event of Default”** means an Event of Default under Section 7.1 hereof.

**“Force Majeure”** means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any other cause or event not reasonably within the control of the Developer or the City, as the case may be, excluding, however, the inability of a Party to perform its obligations hereunder due to lack of financial capacity or third party financing.

**“Notice Address”** means:

as to City:	City of Powell 47 Hall Street Powell, Ohio 43065 Attention: City Manager <a href="mailto:slutz@cityofpowell.us">slutz@cityofpowell.us</a>
as to Developer:	Vincent Romanelli 148 West Schrock Road Westerville, Ohio 43081 <a href="mailto:vromanelli@rh-homes.com">vromanelli@rh-homes.com</a>
with copy to:	Kephart Fisher LLC 207 N. Fourth Street Columbus, Ohio 43215 Attention: David W. Fisher <a href="mailto:davidfisher@kephartfisher.com">davidfisher@kephartfisher.com</a>

**“Owner Special Assessments”** has the meaning assigned to such term in Section 6.1 hereof.

**“Person”** shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

**“Private Improvements”** means 112 single-family homes and 54 patio homes constituting the residential subdivision known as “Verona”.

**“Public Infrastructure Improvements”** means the public infrastructure improvements as generally described on **EXHIBIT B** and depicted on **EXHIBIT C**, each attached hereto and incorporated herein by reference and which are more specifically described in the Construction Documents.

**“Public Infrastructure Improvements Site”** means the real property depicted on **EXHIBIT C** attached hereto and incorporated herein by reference.

**“State”** means the State of Ohio.

**“Work”** means the construction of the Public Infrastructure Improvements in accordance with this Agreement.

**Section 1.3. Interpretation.** Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

**Section 1.4. Captions and Headings.** The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

## ARTICLE II

### GENERAL AGREEMENT AND TERM

**Section 2.1. General Agreement Among Parties.** For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties shall cooperate in the manner described herein to facilitate the construction of the Public Infrastructure Improvements.

**Section 2.2. Term of Agreement.** This Agreement shall become effective as of the Effective Date and shall continue until the Parties and the Joinder Lot Owners, their respective heirs, successors and assigns, have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

## ARTICLE III

### REPRESENTATIONS AND COVENANTS OF THE PARTIES

**Section 3.1. Representations and Covenants of City.** City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by City wherein an unfavorable ruling or decision would materially and adversely affect City's ability, to carry out its obligations under this Agreement.

(f) The City agrees that it shall take all reasonable steps necessary to assist the Developer in the acquisition of any right of way or easement necessary to establish the Public Infrastructure Improvements Site.

(g) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

**Section 3.2. Representations and Covenants of the Developer.** The Developer represents and covenants that:

(a) Developer is a limited liability company duly organized and validly existing under the applicable laws of the State of Ohio and properly authorized to do business in the state of Ohio.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

## ARTICLE IV

### **CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**Section 4.1. General Considerations.** In consideration of the Developer's promise to construct the Public Infrastructure Improvements, the City agrees, subject to Section 4.4 hereof, to reimburse and/or otherwise pay the Developer the Developer Reimbursement Amount in accordance with Section 6.2 and/or any other applicable provisions of this Agreement.

**Section 4.2. Construction of the Public Infrastructure Improvements.** The Developer covenants and agrees that it will cause to be constructed and installed all of the Public Infrastructure Improvements in accordance with this Agreement and the Construction Documents.

The Developer shall supervise, perform and direct the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. The Developer shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

The Developer agrees that the Public Infrastructure Improvements, including those identified on **EXHIBIT C** (which is attached hereto and incorporated herein by reference), shall be dedicated for public use upon completion and acceptance as provided in Sections 4.3 and 4.4 hereof.

**Section 4.3. Completion of the Public Infrastructure Improvements.** The Public Infrastructure Improvements shall be deemed completed upon fulfillment of the following conditions:

(a) Receipt of written notice (the "*Developer's Completion Certificate*") from the Authorized Developer Representative that the Public Infrastructure Improvements have been completed and are ready for final acceptance by the County, which notice shall (i) generally describe all property installed as part of the Public Infrastructure Improvements; (ii) state the cost of the Public Infrastructure Improvements as such costs are certified by the Engineer and (iii) state and shall constitute the Developer's representation that the construction, improvement and equipping of the Public Infrastructure Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, there are no mechanics' liens or to its knowledge, after reasonable inquiry, any basis for such liens, and all obligations, costs and expenses in connection with the Public Infrastructure Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the "*Engineer's Completion Certificate*") stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, that the Public Infrastructure Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items,

that the construction, improvement and equipping of the Public Infrastructure Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Infrastructure Improvements have been approved by the relevant public authorities.

**Section 4.4. Acceptance of the Public Infrastructure Improvements.** The City shall have no obligation to determine the Public Infrastructure Improvements complete until (a) the Public Infrastructure Improvements have been satisfactorily completed in accordance with the Construction Documents, as evidenced by the Engineer's Completion Certificate and properly dedicated easements to the City or the County, as the case may be; (b) the City has received the Developer's Completion Certificate, the Engineer's Completion Certificate, and reasonable evidence of the County's acceptance of the Public Infrastructure Improvements, copies of the approval letters issued by the public authorities as referenced in Section 4.3 herein, and copies of all documents and instruments to be delivered to the County pursuant to the Construction Documents; and (c) the City has received evidence reasonably satisfactory to it that all liens on the Public Infrastructure Improvements, including, but not limited to, tax liens, the lien of any mortgage, and any mechanic's liens, have been or shall be released, or, with respect to mechanic's liens, security therefor has been provided pursuant to Section 5.8 hereof. The City agrees to determine that the Public Infrastructure Improvements have been completed upon satisfaction of the conditions listed in (a) though (c) of the immediately preceding sentence. The determination by the City of the Public Infrastructure Improvements have been completed shall not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.10. hereof.

**Section 4.5. Extensions of Time.** If the Developer or the City is delayed in the commencement or progress of its obligations hereunder by a breach by the other Party of its obligations hereunder, or by failure of the Engineer to act as provided in this Agreement, or by Force Majeure, then the time for performance under this Agreement by the Party so delayed shall be extended for such time as is commercially reasonable under the circumstances.

**Section 4.6. Changes in the Work.** After the execution of this Agreement, and without invalidating this Agreement, the Developer and the Engineer by written agreement (a "*Change Order*") may agree to changes in the Work so long as the Change Order is satisfactory to the County Sanitary Engineer. Changes in the Work shall be performed under applicable provisions of this Agreement and the Construction Documents, unless otherwise provided in the Change Order.

## ARTICLE V

### **FURTHER PROVISIONS RELATING TO THE CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**Section 5.1. Construction Documents.** The Developer has caused to be prepared the Construction Documents in a form and content satisfactory to the County Sanitary Engineer and the Developer and reasonably reviewed by the Authorized City Representative. Any working drawings, plans and specifications prepared in connection with the Work (collectively, the "*Drawings and Specifications*") and that comprise the Construction Documents are instruments of service through which the Work to be executed is described.



**Section 5.2. Prevailing Wage.** The City designates its Assistant Finance Director as the prevailing wage coordinator for the Public Infrastructure Improvements (the “*Prevailing Wage Coordinator*”). The Developer acknowledges and agrees that the Public Infrastructure Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Infrastructure Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Infrastructure Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Developer shall comply, and the Developer shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors working on the Public Infrastructure Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. The Developer (and all contractors and subcontractors thereof) shall cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by the Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator shall notify the Developer of the prevailing wage rates for the Public Infrastructure Improvements. The Prevailing Wage Coordinator shall notify the Developer of any change in prevailing wage rates within seven working days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer shall immediately upon such notification (a) insure that all contractors and subcontractors receive notification of any change in prevailing wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) insure that all contractors and subcontractors make the same necessary adjustments.

The Developer shall, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work, supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which the Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. The Developer (and each contractor or subcontractor thereof) shall also deliver to the Prevailing Wage Coordinator a certified copy of its payroll within two weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition which shall exhibit for each employee paid any wages, the employee’s name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee’s hourly rate of pay, the employee’s job classification, fringe payments and deductions from the employee’s wages. The certification of each payroll shall be executed by the Developer (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

The Developer shall provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Infrastructure Improvements as soon as they are available, and the name and address

of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors.

The Developer shall not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Prior to final payment under this Agreement, the Developer (and any contractor or subcontractor thereof) shall submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code.

**Section 5.3. Traffic Control Requirements.** The Developer shall be responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic during the construction of the Public Infrastructure Improvements. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations.

**Section 5.4. Equal Opportunity Clause.** The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that the Developer is an equal opportunity employer. The Developer shall require all contractors and shall require all contractor's subcontractors to include in each contract a summary of this equal opportunity clause.

**Section 5.5. Insurance Requirements.** The Developer shall furnish proof to the City at the time of commencing construction of the Work of possession of comprehensive general liability insurance naming the City and its authorized agents as an additional insured party in amounts as are required by the County for public construction projects of similar size and scope. The required insurance policies shall comply with the following:

(a) The Developer shall obtain an additional named insurance endorsement for the CGL and automobile liability coverage with the following named insureds for covered claims arising out of the performance of the Work under the Construction Documents:

- (i) the City of Powell; and
- (ii) Powell City Council members, executive officers, and employees;

Each policy of insurance and respective certificate of insurance shall expressly provide that no less than 30 days prior written notice shall be given to City in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy.

(b) Insurance policies shall be written on a claims made basis only.

(c) Products and completed operations coverage shall commence with the certification of the acceptance of the Public Infrastructure Improvements pursuant to Section 4.4 and shall extend for not less than two years beyond that date.

(d) The Developer shall require all contractors to provide workers' compensation, CGL, and automobile liability insurance with the same minimum limits specified herein, unless the County agrees to a lesser amount.

**Section 5.6. City Income Tax Withholdings.** If applicable, the Developer shall withhold and pay, shall require all contractors to withhold and pay, and shall require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of Chapter 181 and/or 182 of the Powell City Code.

**Section 5.7. Compliance with Occupational Health and Safety Act of 1970.** The Developer and all contractors and subcontractors shall be solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

**Section 5.8. Provision of Security for Mechanic's Liens.** To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Public Infrastructure Improvements, the Developer shall, or shall require the appropriate contractor to, provide any security required by Section 1311.11 of the Ohio Revised Code to cause that mechanic's lien to be released of record with respect to the Public Infrastructure Improvements.

**Section 5.9. Security for Performance.** The Developer shall furnish or require all contractors performing Work to furnish prior to commencement of construction of the Public Infrastructure Improvements a performance and payment bond or such other security which is acceptable to the County that shall name the Developer and the City as obligees in the form provided by Section 153.57 of the Ohio Revised Code. The bond or security shall cover all costs of the Work, including a guarantee period of one (1) year set forth in Section 5.10 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, the Developer, within five (5) days thereafter, shall substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which shall be acceptable to the City and the Developer. The Developer shall provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

**Section 5.10. Further Developer Guaranties Relating to the Public Infrastructure Improvements.** The Developer guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in performing comparable services in Central Ohio. The Developer further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work by City. The performance and payment bond or other security provided in Section 5.09 of the

contractor(s) shall remain in effect until the expiration of the guarantee period. The guarantee provided in this Section shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents.

## ARTICLE VI

### **SEWER ASSESSMENTS AND PAYMENT OF DEVELOPER REIMBURSEMENT AMOUNT**

**Section 6.1. Assessment for Public Infrastructure Improvements.** Developer, in its capacity as owner of portions of the real property as identified in attached Exhibit B and the Joinder Lot Owners as fee simple owners of designated Lots constituting a part of the Private Improvements (collectively, the “Assessed Property”) hereby consent to, request and agree in writing and further petition for the Assessed Property to be assessed by the City to pay costs of the Public Infrastructure Improvements to be constructed on the Assessed Property. Developer and Joinder Lot Owners request that (1) the whole cost of the Work, less any payment received by the City from Spectrum Acquisitions, be specially assessed, in proportion to the benefits that may result from the Public Infrastructure Improvements, upon the Assessed Property pursuant to Chapters 727 of the Revised Code, and (2) those special assessments (the “Owner Special Assessments”), be collected in up to ten (10) semi-annual installments; provided that in any event (A) Owner Special Assessments on all Lots located within the Assessed Property having a front footage of 100’ or more shall not exceed \$ \_\_\_ per annum, and (B) Owner Special Assessments on all Lots located within the Assessed Property having a front footage of less than 100’ shall not exceed \$ \_\_\_\_ **[75% of assessed amount for 100’ Lots]**. In connection with this request and in furtherance of the purposes hereof, Developer acknowledges that it has reviewed or has caused to be reviewed (1) the Drawings and Specifications, and (2) the estimate of cost of the Work, which are now on file with the City. In connection with this Petition and in furtherance of the purposes hereof, Developer also acknowledges that it has reviewed or has caused to be reviewed the estimated special assessments to be levied for the Public Infrastructure Improvements, which are now on file with the City. In consideration of the Public Infrastructure Improvements, the Developer and each Joinder Lot Owner agrees (U) that the Owner Special Assessments do not exceed the benefit to be received by the Assessed Property as a result of the Public Infrastructure Improvements, (V) that the Assessed Property is benefited by the Public Infrastructure Improvements in the proportionate amounts set forth estimated special assessments, (W) that the Assessed Property is the only property specially benefited by the Public Infrastructure Improvements and the only property that should be assessed for the Public Infrastructure Improvements, (X) that the Developer, the Joinder Lot Owners, and their respective heirs, successors and/or assigns, will pay promptly all installments of the Owner Special Assessments levied against the Assessed Property as they become due, (Y) that the determination by the City Council of the City of the Owner Special Assessments against the Assessed Property pursuant to and in accordance with this request will be final, conclusive and binding upon the Developer, the Joinder Lot Owners, and their respective successors and assigns and grantees of the Assessed Property, and (Z) to include in each deed or other instrument conveying in fee all or any portion of the Assessed Property (i) a reference to the Owner Special Assessments allocable to the property or portion being conveyed, as determined and approved by the City, and (ii) a covenant running with such property to be bound by the provisions of this

Agreement and to timely pay the installments of the Owner Special Assessments as they come due.

The Developer and each Joinder Lot Owner consents and requests that the Owner Special Assessments be levied and collected, in the same manner as property taxes, without limitation as to the value of the Assessed Property, and waives all the following relating to the Public Infrastructure Improvements and the Owner Special Assessments:

(1) Any and all rights, benefits and privileges specified by Sections 727.03 and 727.06 of the Revised Code or by any other provision restricting these special assessments to 33-1/3% of the actual improved value of the Assessed Property as enhanced by the Public Infrastructure Improvements;

(2) Any and all rights, benefits and privileges specified by Section 727.04 of the Revised Code or by any other provision limiting special assessments for reimprovement when a special assessment has been levied and paid previously;

(3) Any and all damages or claims for damages of whatsoever kind, character or description resulting from the Work or the construction and installation of the Public Infrastructure Improvements, including but not limited to all rights, benefits and privileges specified by Sections 727.18 through 727.22 and Section 727.43 of the Revised Code;

(4) Any and all resolutions, ordinances and notices required for the construction and installation of the Public Infrastructure Improvements, including the notice of the adoption of the resolution of necessity and the filing of estimated special assessments, any increase in the cost of labor and materials over the estimated cost, and the passage of the assessing ordinance, including but not limited to notices authorized and required by Sections 727.13, 727.16, 727.17, 727.24 and 727.26 of the Revised Code;

(5) Any and all irregularities and defects in the proceedings;

(6) The right to strict construction of proceedings specified by Section 727.40 of the Revised Code (the Developer and each Joinder Lot Owner hereby requesting and agreeing that the proceedings for the Public Infrastructure Improvements and the levying of the Owner Special Assessments be liberally construed in all respects);

(7) Any waiver of the lien of the Owner Special Assessments after two years as specified by Section 727.34 of the Revised Code (the Developer and each Joinder Lot Owner hereby requesting and agreeing that such lien against the property it owns continues in force so long as any of the Owner Special Assessments remain uncollected); and

(8) Any and all rights, benefits and privileges specified by Sections 727.12, 727.15, 727.23, 727.24, 727.25 and 727.251 of the Revised Code, including but not limited to the filing of plans, specifications, profiles and

estimate of cost relating to the Public Infrastructure Improvements, the preparation and filing of estimated assessments and the right to file objections to the proposed assessment or to the cost of the labor and materials for the Work, and the right to request a deferment of payment of those Owner Special Assessments.

The Developer and Joinder Lot Owners further consent and request that (A) all legislation required to be enacted to permit the Work to commence immediately, be enacted by the Council of the City, including, without limiting the generality of the foregoing, the resolution of necessity specified in Section 727.12 of the Revised Code and the resolution to proceed specified in Section 727.23 of the Revised Code, and (B) notwithstanding Section 727.24 of the Revised Code, the Public Infrastructure Improvements be undertaken.

The Developer and Joinder Lot Owners agree that none of them shall contest, in a judicial or administrative proceeding, the Owner Special Assessments levied against their respective properties for the Public Infrastructure Improvements.

The Developer and Joinder Lot Owners hereby covenant and agree that each will disclose the existence of the Owner Special Assessments to any purchaser of any part of the Assessed Property owned by Developer or Joinder Lot Owners, as applicable, in any purchase contract and will provide requested related documentation to such purchaser.

**Section 6.2. Disbursements of the Developer Reimbursement Amount.** Based on the foregoing, the City agrees, subject to Section 4.4 hereof, to reimburse and/or otherwise pay the Developer the Developer Reimbursement Amount. The City hereby agrees to pay the Developer, upon the satisfaction of the conditions of Section 4.2 hereof with respect to the Public Infrastructure Improvements for which a written requisition substantially in the form attached as **EXHIBIT D** (a “Written Requisition”) is submitted to the City, the actual costs of those Public Infrastructure Improvements (with the costs of all those Public Infrastructure Improvements collectively referred to herein as the “Costs”). Except as otherwise provided in an agreement entered into between the Developer and the City, the Developer may submit one (1) Written Requisition per calendar month. Such payments shall be made within 30 days after the City’s receipt of a complete Written Requisition. The amount on each Written Requisition is subject to approval by the City’s Director of Finance or City Manager as properly payable under this Agreement, which approval shall not be unreasonably withheld.

**Section 6.3. Final Disbursement.** Upon final completion of the Work and acceptance by the County, Developer shall deliver to City copies of unconditional final lien waivers executed by all subcontractors, suppliers or lien claimants. Payment of the final disbursement shall be conditioned upon the Public Infrastructure Improvements being determined to be complete under Article IV of this Agreement and satisfaction of all other final payment conditions.

**Section 6.4. Tax Covenants.** The obligation of the City to make payments to the Developer pursuant to this Agreement is not an obligation or pledge of any moneys raised by taxation and does not represent or constitute a debt or pledge of the faith and credit of the City. Except for the payment from the Developer Reimbursement Amount described in this

Agreement, the Developer shall receive no other monies from the City in connection with the construction of the Public Infrastructure Improvements.

## ARTICLE VII

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 7.1. General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto (each an “*Event of Default*”), such Party shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the Party shall upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the following remedies may be pursued: (i) the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; and (ii) in addition, if the default or breach is a failure of the Developer to achieve completion of the Work, as adjusted by Change Order, then City may proceed to perform the Developer’s obligations under this Agreement, and pay the costs thereof without reimbursement to the Developer hereunder.

**Section 7.2. Other Rights and Remedies; No Waiver by Delay.** The Parties shall each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by either party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of such party with respect to any other defaults by the other party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

**Section 7.3. Force Majeure.** Notwithstanding anything contained in Sections 7.1 and 7.2 to the contrary and except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen, but not including lack of financial capacity by a Party; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations

shall be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section 7.3 shall within fourteen (14) days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Party in writing of the duration of the delay.

## ARTICLE VIII

### **DISPUTE RESOLUTION PROVISIONS AS TO AMENDMENTS AND CLAIMS**

**Section 8.1. Notice and Filing of Requests.** Any request by the City or the Developer for amendment of the terms of this Agreement, including without limitation, for additional funds or time for performance shall be made in writing and given prior to completion of the Public Infrastructure Improvements.

**Section 8.2. Request Information.** In every written request given pursuant to Section 8.1 hereof, the party giving notice shall provide the nature and amount of the request; identification of persons, entities and events responsible for or related to the request; and identification of the activities on the applicable schedule affected by the request.

**Section 8.3. Meeting.** Within ten (10) days of receipt of the request given pursuant to Section 8.1 hereof, the parties shall schedule a meeting in an effort to resolve the request and shall reach a decision on the request promptly thereafter or reach a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the City and the Developer. Any decision on the request shall be made to the mutual reasonable satisfaction of the parties.

**Section 8.4. Mediation.** If no decision is reached within 30 days of the date of the meeting held pursuant to Section 8.3 hereof, the parties may submit the matter to mediation, upon written agreement between them, or exercise any other remedy permitted to them at law or in equity.

**Section 8.5. Performance.** The City and the Developer shall proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

## ARTICLE IX

### **MISCELLANEOUS**

**Section 9.1. Notice.** Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing, fax or email and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified



mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

**Section 9.2. Extent of Covenants; No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

**Section 9.3. Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 9.4. Binding Effect Against Successors and Assigns.** The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

**Section 9.5. Recitals.** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

**Section 9.6. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

**Section 9.7. Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

**Section 9.8. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims,

counterclaims, disputes and other matters in question between any of the Parties and their respective agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.

**Section 9.9. Assignment.** This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

**Section 9.10. Survival of Representations and Warranties.** All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

**Section 9.11 Declaration Regarding Material Assistance/Nonassistance To a Terrorist Organization.** Developer hereby warrants and represents that neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in Developer has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. Developer acknowledges receipt of a current version of the Terrorist Exclusion List, and Developer shall provide to City a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization upon request of the City.

[Signature Pages and Exhibits Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**CITY OF POWELL, OHIO**

By: \_\_\_\_\_

Printed: Steve Lutz

Title: City Manager

Approved as to Form:

By: \_\_\_\_\_

Printed: Eugene L. Hollins

Title: Director of Law

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**DEVELOPER**

**VERONA LLC**, an Ohio limited Liability Company

By: \_\_\_\_\_

Printed: Vincent Romanelli

Title: Managing Member

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Director of Finance of the City of Powell, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2016 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Debra Miller  
Director of Finance  
City of Powell, Ohio

**LOT OWNER JOINDER**

The undersigned, as fee simple owner of the Designated Lot set forth below, joins in the execution and delivery of the attached Sewer Assessment and Financing Agreement (“*Agreement*”) solely for the purpose of subjecting the Designated Lot to the provisions of Section 6.1 of the Agreement thereby imposing Owner Special Assessments, as defined in the Agreement, on the Designated Lot and making and entering into such consents, requests and waivers as set forth in such Section 6.1.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Lot Owner Joinder and authorized its attachment to the Agreement as of the Execution Date referenced below.

Execution Date: \_\_\_\_\_

Designated Lot: Lot # \_\_\_\_\_

Lot Owner(s): \_\_\_\_\_

Signature(s) of Lot Owner(s): \_\_\_\_\_

Notary Acknowledgment

EXHIBIT A  
VERONA DEVELOPMENT PLAN

## EXHIBIT B

### PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include:

- Sanitary sewer lift station, force main and other improvements necessary to provide sanitary sewer service to the Private Improvements.
- The components of the improvements are identified in the Preliminary Cost Estimate (Exhibit B) and depicted on the Site Plan (Exhibit C).

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS PLAN



EXHIBIT D  
REQUISITION FORM