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April 24, 2024

VIA EMAIL ONLY

Hon. David Thomas  
Ashtabula County Auditor  
25 West Jefferson Street,  
Jefferson, OH 44047-1092  
auditor@ashtabulacountyauditor.org

CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT TO EVIDENCE RULE 408

Re: Property Owner: Ashtabula Industrial Park, LLC  
BOR No.: 2023-0066  
Parcel No.: 03-000-00-140-00  
Response from Property Owner/Complainant to Settlement Worksheet

Dear Auditor Thomas:

My firm represents Ashtabula Industrial Park, LLC (“AIP”), which owns parcel 03-000-00-140-00 (the “Subject Property”). The Subject Property is subject to a tax year 2023 valuation complaint (“the BOR Complaint”), to which your office has assigned Board of Revision (“BOR”) case number 2023-0066 (the “BOR Case”). The Subject Property occupies 104.603 acres and includes a decommissioned former coal-fired power plant. The Subject Property’s land and improvements are so materially encumbered with environmental cleanup obligations that AIP is subject to a court-ordered requirement to remediate the Subject Property, which it is pursuing by safely preparing and demolishing the Subject Property’s improvements. Since before AIP acquired the Subject Property, these improvements have been unsafe and unusable due to asbestos. Any buyer of the Subject Property would be subject to the same court-ordered remediation obligations that AIP assumed when it purchased the Subject Property for \$10.

Your office originally assigned a fair market value to the Subject Property for tax year 2023 of \$4,795,500, allocating \$1,416,600 to the Subject Property’s land, and \$3,378,900 to its buildings. On its BOR Complaint, AIP requested a total fair market value for the Subject Property of \$1,416,600.

Last week, we received your office's April 5, 2024 Settlement Worksheet, which proposed a settlement of the BOR Case at a fair market value of \$2,303,400; we understand that this proposal would reduce the value assigned to the Subject Property's buildings, but would retain the Auditor's original land value. In other words, the Settlement Worksheet proposes a building value of \$886,800 for the asbestos-containing buildings, which are decommissioned, subject to court-ordered remediation, and which AIP is in the process of preparing for demolition.

As the following discussion and attached documents show, AIP recently bought the Subject Property in an arm's length transaction for \$10. The purchase price in this arm's length sale was so low because AIP also assumed the seller's court-ordered environmental clean-up obligations. The State of Ohio required AIP to secure bonds covering the projected \$27-million cost of clean-up. Until the Subject Property has been fully remediated, its true value is negative, to the tune of millions of dollars, given the lengthy and costly environmental clean-up and remediation that AIP is required to perform, and which any buyer of the Subject Property would inherit under the terms of the Stipulation.

Rather than pursue the lower value of \$10, which the Subject Property's recent purchase price supports, AIP would agree to a fair market value for the Subject Property of \$1,416,600, which is the Auditor's original land value for the Subject Property. As the below analysis shows, even if we made the extraordinary and factually incorrect assumption that the Subject Property is not burdened with environmental remediation obligations, the Subject Property's current per-acre value of about \$13,540 would exceed the land value of other immediately adjacent parcels, which are presumably not subject to the same degree of court-ordered clean-up requirements that encumber the Subject Property. In short, AIP's suggested value of \$1,416,600 certainly exceeds the Subject Property's economic value, given the costs of remediation. It unquestionably exceeds the price that AIP paid to acquire the Subject Property just seven months before the 2023 tax lien date. And it materially exceeds the per-acre value that the Auditor assigned to multiple adjacent properties.

For all of these reasons, which are set forth in greater detail below, AIP respectfully proposes to settle the BOR Case by agreeing to a fair market value of the Subject Property for Tax Year 2023 of \$1,416,600.

## **I. AIP Acquired the Subject Property in Mid-2022 for \$10 in an Arm's Length Sale**

AIP attached to its BOR Complaint the Conveyance Fee Statement and Deed associated with its \$10 purchase of the Subject Property in May 2022. *See* BOR Complaint, attached as **Exhibit A**. The Deed notes that the Subject Property is subject to a Stipulation in favor of the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency concerning certain remediation and demolition obligations that was filed in a lawsuit styled *In re FirstEnergy Solutions Corp., et al., now captioned as In re Energy Harbor LLC and Pleasants Corp.*, Case No. 18-50757 (Bankr. N.D. Ohio), Docket No. 3045. *Id.* Providing further detail, and confirming that AIP is bound by the seller's environmental remediation and demolition obligations, AIP included

with its BOR Complaint the “Supplement to DTE-100” that it filed with its Conveyance Fee Statement, which confirmed that “the only consideration associated with the transaction is \$10.” *Id.*

That Supplement continues, explaining why the arm’s length purchase price of \$10 was so low:

The consideration is based upon the extensive remediation, restoration, and demolition obligations that Grantee will need to fulfill to render the Real Estate suitable for use and/or development. Further, the structures on the Real Estate are associated with a former coal-fired power plant that has been permanently decommissioned and said structures will have to be demolished for the property to be suitable for use and/or development. Specifically, Grantee will be required to comply with the obligations set forth in the Stipulation Resolving Confirmation Objection of Environmental Agencies by and between FirstEnergy Generation LLC nka Energy Harbor Generation LLC and the United States Environmental Protection Agency, Ohio Environmental Protection Agency and the Ohio Department of Natural Resources dated August 15, 2019 and filed in Case No. 18-5075-amk as Doc 3045 (the “Stipulation”), as such Stipulation has been modified in conjunction with this transaction. Grantee’s assumption of the responsibility for compliance with the Stipulation, as modified, requires, among other things, demolition and remediation of structures within Lake Erie and on the Real Estate. The structures and materials removed from the Lake Erie lakebed and Real Estate must be handled in accordance with applicable law at Grantee’s expense. Based upon the foregoing, the actual consideration associated with the transaction is \$10.

*Id.*

The Supplement to the Conveyance Fee Statement is consistent with the terms of AIP’s Asset Purchase Agreement with Energy Harbor Generation LLC (the FirstEnergy successor that sold the Subject Property to AIP). *See* Asset Purchase Agreement, attached as **Exhibit B**, at Section 2.03, Assumed Liabilities, page 12 (noting that AIP assumed, among many other environmental responsibilities, the clean-up and demolition responsibilities required in the Ashtabula Stipulation).<sup>1</sup> In particular, AIP assumed “all” of Seller’s demolition and restoration responsibilities under the Ashtabula Stipulation. *Id.* at Section 2.03(g), at page 12–13.

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<sup>1</sup> The Asset Purchase Agreement defines the Ashtabula Stipulation to be the “Notice of Filing Stipulation Resolving Confirmation Objection of Environmental Agencies filed in the Bankruptcy Case as Dkt. No. 3045, outlining remediation and restoration obligations associated with the Ashtabula Real Property.” *Id.*, at 1–2.

Because it assumed these broad demolition and restoration responsibilities, AIP would only agree to pay a nominal sum of \$10 to acquire the Subject Property. AIP bargained in its own best interest in its purchase of the Subject Property, and it has no common ownership or control with FirstEnergy, Energy Harbor Generation LLC, or any of their affiliates.

In short, AIP bought the Subject Property from an unrelated party for a purchase price of \$10. As part of that transaction, it assumed the Seller's legal duties to remediate the Subject Property, including the Seller's duties to demolish the asbestos-containing buildings, restore the submerged lakebed, and clean ponds and land.

## **II. The Stipulation and Court-Ordered Cleanup Requirement, Including \$27 Million Surety Bonds to Secure Clean-up Obligations**

FirstEnergy formerly operated the Subject Property before it permanently decommissioned the coal-fired power plant. During FirstEnergy's bankruptcy, and in response to various environmental protection agencies' objections to the bankruptcy, FirstEnergy entered the Stipulation on August 15, 2019. *See* Stipulation, attached as **Exhibit C**.<sup>2</sup> That Stipulation, defined as the Ashtabula Stipulation in the Asset Purchase Agreement, set forth extensive remediation and demolition obligations, and only permitted FirstEnergy to sell the Subject Property if its buyer agreed to assume those clean-up obligations. *See* Stipulation, at 1–2; Asset Purchase Agreement, at 1–2.

For instance, the Stipulation required FirstEnergy either to “(i) demolish the power plant facility . . . , restore such property in full compliance with all applicable state and federal environmental rules [within 5 years] . . . or (ii) sell or transfer the property to a third party purchaser who will demolish the Ashtabula Property, restore such property . . . and use reasonable best efforts to do the foregoing activities within 5 years of the Effective Date.” *Id.* at 1.

As a condition for approving the Stipulation, the Ohio Environmental Protection Agency (“Ohio EPA”) required any buyer of the Subject Property to provide “financial assurance for the demolition and asbestos abatements costs at such property in the amount of \$15 million . . .” *Id.* at 1. Likewise, the Ohio EPA required an additional bond of another \$12 million to secure the clean-up obligations as to the Subject Property's shoreline and lakebed. *Id.* at 2.

The Stipulation's cleanup obligations, which AIP assumed when it bought the Subject Property, were not limited merely to remediating or demolishing the former generation facilities; AIP must also perform shore modifications, remove real and personal property, remove an oily

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<sup>2</sup> Note that the Stipulation was attached as Exhibit A to a Notice of Filing Stipulation that was filed with the Bankruptcy Court, and both the Notice and the Stipulation are attached here as Exhibit C. Citations in this letter to the Stipulation's page numbers relate to the Stipulation, not the Notice that precedes it.

treatment pond, decommission certain treatment systems and coal piles, and transfer a residual waste landfill, among many other cleanup obligations. *See Stipulation*, at 1–4.

As the Asset Purchase Agreement and Stipulation required, AIP has secured \$27 million of surety bonds, which the Ohio EPA required to secure FirstEnergy’s, and now AIP’s, clean-up and demolition obligations. *See* \$15 Million and \$12 Million Surety Bonds, attached as **Exhibits D and E**, respectively. In other words, to ensure that AIP lives up to the clean-up responsibilities it assumed from FirstEnergy, the State of Ohio required AIP to bring \$27 million of bonds to the table – this explains why AIP would only pay a nominal sum of \$10 to buy the Subject Property.

**III. The Auditor Assigned Per-Acre Land Values to Neighboring Properties of \$5,000 and \$11,250 Per Acre, Substantially Less than the \$13,540 Per Acre Value Assigned to the Subject Property’s Land**

AIP initially requested a \$1,416,600 value because that was the Auditor’s original land value for the Subject Property, even though much of the land is encumbered and affected by environmental remediation obligations, and even though the Auditor’s land value on a per-acre basis substantially exceeds the value assigned to multiple immediately adjacent parcels. AIP remains interested in resolving the BOR Case at the county level by agreeing to the Auditor’s original land value, but it did wish to note that the Auditor’s per-acre land value of the Subject Property exceeds the per-acre values that were assigned to AIP’s presumably un- or less-environmentally encumbered neighbors.

AIP understands from the Auditor’s website that the Auditor assigned three different per-acre values to the Subject Property’s land. Here is a snip from the Auditor’s website listing the different values that the Auditor assigned to the Subject Property’s land:

PARID: 030000014000		JUR: 04					
NBHD: 8310C		ROLL: RP					
ASHTABULA INDUSTRIAL PARK LLC		2133 LAKE (SR 531) RD E					
<b>Land Summary</b>							
Line #	Land Class	Land Type	Land Code	Square Feet	Acres	Rate	Market Land Value
1	-	A-ACREAGE	4-UNDEVELOPED	522,720	12.0000	35,000.00	\$210,000.00
2	-	A-ACREAGE	1-PRIMARY SITE	1,855,656	42.6000	35,000.00	\$736,580.00
3	-	A-ACREAGE	4-UNDEVELOPED	2,178,131	50.0030	15,000.00	\$470,030.00
Total:				4,556,507	104.6030		\$1,416,610.00

Dividing each of the three Market Land Values by their acreage yields the following three per-acre values that the Auditor assigned to the Subject Property:

Portion of Subject Property	Auditor's Market Land Value	Acres	Auditor's Per-Acre Land Value
1	\$210,000	12.0000	\$17,500
2	\$736,580	42.6000	\$17,290
3	\$470,030	50.0030	\$9,400
<b>Average</b>	<b>\$1,416,610</b>	<b>104.6030</b>	<b>\$13,543</b>

The Subject Property's current land values substantially exceed the values the Auditor assigned to AIP's eastern neighbors, both on the water and inland.<sup>3</sup> For instance, the Auditor assigned a value of \$370,220 to parcel 03-010-00-011-02's 74.2750 acres, yielding a land value for that neighboring parcel of under \$5,000 per acre. See Land Summary of Parcel 03-010-00-011-02, attached as **Exhibit F**. This neighboring property is immediately to the east of the Subject Property, and it is a similarly aged and largely vacant industrial site:



<sup>3</sup> The parcel to the west of the Subject Property along the water is a park, and its valuation is probably not relevant to the Subject Property's.

As to the value the Auditor assigned to neighboring water-front industrial land, the Auditor assigned a land value of \$237,850 to parcel 03-000-00-142-00, which the Ashtabula County Port Authority owns, yielding a per-acre land value of this 21.142-acre water-front industrial site of \$11,250. *See Land Summary of Parcel 03-000-00-142-00*, attached as Exhibit G. The following snip illustrates this other parcel's location immediately to the east of the Subject Property along the shore of Lake Erie:



For the purposes of illustration, a weighted average of these two neighboring properties' values on a per-acre basis would be less than \$6,400 per acre:

<b>Parcel</b>	<b>Acreage</b>	<b>Auditor's Per-Acre Land Value</b>	<b>Weighted Avg. Per-Acre Value</b>
03-010-00-011-02	74.2750	\$5,000	\$5,000 x (74.2750/95.417) = \$3,890
03-000-00-142-00	21.142	\$11,250	\$11,250 x (21.142/95.417) = \$2,497.50
Total	95.417 Acres		Weighted Average of Eastern Neighbors' Land Values: <b>\$6,387.50/Acre</b>

Applying that weighted average of the two neighboring parcels' land values to the Subject Property's 104.603 acres would indicate a land value for the Subject Property of \$668,152, which is less than half the land value of \$1,416,600 that the Auditor assigned to the Subject Property. All of this data reinforces the notion that AIP's requested reduction in value to \$1,416,600 is not merely consistent with neighboring valuations, but that this proposal exceeds the per-acre values that have been assigned to the Subject Property's eastern neighbors.

**IV. AIP Respectfully Proposes Resolving the BOR Case at the County Level by Agreeing to a Fair Market Value of \$1,416,600, Even Though it Recently Bought the Subject Property for Just \$10 in May 2022, Even Though the State of Ohio Required AIP to Secure its Clean-Up Responsibilities with \$27 Million in Surety Bonds, and Even though the Auditor's Value of the Subject Property's Land Exceeds the Value the Auditor Assigned to AIP's Neighbor's Land**

AIP reiterates its gratitude to the Auditor for reviewing the Subject Property, and for offering the recent Settlement Worksheet. AIP respectfully responds to the Auditor's proposed settlement value of \$2,303,400 by suggesting that a value, for settlement purposes, of \$1,416,600 is reasonable, and substantially exceeds the Subject Property's true value.

AIP recently purchased the Subject Property for \$10; in the hypothetical setting of a future appeal to the Board of Tax Appeals, that is the value that AIP would request. As part of its acquisition of the Subject Property, AIP assumed the Subject Property's former owner's court-ordered environmental clean-up obligations. The State of Ohio would only permit AIP to assume those clean-up responsibilities, including remediation of asbestos, restoration of the lakebed and lakeshore, and demolition and removal of asbestos-containing industrial buildings and ponds if AIP secured surety bonds that total \$27 million. Valuing this compromised property at a value of

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\$1,416,600 would be a reasonable resolution at the county level, and would avoid the cost and uncertainty of an appeal to the Ohio Board of Tax Appeals. That settlement value would exceed the per-acre land values that the Auditor has assigned to AIP's neighbors, and would reflect the fact that the decommissioned power plant's asbestos-containing buildings have a negative or non-existent contribution to the Subject Property's value.

Thank you again for your patience in considering the materials that AIP has presented, and also for the extension of time for AIP to respond to your Settlement Worksheet. We look forward to learning whether the Auditor would agree to a settlement of the BOR case at a fair market value of \$1,416,600.

Sincerely,



Jonathan Brollier

JB

Enclosure

cc: Ms. Tara Frable (trfrable@ashtabulacounty.us)

Tax year 2023

BOR no. 0066

**FILED ON**

DTE 1  
Rev. 08/21

County Ashtabula

Date received FEB 14 2024

### Complaint Against the Valuation of Real Property

Answer all questions and type or print all information. Read instructions on back before completing form.

Attach additional pages if necessary.

This form is for full market value complaints only. All other complaints should use DTE Form 2

Original complaint  Counter complaint

Notices will be sent only to those named below.

Name		Street address, City, State, ZIP code	
1. Owner of property	Ashtabula Industrial Park LLC	c/o EBG 250 West St., Ste 300, Col., OH 43215	
2. Complainant if not owner			
3. Complainant's agent	Jonathan T. Brollier, Esq.	EBG 250 West St., Ste 300, Col., OH 43215	
4. Telephone number of contact person	(614) 872-2412		
5. Email address of complainant	Jbrollier@ebglaw.com		
6. Complainant's relationship to property, if not owner	N/A		
If more than one parcel is included, see "Multiple Parcels" on back.			
7. Parcel numbers from tax bill	Address of property		
03-000-00-140-00	2133 Lake (SR 531) Rd. E.		
8. Principal use of property <b>Environmentally contaminated former industrial/commercial land</b>			
9. The increase or decrease in market value sought. Counter-complaints supporting auditor's value may have -0- in Column C.			
Parcel number	Column A Complainant's Opinion of Value (Full Market Value)	Column B Current Value (Full Market Value)	Column C Change in Value
03-000-00-140-00	\$1,416,600	\$4,795,500	(\$3,378,900)
10. The requested change in value is justified for the following reasons: The Auditor's valuation of the Subject Property exceeds its fair market value; the Subject Property's true value is less than the value that the Auditor assigned; other reasons to be presented at hearing.			

11. Was property sold within the last three years?  Yes  No  Unknown If yes, show date of sale 05/31/2022 and sale price \$ 10.00 ; and attach information explained in "Instructions for Line 11" on back.

12. If property was not sold but was listed for sale in the last three years, attach a copy of listing agreement or other available evidence.

13. If any improvements were completed in the last three years, show date \_\_\_\_\_ and total cost \$ \_\_\_\_\_

14. Do you intend to present the testimony or report of a professional appraiser?  Yes  No  Unknown

15. If you have filed a prior complaint on this parcel since the last reappraisal or update of property values in the county, the reason for the valuation change requested must be one of those below. Please check all that apply and explain on attached sheet. See R.C. section 5715.19(A)(2) for a complete explanation.

The property was sold in an arm's length transaction.

The property lost value due to a casualty.

A substantial improvement was added to the property.

Occupancy change of at least 15% had a substantial economic impact on my property.

I declare under penalties of perjury that this complaint (including any attachments) has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Date 02/14/2024

Complainant or agent

Signature

Title (if agent)

Attorney

# Instructions for Completing DTE 1

DTE 1  
Rev. 08/21

**FILING DEADLINE:** A COMPLAINT FOR THE CURRENT TAX YEAR MUST BE RECEIVED BY THE COUNTY AUDITOR ON OR BEFORE MARCH 31 OF THE FOLLOWING TAX YEAR OR THE LAST DAY TO PAY FIRST-HALF TAXES WITHOUT A PENALTY, WHICHEVER DATE IS LATER. A COUNTER-COMPLAINT MUST BE FILED WITHIN 30 DAYS AFTER RECEIPT OF NOTICE FROM THE AUDITOR THAT AN ORIGINAL COMPLAINT HAS BEEN FILED.

**Who May File:** Any person owning taxable real property in the county, the board of county commissioners, the county prosecutor, the county treasurer, the board of township trustees of any township with territory in the county, the board of education of any school district with territory in the county, or the mayor or legislative authority of any municipal corporation with territory in the county may file a complaint, or a tenant of the property owner, if the property is classified as to use for tax purposes as commercial or industrial, the lease requires the tenant to pay the entire amount of taxes charged against the property, and the lease allows, or the property owner otherwise authorizes, the tenant to file such a complaint with respect to the property. See R.C. 5715.19 for additional information.

**Tender Pay:** If the owner of a property files a complaint against the valuation of that property, then, while such complaint is pending, the owner is entitled to tender to the county treasurer an amount of taxes based on the valuation claim for such property in the complaint. **Note:** If the amount tendered is less than the amount finally determined, interest will be charged on the difference. In addition, if the amount finally determined equals or exceeds the amount originally billed, a penalty will be charged on the difference between the amount tendered and the final amount.

**Multiple Parcels:** Only parcels that (1) are in the same taxing district and (2) have identical ownership may be included in one complaint. Otherwise, separate complaints **must** be used. However, for ease of administration, parcels that (1) are in the same taxing district, (2) have identical ownership and (3) form a **single economic unit should be included in one complaint.** The increase or decrease in valuation may be separately stated for each parcel or listed as an aggregate sum for the economic unit. If more than three parcels are included in one complaint, use additional sheets of paper.

**General Instructions:** Valuation complaints must relate to the **total value** of both land and buildings. The Board of Revision may increase or decrease the total value of any parcel included in a complaint. The board will notify all parties not less than 10 days prior to the hearing of the time and place the complaint will be heard. The complainant should submit any documents supporting the claimed valuation to the board prior to the hearing. The board may also require the complainant and/or owner to provide the board additional information with the complaint and may request additional information at the hearing, including purchase and lease agreements, closing statements, appraisal reports, construction costs, rent rolls and detailed income and expense statements for the property.

Ohio Revised Code section 5715.19(G) provides that "a complainant shall provide to the Board of Revision all information or evidence within the complainant's knowledge or possession that affects the real property" in question. Evidence or information that is not presented to the board cannot later be presented on any appeal, unless good cause is shown for the failure to present such evidence or information to the board.

**Instructions for Line 9.** In Column A enter the complainant's opinion of the full market value of the parcel before the application of the 35% percent listing percentage. In Column B enter the current full market value of the parcel. This will be equal to the total taxable value as it appears on the tax bill divided by 0.35. Enter the difference between Column B and Column A in Column C.

**Instructions for Line 11.** If property was sold in the last three years, attach the purchase agreement, escrow statement, closing statement or other evidence available. If the buyer and seller were or are related or had any common business interests, attach an explanation. If any other items were included in the sale of the real estate, attach a description of those items. Show the value of those items and explain how the values were determined.

**Notice:** If the county auditor is in possession of an email address for you the auditor may choose to send any notices the auditor is required to send regarding this complaint by email and regular mail instead of by certified mail.



20370106

# Real Property Conveyance Fee Statement of Value and Receipt

Low Value

DTE 100 Rev. 5/20

If exempt by Ohio Revised Code section 319.54(G)(3), use form DTE 100(EX).

### TYPE OR PRINT ALL INFORMATION.

Type instrument <u>WD</u>	Tax list year <u>2022</u>	County number <u>04</u>	Tax. dist. number <u>1020</u>	Date <u>5/31/2022</u>
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Property located in Ashtabula taxing district

Name on tax duplicate \_\_\_\_\_ Tax duplicate year \_\_\_\_\_

Acct. or permanent parcel no. 03-100-00140-00 Map book \_\_\_\_\_ Page \_\_\_\_\_

Description \_\_\_\_\_ Platted \_\_\_\_\_ Unplatted \_\_\_\_\_

Auditor's comments: Split \_\_\_\_\_ New plat \_\_\_\_\_ New improvements \_\_\_\_\_ Partial value \_\_\_\_\_  
C.A.U.V \_\_\_\_\_ Building removed \_\_\_\_\_ Other \_\_\_\_\_

Number	<u>2124</u>
No. of Parcels	<u>1</u>
DTE Code No.	<u>489</u>
Neigh. Code	
No. of Acres	
Land Value	<u>495810</u>
Bldg. Value	<u>1182620</u>
Total Value	<u>1678430</u>
DTE Use Only	
DTE Use Only	
DTE Use Only	
Consideration	<u>10 00</u>
DTE Use Only Valid sale	
1. Yes 2. No	
Receipt Number	

### Grantee or Representative Must Complete All Questions in This Section. See instructions on reverse.

1. Grantor's name Energy Harbor Generation LLC Phone (888) 254-6359

2. Grantee's name Ashtabula Industrial Park, LLC Phone (716) 447-7587

Grantee's address 500 Seneca Street Suite 504, Buffalo, NY 14204

3. Address of property 2133 Lake Road East, Ashtabula, OH 44004

4. Tax billing address 500 Seneca Street Suite 504, Buffalo, NY 14204

5. Are there buildings on the land?  Yes No If yes, check type:  
 1, 2 or 3 family dwelling \_\_\_\_\_ Condominium \_\_\_\_\_ Apartment: No. of units \_\_\_\_\_  
 Manufactured (mobile) home \_\_\_\_\_ Farm buildings \_\_\_\_\_  Other Former power plant \_\_\_\_\_  
 If land is vacant, what is intended use? \_\_\_\_\_

6. Conditions of sale (check all that apply) Grantor is relative \_\_\_\_\_ Part interest transfer \_\_\_\_\_ Land contract \_\_\_\_\_  
 Trade \_\_\_\_\_ Life estate \_\_\_\_\_ Leased fee \_\_\_\_\_ Leasehold \_\_\_\_\_ Mineral rights reserved \_\_\_\_\_ Gift \_\_\_\_\_  
 Grantor is mortgagee \_\_\_\_\_ Other \_\_\_\_\_

7. a) New mortgage amount (if any).....\$ \_\_\_\_\_ 0.00  
 b) Balance assumed (if any).....\$ \_\_\_\_\_ 0.00  
 c) Cash (if any).....\$ \_\_\_\_\_ 10.00  
 d) Total consideration (add lines 7a, 7b and 7c).....\$ \_\_\_\_\_ 10.00  
 e) Portion, if any, of total consideration paid for items other than real property .....\$ \_\_\_\_\_ 0.00  
 f) Consideration for real property on which fee is to be paid (7d minus 7e) .....\$ \_\_\_\_\_ 10.00  
 g) Name of mortgagee \_\_\_\_\_  
 h) Type of mortgage  Conv.  F.H.A.  V.A.  Other \_\_\_\_\_  
 i) If gift, in whole or part, estimated market value of real property.....\$ \_\_\_\_\_

8. Has the grantor indicated that this property is entitled to receive the senior citizen, disabled person or surviving spouse homestead exemption for the preceding or current tax year? Yes  No If yes, complete form DTE 101.

9. Has the grantor indicated that this property qualified for current agricultural use valuation for the preceding or current tax year?  Yes  No If yes, complete form DTE 102.

10. Application for owner-occupancy (2.5% on qualified levies) reduction. (Notice: Failure to complete this application prohibits the owner from receiving this reduction until another proper and timely application is filed.) Will this property be grantee's principal residence by Jan. 1 of next year?  Yes  No If yes, is the property a multi-unit dwelling?  Yes  No

I declare under penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief it is a true, correct and complete statement.

[Signature] Date 5-31-2022

Signature of grantee or representative Date

### Receipt for Payment of Conveyance Fee

The conveyance fee required by Ohio Revised Code section (R.C.) 319.54(G)(3) and, if applicable, the fee required by R.C. 322. in the total amount of \$ 4.00 has been paid by ANN and received by the \_\_\_\_\_ county auditor.

County auditor DAVID THOMAS

FNTS Holdings  
Ch# 3920528433

Date 5/31/2022

50 KMP

**TRANSFERRED**  
Auditor, Ashtabula County, Ohio

MAY 31 2022

*David Thomas*

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In compliance with Sec. 319.202  
R.C. and Sec. (F) 319.54 R.C.  
effective January 1<sup>st</sup>, 1968

\$10.00

**LIMITED WARRANTY DEED**

ENERGY HARBOR GENERATION LLC, a Delaware limited liability company, formerly known as FirstEnergy Generation LLC, an Ohio limited liability company which was converted from FirstEnergy Generation Corp., an Ohio corporation, 168 East Market Street, Akron, Ohio 44308, the GRANTOR, for valuable consideration paid, grants with limited warranty covenants to ASHTABULA INDUSTRIAL PARK, LLC, whose tax mailing address shall be 500 Seneca Street Suite 504 Buffalo, New York 14202, the GRANTEE, the following real property:

Situated in the Township of Ashtabula County of Ashtabula, and State of Ohio, as more fully described in **Exhibit A** attached hereto and incorporated herein by reference (the "Real Property"):

Except restrictions, conditions, leases, including but not limited to the Submerged Land Lease between Grantor and the Ohio Department of Natural Resources recorded at OR Volume 278, Page 2296 of the Ashtabula County Records, easements, including but not limited to such recorded and unrecorded easements and rights of way relating to the location of and access to all electric transmission substations, towers, lines, and all related equipment including related communication equipment and facilities located on or adjacent to the Real Property (the "Transmission Facilities") and all access roads and vehicle drives necessary to access such improvements and / or equipment, wheresoever located on the Real Property, and the rights (recorded and unrecorded) of the owners of the Transmission Facilities, American Transmission Systems, Incorporated and The Cleveland Electric Illuminating Company, to utilize the existing surface water drainage and discharge lines and courses on the Real Property for discharge or release of surface water from such Transmission Facilities to and through the Real Property, orders, stipulations, including but not limited to the Stipulation by Grantor in favor of the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency concerning certain remediation and demolition obligations relating to the Real Property filed in *In re FirstEnergy Solutions Corp., et al., now captioned as In re Energy Harbor LLC and Pleasants Corp.*, Case No. 18-50757 (Bankr. N.D. Ohio) as Dkt. No. 3045, oil and gas or coal leases or other mineral severances, any items or matters that would be disclosed by an accurate

survey of the Real Property, and any other matters appearing on record, and zoning ordinances and taxes, which shall be prorated between the parties as of the date of transfer.

Permanent Parcel Number: 03-000-00140-00

Prior Deed Reference: OR Book 367, Page 446

Said Grantor has executed this limited warranty deed by its duly authorized officer as of the 23rd day of May, 2022.

ENERGY HARBOR GENERATION LLC

By: John W. Jodge  
Name: John W. Jodge  
Title: President

STATE OF OHIO            )  
  ) SS:  
COUNTY OF SUMMIT    )

This is an acknowledgement clause; no oath or affirmation was administered to the signer. The foregoing instrument was acknowledged before me this May 23, 2022 by John W. Jodge of Energy Harbor Generation LLC, a Delaware limited liability company.



**KIMBERLY D. ANDERS**  
Notary Public, State of Ohio  
My Commission Expires  
December 27, 2022

Kimberly D. Anders  
Notary Public  
Printed Name: Kimberly D. Anders

This instrument prepared by:  
Black McCuskey Souers & Arbaugh Co. LPA  
220 Market Avenue South Suite 1000  
Canton, Ohio 44702

## EXHIBIT A

### FEE PARCEL:

Situated in the Township of Ashtabula, County of Ashtabula and State of Ohio and known as being part of the Holmes Tract and Lot No. 1 of the Erie Tract of said Township, and being in Township 13 North, Range 3 West of the Connecticut Western Reserve and further described as follows:

Beginning at a 3/4 inch iron pin found in a monument box at the intersection of the centerlines of State Road, 60 (sixty) feet wide and Lake Road, 70 (seventy) feet wide (aka State Route 531};

COURSE I Thence North 00°55'48" East, along the easterly line of land conveyed to the Ashtabula Township Park Board by deed recorded in Volume 197, Page 139 of Ashtabula County Deed Records, passing through a 1/2 inch pin found at 558.80 feet, 1233.92 feet to the shore line of Lake Erie;

COURSE II Thence North 48°40'21" East, along the shore of said Lake Erie and a breakwall, passing through a drill hole found at 88.54 feet and a iron pin with a brass cap found at 481.92 feet, 498.71 feet to a point;

COURSE III Thence South 28°53'03" East, along the shore of said Lake Erie and a breakwall, 222.35 feet to a point;

COURSE IV Thence North 60°30'35" East, along the northerly edge of a retaining wall, 185.02 feet to a point;

COURSE V Thence North 86°24'53" East, along said retaining wall, 174.51 feet to a point;

The following nine courses are along the shore of said Lake Erie;

COURSE VI Thence North 37°36'47" West, 117.08 feet to a point;

COURSE VII Thence North 08°22'39" West, 72.08 feet to a point;

COURSE VIII Thence North 49°30'53" West, 85.60 feet to a point;

COURSE IX Thence North 25°49'17" East, 181.02 feet to a point;

COURSE X Thence South 51°15'18" East, 75.40 feet to a point;

COURSE XI Thence South 60°58'47" East, 86.47 feet to a point;

COURSE XII Thence South 87°02'34" East, 69.66 feet to a point;

COURSE XIII Thence South 39°17'43" West, 238.72 feet to a point;

COURSE XIV Thence South 50°04'56" East, 95.97 feet to a point;

The following three courses are along the northerly edge of a Breakwall;

COURSE XV Thence North 43°55'01" East, 71.70 feet to a point;

COURSE XVI Thence North 68°59'22" East, 55.41 feet to a point;

COURSE XVII Thence North 44°48'36" East, 776.84 feet to a point;

The following four courses are along the northerly edge of rip rap;

COURSE XVIII Thence North 76°43'52" East, 38.70 feet to a point;

COURSE XIX Thence South 70°37'09" East, 74.53 feet to a point;

COURSE XX Thence South 29°00'07" East, 51.09 feet to a point;

COURSE XXI Thence South 23°30'25" East, 86.14 feet to a point;

The following 12 courses are along the shore of said Lake Erie;

COURSE XXII Thence South 80°58'23" East, 35.60 feet to a point;

COURSE XXIII Thence North 79°47'31" East, 49.52 feet to a point;

COURSE XXIV thence South 72°34'33" East, 29.31 feet to a point;

COURSE XXV Thence South 34°25'05" East, 36.75 feet to a point;

COURSE XXVI Thence North 75°48'10" East, 231.11 feet to a point;

COURSE XXVII Thence North 57°39'37" East, 41.95 feet to a point;

COURSE XXVIII Thence North 72°32'54" East, 226.14 feet to a point;

COURSE XXIX Thence North 75°44'17" East, 45.34 feet to a point;

COURSE XXX Thence North 59°29'41" East, 92.73 feet to a point;

COURSE XXXI Thence North 70°57'37" East, 6.55 feet to a point;

COURSE XXXII Thence South 01°40'56" West, along the west line of land conveyed to C.E.I. Company by deed recorded In Volume 733, Page 65 of Ashtabula County Records, passing through a 5/8 inch iron pin set at 12.59 feet, a total distance of 741.56 feet to a 5/8 inch iron pin set in the northerly sideline of said Lake Road;

COURSE XXXIII Thence South 60°24'56" West, along the northerly line of said Lake Road, 694.27 feet to a point, said point being 2.52 feet south and 2.30 feet east of a 3/4 inch iron pin found;

COURSE XXXIV Thence North 01°57'50" East, along the westerly line of the Alpine Allotment, as recorded in Volume 9, Page 39 of Ashtabula County Plat Records, 600.00 feet to a 5/8 inch iron pin set;

COURSE XXXV Thence North 88°21'02" West, 82.06 feet to the easterly line of the Holmes Tract, said point being 1.83 feet South of a 1 inch iron pin found;

COURSE XXXVI Thence South 01°46'50" West, along the easterly line of said Holmes Tract, 683.79 feet to a 3/4 inch iron pin found in a monument box at an angle point in the centerline of said Lake Road;

COURSE XXXVII Thence South 01°21'14" West, along the westerly line of said Lot No. 1, Erie Tract, and the westerly line of land conveyed to Elkern Metals Co, LP by deed recorded in Volume 115, Page 9023, and the westerly line of land conveyed to the CEI Co., by deed recorded in Volume 300, Page 157 of Ashtabula County Deed Records, 2559.31 feet to a 1 inch iron pin found at the southwest corner of said Lot No. 1, Erie Tract, said point also being the southwest corner of said CEI Co.;

COURSE XXXVIII Thence South 01°26'10" West, along the westerly line of Lot No. 6, in said Erie Tract and the westerly line of said Elkern Metals Co, LP, 1135.61 feet to a 1 inch iron pin found at the northeast corner of land conveyed to the N.Y.C. Railroad Company, by deed dated 01-19-1952 of Ashtabula County Deed Records;

COURSE XXXIX Thence North 88°59'46" West, along the northerly line of said N.Y.C. Railroad Company and a northerly line of land conveyed to RMI Titanium Co., by deed recorded in Volume 51, Page 2964 of Ashtabula County Deed Records, 398.55 feet to a drill hole found in a stone monument at an angle point therein;

COURSE XL Thence North 01°22'37" East, along a easterly line of said RMI Titanium Co., and the easterly line of land conveyed to DiMaximum, Inc., by deed recorded in Volume 136, Page 369 of Ashtabula County Deed Records, 336.27 feet to a framing nail found at an angle point therein, said point also being the most southerly corner of land conveyed to State Road Industrial Development, LLC by deed recorded in Volume 124, Page 1679 of Ashtabula County Deed Records;

COURSE XLI Thence North 17°32'54" West, along the easterly line of said State Road Industrial Development, LLC and the easterly line of land conveyed to Ashco Industrial Water Co. by deed recorded in Volume 574, Page 235 of Ashtabula County Deed Records, 2047.45 feet to a 1 inch iron pin found at the northeast corner thereof;

COURSE XLII Thence North 89°09'50" West, along the northerly line of said Ashco Industrial Water Co., passing through a 3/4 inch iron pipe found at 620.20 feet, 650.17 feet to the centerline of said State Road;

COURSE XLIII Thence North 00°51'05" East, along the centerline of said State Road, 386.08 feet to the Place of Beginning;

Thence omitting the following three descriptions:

Parcel "A":

Beginning at a 3/4 inch iron pin found in a monument box at the intersection of the centerlines of State Road, 60 (sixty) feet wide and Lake Road 70 (seventy) feet wide (aka State Route 531);

Thence North 60°03'15" East, along the centerline of said Lake Road, 568.69 feet to the Principal Place of Beginning;

COURSE I Thence North 29°54'37" West, passing through a 5/8" iron pin set at 30.00 feet on the northerly line of said Lake Road, 261.86 feet to a 5/8 inch iron pin set;

COURSE II Thence South 59°55'14" West, 42.49 feet to a 5/8 inch iron pin set;

COURSE III Thence North 29°39'23" West, 96.11 feet to a 5/8 inch iron pin set;

COURSE IV Thence North 60°02'34" East, 41.66 feet to a 5/8 inch iron pin set;

COURSE V Thence North 30°06'30" West, 32.50 feet to a 5/8 inch iron pin set;

COURSE VI Thence North 60°03'35" East, 350.27 feet to a 5/8 inch iron pin set;

COURSE VII Thence South 30°10'29" East, passing through a 5/8 inch iron pin set at 360.35' on the northerly line of said Lake Road, 390.35 feet to the centerline of said Lake Road;

COURSE VIII Thence South 60°03'15" West, along the centerline of said Lake Road, 351.56 feet to the Principal Place of Beginning;

Parcel "B":

Beginning at a 3/4 inch iron pin found in a monument box at the intersection of the centerlines of State Road, 60 (sixty) feet wide and Lake Road 70 (seventy) feet wide (aka State Route 531);

Thence North 60°03'15" East, along the centerline of said Lake Road, 532.65 feet to the Principal Place of Beginning;

COURSE I Thence continuing North 60°03'15" East, along the centerline of said Lake Road, 1009.46 feet to a point:

COURSE II Thence South 28°41'54" East, passing through a 5/8 inch iron pin in the southerly line of said Lake Road, 415.88 feet to a 5/8 inch iron pin set;

COURSE III Thence South 60°59'41" West, 305.88 feet to a 5/8 inch iron pin set;

COURSE IV Thence North 29°20'14" West, 115.01 feet to a 5/8 inch iron pin set;

COURSE V Thence South 60°07'19" West, 323.50 feet to a 5/8 inch iron pin set;

COURSE VI Thence North 29°51'55" West, 148.09 feet to a 5/8 inch iron pin set;

COURSE VII Thence South 62°41'03" West, 42.85 feet to a 5/8 inch iron pin set;

COURSE VIII Thence South 58°51'55" West, 334.52 feet to a 5/8 inch iron pin set;

COURSE IX Thence North 29°17'03" West, passing through a 5/8 inch iron pin set at 97.74 feet in the southerly line of said Lake Road, 137.74 feet to the Principal Place of Beginning;

Parcel "E":

Beginning at a 3/4 inch iron pin found in a monument box at the intersection of the centerlines of State Road, 60 (sixty) feet wide and Lake Road 70 (seventy) feet wide (aka State Route 531);

Thence North 60°03'15" East, along the centerline of said Lake Road, 1542.11 feet to the Principal Place of Beginning;

COURSE I Thence continuing North 60°03'15" East, along the centerline of said Lake Road, 389.33 feet to a point;

COURSE II Thence South 01°21'14" West, passing through a 5/8 inch iron pin set at 46.81 feet in the southerly line of said Lake Road, 489.37 feet to a 5/8 inch iron pin set;

COURSE III Thence South 60°59'41" West, 144.17 feet to a 5/8 inch iron pin set;

COURSE IV Thence North 28°41'54" West, passing through a 5/8 inch iron pin set at 375.87 feet in the southerly line of said Lake Road, 415.58 feet to the Principal Place of Beginning and containing 117.3379 acres (after omitting parcel "A" 3.2360 Ac., parcel "B" 6.2841 Ac. and parcel "E" 2.5569 Ac.) of land more or less, but subject to all legal highways, waterways, and easements of record. Being a consolidation of lands conveyed to the Cleveland Electric Illuminating Company by deeds recorded in Volume 306, Page 136; Volume 306, Page 186; Volume 80, Page 8171; Volume 814, Page 40; Volume 795, Page 106; Volume 757, Page 80; Volume 759, Page 180; Volume 761, Page 74; Volume 743, Page 203; Volume 781, Page 211; Volume 745, Page 164; Volume 749, Page 273; Volume 750, Page 227; Volume 781, Page 213; Volume 764, Page 296; Volume 745, Page 160; Volume 741, Page 29; Volume 781, Page 204; Volume 767, Page 138, Volume 748, Page 17 of Ashtabula County Deed Records, as calculated and described by Timothy J. Sullivan, P.S. No. 7847, per a survey performed in September, 2001 by Richard A. Thompson, Jr, P.S. No. 7388 of LDC, Inc., Mentor, Ohio. All iron pins set at 5/8 inch diameter rebar, 30 inches long, marked with plastic yellow cap "LDC, Inc." Basis for bearings is the centerline of Lake Road, North 60°03'15" East. Locations of the shore of Lake Erie, breakwalls, and rip rap used in this description are based on an aerial photograph prepared by Kucera International, Inc., in September, 2001.

EXCEPTING THEREFROM THE FOLLOWING:

Situated in the Township of Ashtabula, County of Ashtabula and State of Ohio and known as being part of the Holmes Tract and Lot No. 1 of the Erie Tract of said Township, and being in Township 13 North, Range 3 West of the Connecticut Western Reserve, also being part of land conveyed to First Energy Generation Corp. by deed recorded in Volume 367, Page 446

of Ashtabula County Deed Records (PN: 03-000-00-140-00) and further described as follows:

Beginning at a 3/4 inch iron pin found in a monument box at the intersection of the centerlines of State Road (CH 25 Section M), 60 (sixty) feet wide and Lake Road, 70 (seventy) feet wide (aka State Route 531);

Thence North 60°03'15" East, along the centerline of Lake Road, 417.86 feet to the PRINCIPAL PLACE OF BEGINNING;

COURSE I Thence South 21°52'24" East, passing through a 5/8 inch iron pin set (LDC, Inc.) at 40.40 feet, a total distance of 567.41 feet to a 5/8 inch iron pin set (LDC, Inc.);

COURSE II Thence North 72°28'48" East, 647.33 feet to a 5/8 inch iron pin set (LDC, Inc.);

COURSE III Thence North 77°59'07" East, 469.73 feet to a 5/8 inch iron pin set (LDC, Inc.);

COURSE IV Thence North 01°21'14" East, 500.37 feet to a 5/8 inch iron pin found (LDC, Inc.) at the Southeasterly corner of Parcel "E" of land conveyed to C.E.I., Co. by deed recorded in Volume 348, Page 427 of Ashtabula County records (PPN: 03-000-00-140-03);

COURSE V Thence South 60°59'41" West, along the Southerly line of "Parcel E", and the Southerly line of "Parcel B" of land conveyed to C.E.I., Co (PPN: 03-000-00-140-02), passing through a 5/8 inch iron pin found (LDC, Inc.) at 144.17 feet, a total distance of 450.05 feet to a 5/8 inch iron pin found (LDC, Inc.) at an angle point in said "Parcel B";

COURSE VI Thence North 29°20'14" West, along the Southerly line of "Parcel B", 115.01 feet to a 5/8 inch iron pin found (LDC, Inc.) at an angle point therein;

COURSE VII Thence South 60°07'19" West, along the Southerly line of "Parcel B", 323.60 feet to a 5/8 inch iron pin found (LDC, Inc.) at an angle point therein;

COURSE VIII Thence North 29°51'55" West, 148.09 feet to a 5/8 inch iron pin found (LDC, Inc.) at an angle point therein;

COURSE IX Thence South 82°41'03" West, along the Southerly line of "Parcel B", 42.85 feet to a 5/8 inch iron pin found (LDC, Inc.) at an angle point therein;

COURSE X Thence South 58°51'55" West, along said Southerly line of "Parcel B", 334.52 feet to a 5/8 inch iron pin found (LDC, Inc.) at the Southwesterly corner of said "Parcel B";

COURSE XI Thence North 29°17'03" West, along the Westerly line of "Parcel B", passing through a 5/8 inch iron pin found (LDC, Inc.) at 97.74 feet, a total distance of 137.74 feet to the centerline of said Lake Road;

COURSE XII Thence South 60°03'15" West, along said centerline, 114.79 feet to the Principal Place of Beginning and containing 12.7349 acres (554,731 sq. ft.) of land, of which 12.6271 acres (550,035 sq. ft.) of land are exclusive of Right of Way, as calculated and described by William C. Vondra, Jr., P.S. No. 7478 in March 2020, per a survey performed in September, 2001 by Richard A. Thompson, Jr., P.S. No. 7388 of LDC, Inc. All iron pins set

at 5/8 inch diameter rebar, 30 inches long, marked with a plastic yellow "LDC, Inc.", Basis for bearings is the centerline of Lake Road, North 60°03'15" East.

The Intent of this description is to split 12.7349 acres out of PN: 03-000-00-140-00.

PPN: 03-000-00-140-00

**SURVEY UPDATE REQUIRED  
FOR NEXT TRANSFER**

03-000-00-140-00  
BY: DAH DATE 5-31-2022  
ASHTABULA COUNTY ENGINEER

### **Supplement to DTE-100**

As stated in the Real Property Conveyance Fee Statement of Value and Receipt (DTE 100) and the associated deed to Grantee, the only consideration associated with the transaction is \$10.00. No new mortgage, assumption of existing mortgage, or other consideration is being provided to Grantor.

The consideration is based upon the extensive remediation, restoration, and demolition obligations that Grantee will need to fulfill to render the Real Estate suitable for use and/or development. Further, the structures on the Real Estate are associated with a former coal-fired power plant that has been permanently decommissioned and said structures will have to be demolished for the property to be suitable for use and/or development. Specifically, Grantee will be required to comply with the obligations set forth in the Stipulation Resolving Confirmation Objection of Environmental Agencies by and between FirstEnergy Generation LLC nka Energy Harbor Generation LLC and the United States Environmental Protection Agency, Ohio Environmental Protection Agency and the Ohio Department of Natural Resources dated August 15, 2019 and filed in Case No. 18-50757-amk as Doc 3045 (the "Stipulation"), as such Stipulation has been modified in conjunction with this transaction. Grantee's assumption of the responsibility for compliance with the Stipulation, as modified, requires, among other things, demolition and remediation of structures within Lake Erie and on the Real Estate. The structures and materials removed from the Lake Erie lakebed and Real Estate must be handled in accordance with applicable law at Grantee's expense. Based upon the foregoing, the actual consideration associated with the transaction is \$10.00.

**ASSET PURCHASE AGREEMENT**

dated as of December 20, 2021

by and between

Energy Harbor Generation LLC, as Seller

and

Ashtabula Industrial Park, LLC, as Buyer

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (“*Agreement*”) is dated as of December 20, 2021 (the “*Execution Date*”) between Energy Harbor Generation LLC, a Delaware limited liability company (the “*Seller*”) and Ashtabula Industrial Park, LLC, a New York limited liability company (the “*Buyer*” and together with Seller, the “*Parties*”).

### RECITALS:

A. Seller owns the Ashtabula Power Plant, comprised of decommissioned coal-fired units with the collective output of 256 megawatts, located in Ashtabula County, Ohio (the “*Ashtabula Generating Facility*”); and

B. Seller now desires to sell and transfer the Purchased Assets and Assumed Liabilities to Buyer, and Buyer desires to acquire the Purchased Assets and assume the Assumed Liabilities, upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises herein made and the mutual benefits to be derived therefrom, and in consideration of the representations, warranties, and covenants contained herein, the Parties agree as follows:

### ARTICLE I DEFINITIONS

Section 1.01 **Definitions**. The following terms and phrases, as used in this Agreement, have the following meanings:

“*Affiliate*” means with respect to any Person any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under Common Control with, such first Person.

“*Agreement*” is defined in the preamble.

“*Allocation*” is defined in Section 2.05(b).

“*Apportioned Obligations*” is defined in Section 8.02(b).

“*Ashtabula Railroad Lease*” is defined in Section 2.01(f).

“*Ashtabula Real Property*” means the Real Property of approximately 104 acres situated in the Township of Ashtabula, Ashtabula County, Ohio, which is described on Exhibit A, attached hereto and made a part hereof.

“*Ashtabula Stipulation*” means the Notice of Filing Stipulation Resolving Confirmation Objection of Environmental Agencies filed in the Bankruptcy Case as Dkt.

No. 3045, outlining remediation and restoration obligations associated with the Ashtabula Real Property.

**“Assignment and Assumption Agreement”** means an Assignment and Assumption Agreement in substantially the form set forth on Exhibit B.

**“Assumed Contracts”** is defined in Section 2.01(d).

**“Assumed Liabilities”** is defined in Section 2.03.

**“Bankruptcy Case”** means the bankruptcy case filed as *In re FirstEnergy Solutions Corp., et al., now captioned as In re Energy Harbor LLC and Pleasants Corp.*, Case No. 18-50757 (Bankr. N.D. Ohio).

**“Bill of Sale”** means a Bill of Sale in substantially the form set forth on Exhibit C.

**“Books and Records”** means all the material files, documents, instruments, papers, books, and records related solely to the ownership or condition of the Purchased Assets provided by the Seller to the Purchaser at the Closing, including, if in Seller’s possession and reasonably available, engineering documents and other reports, copies of the Assumed Contracts, environmental studies and plans, title reports, wildlife studies, maps, geotechnical investigations, data and reports, layouts and drawings, but excluding any financial information, power sales data, power generation data or records, human resource data or records, sales process information, internal analyses or similar records, and information, documents, notes, records relating to this Agreement; *provided, however*, that the Seller may retain copies of all Books and Records in its sole discretion.

**“Business Day”** means any day other than Saturday, Sunday or a day on which United States national banks are authorized or required by Law to be closed.

**“Buyer”** is defined in the preamble.

**“Buyer Disclosure Schedule”** means the schedules setting forth certain disclosures of Buyer, or qualifications or exceptions to any of Buyer’s representations or warranties set forth in ARTICLE IV, which schedules are delivered simultaneously with the execution and delivery of this Agreement.

**“Buyer Environmental Liabilities”** means any and all Liabilities under Environmental Laws and/or any Environmental Claim with respect to the ownership or operation of the Purchased Assets, whether such Liabilities are based on events, facts or circumstances occurring prior to, on or after the Closing Date, including but not limited to (i) Liabilities or Environmental Claims arising out of or resulting from any conditions on, under or originating from the Real Property or any of the Purchased Assets, including all corrective action, remediation, decommissioning, restoration, monitoring and compliance obligations arising under Environmental Laws, (ii) all Liabilities arising out of or of incurred to comply with Environmental Permits and Environmental Laws (including any changes

Section 2.03 **Assumed Liabilities**. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller agrees to assign to Buyer, and Buyer agrees to assume, pay, perform and discharge on and after the Closing Date, in accordance with their respective terms, the following Liabilities, in each case to the extent relating to the Purchased Assets (collectively, the “*Assumed Liabilities*”):

(a) all Liabilities relating to the period on and after the Closing Date under the Assumed Contracts, the Submerged Land Lease, and the Ashtabula Railroad Lease;

(b) all Liabilities arising out of any Proceeding relating to the ownership or operation of the Purchased Assets (excluding any Excluded Assets) before any arbitrator or any Governmental Body to the extent arising out of events, facts or circumstances occurring on or after the Closing Date;

(c) all Buyer Environmental Liabilities;

(d) all Liabilities for (i) all Taxes for which Buyer is liable under Section 8.02, and (ii) all Taxes attributable to the ownership or use of any of the Purchased Assets on and after the Closing Date;

(e) all Liabilities arising under the Assumed Contracts and under the Submerged Land Lease from and including the Closing Date and thereafter, including but not limited to any restoration obligations required thereby;

(f) with respect to the Ashtabula Real Property, all Liabilities and responsibilities in connection with any recorded or unrecorded easement or rights to access or use such Property, including but not being limited to the rights of the owner(s) of the Transmission and Interconnection Facilities to use existing drainage facilities on the Ashtabula Real Property for the discharge or release of surface water from such Transmission and Interconnection Facilities to and through the Ashtabula Real Property; and

(g) with respect to the Ashtabula Real Property, all Liabilities and responsibilities in connection with the demolition, reclamation, restoration and remediation of the Real Property and the Facilities located thereon, all of which shall be completed within the following time period: (i) all demolition and restoration to be completed under the Submerged Land Lease with the ODNR dated October 14, 2003, must be completed by February 26, 2023, and (ii) pursuant to the Ashtabula Stipulation, a copy of which is set forth on Schedule 2.03(g), all Plant demolition and restoration work on the Ashtabula Property must be completed by February 26, 2025. In each instance, demolition and restoration must be completed in accordance with the plans and requirements set forth in the Submerged Land Lease and in the Ashtabula Stipulation, respectively, and Buyer hereby assumes all of Seller’s obligations and responsibilities in connection therewith. Buyer herein further agrees and acknowledges that with respect to any and all of such obligations under subsection (i) above, the ODNR shall be a third party beneficiary hereunder, and that with respect

to any and all of such obligations under subsection (ii) above or otherwise related to such demolition and restoration obligations, the Ohio Environmental Protection Agency (the “*OEPA*”) shall be deemed to be a third party beneficiary hereunder with regard to Buyer’s assumption of such obligations and liabilities under the terms of this Agreement.

**Section 2.04 Assignment of Contracts and Rights.** Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any Claim or right or any benefit arising thereunder or resulting therefrom if such assignment, without the consent of a third party thereto, would constitute a breach or other contravention of such Purchased Asset or in any way materially adversely affect the rights of Buyer or Seller thereunder. Seller and Buyer will use commercially reasonable efforts (but without any payment of money) to obtain the consent of the other parties to any such Purchased Assets or any Claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may request. If such consent is not obtained prior to the Closing, or if an attempted assignment thereof would be ineffective or would materially adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights, unless waived by Buyer, Seller and Buyer will cooperate in a mutually agreeable, contractually permissible and commercially reasonable arrangement under which, after the Closing, Buyer would obtain the benefits and assume the obligations with respect to the relevant Purchased Asset in accordance with this Agreement, including sub-contracting, sub-licensing, or sub-leasing to Buyer, or under which Seller would enforce for the benefit of Buyer, with Buyer assuming Seller’s obligations, any and all rights of Seller against a third party thereto.

**Section 2.05 Consideration; Payment of Cash Consideration and Allocation of Consideration for Tax Purposes.**

(a) Upon the terms and subject to the conditions set forth in this Agreement, in consideration for the sale, assignment, conveyance, transfer and delivery of the Purchased Assets, upon the Closing Date, Buyer shall assume the Assumed Liabilities, provide Seller and its Affiliates with releases and waivers of liability from and with respect to the Assumed Liabilities as set forth in the Assignment and Assumption Agreement, and shall pay the sum of **Ten Dollars (\$10.00)** to Seller (the “*Cash Consideration*”) at Closing by wire transfer of immediately available funds to an account designated by Seller on or prior to the Closing Date.

(b) Seller shall allocate the Cash Consideration and the Assumed Liabilities of Seller to the extent treated as purchase price for Tax purposes, as of the Closing, among the classes of assets (as described in the Treasury regulations promulgated under Section 338 of the Code) to which the Purchased Assets relate (the “*Allocation*”) in accordance with Section 1060 of the Code and the regulations promulgated thereunder (or any similar provision of local or state Tax Law) and shall submit the proposed Allocation to Buyer not later than one hundred eighty (180) days after Closing. If, within sixty (60) days after the receipt of the proposed Allocation, Buyer notifies Seller in writing that Buyer disagrees with the proposed Allocation,

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ENERGY HARBOR GENERATION LLC, AS SELLER

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASHTABULA INDUSTRIAL PARK, LLC, AS BUYER

By: DPJ

Name: David P. Franjic

Title: Managing Member

*[Signature Page to Ashtabula Asset Purchase Agreement]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

ENERGY HARBOR GENERATION LLC, AS SELLER

By: 

Name: JAY K. BELLINGER

Title: SVP - Fossil

ASHTABULA INDUSTRIAL PARK, LLC, AS BUYER

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Signature Page to Ashtabula Asset Purchase Agreement]*

**SURETY BOND**

**KNOW ALL PERSONS BY THESE PRESENTS**, that we, the undersigned ASHTABULA INDUSTRIAL PARK, LLC (“AIP”) as Principal and **EVERGREEN NATIONAL INDEMNITY COMPANY** as Surety, are hereby held and firmly bound unto the **OHIO ENVIRONMENTAL PROTECTION AGENCY** (“Ohio EPA”) as Obligee, in the penal sum of FIFTEEN MILLION DOLLARS (\$15,000,000.00):

for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our administrators, successors, and assigns.

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH**, that whereas: (1) on the 15th day of August, 2019, a Stipulation Resolving Confirmation Objections of Environmental Agencies (the “Stipulation”), was filed in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (Case No. 18-50757 (AMK)); (2) on or about May 23, 2022 AIP and Ohio EPA entered into a Modification to Stipulation Resolving Confirmation Objections of Environmental Agencies (the “Modification; (3) contemporaneously with the issue of this Surety Bond AIP and Ohio EPA have entered into an Amended Modification to Stipulation Resolving Confirmation Objections of Environmental Agencies (“Amended Modification”); and (4) the Stipulation, Modification and Amended Modification are referred to collectively as the “Demolition and Restoration Agreements” and are made a part of this bond as though set forth herein. AIP has agreed to perform according to the terms of the Demolition and Restoration Agreements.

The Surety shall become liable on this bond obligation in the event that AIP fails to perform the obligations required by the Demolition and Restoration Agreements or any Ohio EPA permit or authorizations issued to AIP or its contractor for this site. In the event that AIP fails to perform, then the Surety shall within twenty (20) business days of receipt of written demand from the Director of Ohio EPA (“Director”) provide Ohio EPA notice of the Surety’s intent to either (i) perform or cause to be performed the applicable obligations required by the Demolition and Restoration Agreements or any Ohio EPA permit or authorization issued to AIP or its contractor for this site or (ii) deposit the \$15,000,000.00 penal sum of the bond into a trust fund acceptable to the Director. If the Surety chooses to fund the trust then the deposit shall be made within forty (40) calendar days of the Surety’s election to fund the trust. The amount to be deposited into the trust fund shall not exceed the \$15,000,000.00 penal sum of the bond. If the total amount provided or deposited into the trust fund exceeds the amount required to perform the applicable obligations, such excess amount will be returned to the Surety upon the Director’s certification of the completion of the obligations required by the Demolition and Restoration Agreements or any Ohio EPA permit or authorization issued to AIP or its contractor for this site. Within sixty (60) calendar days of issuance of this surety bond, AIP shall establish a trust acceptable to the Director and a trust fund with a financial institution designated to hold the funds in the event AIP or its contractor fails to perform as set forth above. The terms of the trust shall provide that the trustee,

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

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In re:	)	Chapter 11
	)	
FIRSTENERGY SOLUTIONS CORP., <i>et al.</i> , <sup>1</sup>	)	Case No. 18-50757 (AMK)
	)	(Jointly Administered)
Debtors.	)	
	)	Hon. Judge Alan M. Koschik

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**NOTICE OF FILING STIPULATION RESOLVING  
CONFIRMATION OBJECTION OF ENVIRONMENTAL AGENCIES**

**PLEASE TAKE NOTICE** that the Debtors hereby file the *Stipulation Resolving Confirmation Objection of Environmental Agencies* attached hereto as **Exhibit A**, resolving any and all objection to confirmation of the *Sixth Amended Joint Plan of Reorganization of FirstEnergy Solutions Corp., et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Dkt. No. 2934] (as may be amended from time to time, the “Plan”) by the U.S. Environmental Protection Agency, the Office of the Ohio Attorney General, acting on behalf of the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources (collectively, the “Environmental Agencies”).

**PLEASE TAKE FURTHER NOTICE** that this Notice, including the Stipulation, and all other documents filed in these chapter 11 cases are available free of charge by visiting the case website maintained by the Debtors’ notice and claim agent, Prime Clerk LLC, available at <http://cases.primeclerk.com/fes>. You may also obtain copies of any pleadings by visiting the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; FirstEnergy Generation, LLC (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors’ address is: 341 White Pond Dr., Akron, OH 44320.

Court's website at <https://www.ohnb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: August 15, 2019

Respectfully submitted,

/s/ Kate M. Bradley

**BROUSE MCDOWELL LPA**

Marc B. Merklin (0018195)  
Kate M. Bradley (0074206)  
Bridget A. Franklin (0083987)  
388 South Main Street, Suite 500  
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mmerklin@brouse.com  
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bfranklin@brouse.com

- and -

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Ira Dizengoff (admitted *pro hac vice*)  
Lisa Beckerman (admitted *pro hac vice*)  
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- and -

Scott Alberino (admitted *pro hac vice*)  
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kdoorley@akingump.com

*Counsel for Debtors  
and Debtors in Possession*

**Exhibit A**

Stipulation

Stipulation Resolving Confirmation Objection of Environmental Agencies

In resolution of any and all objections to confirmation of the *Sixth Amended Joint Plan of Reorganization of FirstEnergy Solutions Corp. et al. Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 2934] (the “Plan”)<sup>1</sup> of the U.S. Environmental Protection Agency (“US EPA”), the Office of the Ohio Attorney General, acting on behalf of the Ohio Environmental Protection Agency (“Ohio EPA”) and the Ohio Department of Natural Resources (“ODNR” and, collectively, the “Environmental Agencies”), the Environmental Agencies and FirstEnergy Solutions Corp. and its affiliates and subsidiaries that are debtors and debtors in possession in the Chapter 11 cases jointly administered under the caption *In re FirstEnergy Solutions Corp., et. al.*, Case No. 18-50757 (amk), Bankr. N.D. Ohio (collectively, the “Debtors” and, together with the Environmental Agencies, the “Parties”) agree to the following:

- 1) Ashtabula site - Reorganized FG shall either (i) demolish the power plant facility owned by Reorganized FG (the “Ashtabula Property”), restore such property in full compliance with all applicable state and federal environmental laws, rules, and regulations, and use reasonable best efforts to do the foregoing activities within 5 years of the Effective Date or (ii) sell or transfer the property to a third party purchaser who will demolish the Ashtabula Property, restore such property in full compliance with all applicable state and federal environmental laws, rules, and regulations, and use reasonable best efforts to do the foregoing activities within 5 years of the Effective Date. Reorganized FG shall demolish the NPDES treatment building and restore the property in full compliance with all state and federal environmental laws, rules, and regulations within 1 year after discharge treatment is no longer required. Notwithstanding the foregoing, if Reorganized FG sells or transfers the Ashtabula Property to a third party purchaser, and such purchaser agrees to provide financial assurance for the demolition and asbestos abatement costs at such property in the amount of \$15 million (or such lesser amount agreed by the third party purchaser and Ohio EPA), the third party purchaser will not be bound by the demolition and restoration deadlines set forth herein.

Subject to the proviso in the immediately preceding sentence, if Reorganized FG sells or transfers the Ashtabula Property to a third party purchaser, the asset purchase agreement shall require the third party purchaser to meet the demolition and restoration obligations set forth above, and provide that Ohio EPA is a third party beneficiary with respect to such obligations. To the extent Reorganized FG sells or transfers the Ashtabula Property following the Effective Date, Reorganized FG shall provide to counsel for Ohio EPA the following: (i) 60 days’ notice of the scheduled closing date of a proposed sale or transfer, (ii) 60 days’ notice, or as soon as reasonably practicable thereafter, the name of the prospective purchaser or transferee, and (iii) as soon as reasonably practicable, and in no event later than 20 days prior to the scheduled closing date of a proposed sale or transfer, a copy of the proposed sale or transfer agreement.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

New Holdco shall provide a guarantee to Reorganized FG with respect to Reorganized FG's obligations under this Paragraph 1, in the amount of \$15 million, and Ohio EPA shall be a third party beneficiary of such guarantee.

- 2) Ashtabula Submerged Land Lease - Reorganized FG shall assume the submerged land lease associated with the Ashtabula site (the "Ashtabula SLL") as of the Effective Date, which Ashtabula SLL shall be modified to provide for the following: (i) Reorganized FG shall remove personal property, structures, buildings and fixtures and performance of shore modifications to be set forth in a work plan to be reasonably agreed to between the Debtors and ODNR, and to complete such activities within 3 years of the Effective Date, (ii) Reorganized FG shall remove all other buildings, fixtures, and personal property, except for any piping required for discharge treatment, to be set forth in a work plan to be reasonably agreed between the Debtors and ODNR, and to complete such activities within 7.5 years of the Effective Date, (iii) the Debtors and ODNR shall use their best efforts to agree to a work plan no later than the Effective Date, (iv) access to the Ashtabula SLL property as necessary to perform discharge treatment, (v) removal of any piping and property restoration within 1 year after discharge treatment is no longer required, and (vi) all demolition, removal, and restoration work shall be in full compliance with all applicable state and federal environmental laws, rules, and regulations. ODNR agrees to an extension under section 365(d)(4)(B)(ii) of the Bankruptcy Code with respect to the Ashtabula SLL until the Effective Date.

New Holdco shall provide a guarantee to Reorganized FG with respect to Reorganized FG's Ashtabula SLL obligations set forth above in the amount of \$12 million, and ODNR shall be a third party beneficiary of such guarantee.

- 3) ODNR, subject to its statutory and regulatory requirements, will consider an assignment of the Ashtabula SLL as set forth in paragraph (7) of the SLL, including, without limitation, consideration of the financial ability, including any provision of financial assurance, of any proposed assignees of the Ashtabula SLL to perform the demolition, removal and restoration requirements set forth in paragraph 2 above, subject to ODNR's approval not being unreasonably withheld or unreasonably conditioned. If the Director of ODNR approves the assignment, the assignee(s) of the Ashtabula SLL shall perform the demolition, removal and restoration requirements as set forth in Paragraph 2 above in full compliance with the aforesaid plans agreed to between Debtors and ODNR and all applicable state and federal environmental laws, rules, and regulations within the time periods set forth in paragraph 2 above.
- 4) Lake Shore Submerged Land Lease - Reorganized FG shall assume the submerged land lease associated with the Lake Shore site (the "Lake Shore SLL") as of the Effective Date, which Lake Shore SLL shall be modified to provide for the following: (i) Reorganized FG shall remove all structures, buildings, fixtures, and personal property, except for the NPDES treatment building, the Ash treatment pond, and any piping required for discharge treatment, and structures on the shoreline and extending into Lake Erie, to be set forth in a work plan to be reasonably agreed to between the Debtors and ODNR, and to complete such activities within 7.5 years of the Effective Date, (ii)

the Debtors and ODNR shall use their best efforts to agree to a work plan no later than the Effective Date, (iii) long term maintenance for the existing shore structures that remain in place, (iv) allow Reorganized FG (or any subsequent transferee of the Lake Shore property) access to the Lake Shore SLL property as necessary to perform discharge treatment, (v) Reorganized FG shall remove the NPDES treatment building, the Ash treatment pond, and any piping and property restoration within 1 year after discharge treatment is no longer required, and (vi) all demolition, removal, and restoration work shall be in full compliance with all applicable state and federal environmental laws, rules, and regulations. ODNR agrees to an extension under section 365(d)(4)(B)(ii) of the Bankruptcy Code with respect to the Lake Shore SLL until the Effective Date.

New Holdco shall provide a guarantee to Reorganized FG with respect to Reorganized FG's Lake Shore SLL obligations set forth above in the amount of \$9 million, and ODNR shall be a third party beneficiary of such guarantee.

- 5) ODNR, subject to its statutory and regulatory requirements, will consider an assignment of the Lake Shore SLL as set forth in paragraph (7) of the SLL, including, without limitation, consideration of the financial ability, including any provision of financial assurance, of any proposed assignees of the Lake Shore SLL to perform the demolition, removal and restoration requirements set forth in paragraph 4 above, subject to ODNR's approval not being unreasonably withheld or unreasonably conditioned. If the Director of ODNR approves the assignment, the assignee(s) of the Lake Shore SLL shall perform the demolition, removal and restoration requirements as set forth in Paragraph 4 above in full compliance with the aforesaid plans agreed to between Debtors and ODNR and all applicable state and federal environmental laws, rules, and regulations within the time periods set forth in Paragraph 4 above.
- 6) Lake Shore Oily treatment pond - Within 1 year after discharge treatment is no longer required, Reorganized FG shall remove the oily treatment pond on FG's owned property and conduct restoration in full compliance with all applicable state and federal environmental laws, rules, and regulations.

New Holdco shall provide a guarantee to Reorganized FG with respect to Reorganized FG's obligations under this Paragraph 6, in the amount of \$1 million, and Ohio EPA shall be a third party beneficiary of such guarantee.

If Reorganized FG sells or transfers the property containing the oily treatment pond (the "Oily Pond Property") to a third party purchaser, the asset purchase agreement shall require the third party purchaser to meet the removal and restoration deadlines set forth above; *provided*, that if the third party purchaser agrees to provide financial assurance for the removal and restoration of the oily treatment pond in the amount of \$1 million (or such lesser amount agreed by the third party purchaser and Ohio EPA), such purchaser will not be bound by the deadline set forth above.

Subject to the proviso in the immediately preceding sentence, if Reorganized FG sells or transfers the Oily Pond Property to a third party purchaser, the asset purchase agreement

shall require the third party purchaser to meet the closure and restoration obligations set forth above in this Paragraph 6, and provide that Ohio EPA is a third party beneficiary with respect to such obligations. To the extent Reorganized FG sells or transfers the Oily Pond Property following the Effective Date, Reorganized FG shall provide to counsel for Ohio EPA the following: (i) 60 days' notice of the scheduled closing date of a proposed sale or transfer, (ii) 60 days' notice, or as soon as reasonably practicable thereafter, the name of the prospective purchaser or transferee, and (iii) as soon as reasonably practicable, and in no event later than 20 days prior to the scheduled closing date of a proposed sale or transfer, a copy of the proposed sale or transfer agreement.

- 7) [Reserved]
- 8) Sammis - New Holdco shall provide a guarantee to Reorganized FG with respect to Reorganized FG's obligations for CCR pond closure, tank and treatment system decommissioning and coal pile decommissioning at the W.H. Sammis site, in the amount of \$2.2 million, and Ohio EPA and US EPA shall be third party beneficiaries of such guarantee.
- 9) To the extent Reorganized FG reissues deactivation notices for Sammis Units 5-7, Reorganized FG shall demolish the power plant facility, restore the property in full compliance with all applicable state and federal environmental laws, rules, and regulations and use reasonable best efforts to do such activities within 5 years of deactivation of the units.

New Holdco shall provide guarantees to Reorganized FG with respect to Reorganized FG's obligations under this Paragraph 9, as follows: (i) a guarantee in the amount of \$14.75 million for environmental obligations, and (ii) a guarantee solely with respect to the costs of demolition work (which, for the avoidance of doubt, does not include environmental obligations, including any asbestos abatement and removal costs or the costs to comply with applicable state and federal environmental laws, rules and regulations), which guarantee shall not be limited in amount. Ohio EPA and US EPA shall be third party beneficiaries of such guarantees.

- 10) Hollow Rock Landfill - Reorganized Debtors shall comply with Ohio Adm.Code 3745-37-06 and any other applicable Ohio rule for the transfer of the residual waste landfill permit, license, and financial assurance.

### **General Provisions**

- 11) All work under this Stipulation shall be in compliance with applicable environmental laws and regulations.
- 12) The Debtors and Environmental Agencies that are third party beneficiaries of the guarantees under the Stipulation shall negotiate the form of guarantees, in form and substance reasonably acceptable to each party, and file such forms of guarantee on the Court docket within 45 days of entry of the Confirmation Order. To the extent the

applicable Parties are unable to reasonably agree to the form of guarantees within that time period, the Parties may file a motion or application with the Court to resolve any disputes.

- 13) With respect to the guarantees by New Holdco referenced in this Stipulation, such guarantees shall not limit Reorganized FG's obligations as set forth in this Stipulation.
- 14) The Plan shall include clarifying language that the FE Non-Debtors shall continue their guarantees for surety bonding presently in place in favor of the Commonwealth of Pennsylvania, Department of Environmental Protection with respect to Little Blue Run and the Hatfield's Ferry Landfill.
- 15) In consideration for the Debtors' agreements as set forth herein and the Debtors' Stipulations with Pennsylvania Department of Environmental Protection and the Sierra Club, the Environmental Agencies agree not to object to confirmation of the Plan, *provided*, that notwithstanding the foregoing, the Environmental Agencies reserve their rights with respect to any future changes or amendments to the Plan and any future filings of exhibits or documents relating to the Plan. The Environmental Agencies and Debtors further agree (i) to affirmatively take actions to support approval of this Stipulation, and (ii) to withdraw all pending discovery requests including, but not limited to, any document requests, interrogatories or deposition notices.
- 16) Nothing in this Stipulation or the Plan resolves US EPA's proof of claim number 1377 and the Parties rights with respect to proof of claim number 1377 are preserved.
- 17) The Environmental Agencies have not voted on the Plan and are not subject to the releases in Article VIII.E of the Plan.
- 18) This Stipulation will be incorporated into the Confirmation Order.
- 19) This Stipulation may not be modified other than by a signed writing executed by the Parties.
- 20) The Parties agree that if any court or tribunal of competent jurisdiction determines that any provision of this Stipulation is illegal, invalid, or unenforceable, such illegal, invalid or unenforceable provisions shall be severed from this Stipulation and the remainder of this Stipulation shall not be affected thereby and shall remain in full force and effect.
- 21) This Stipulation shall be binding upon the Parties hereto and upon all of their affiliates, assigns, and successors.

- 22) It is acknowledged that each Party has participated in and jointly consented to the drafting of this Stipulation and that any claimed ambiguity shall not be construed for or against either Party on account of such drafting.
- 23) This Stipulation shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law, except to the extent federal law applies.
- 24) The Bankruptcy Court shall retain jurisdiction over any and all disputes or other matters arising under or otherwise relating to this Stipulation.

*[Signatures to Follow on Next Page]*

**STIPULATED AND AGREED TO BY:**

Dated: August 15, 2019

By: /s/ Michael E. Idzkowski

**FOR THE OFFICE OF THE OHIO ATTORNEY GENERAL DAVE YOST**  
Michael E. Idzkowski (Ohio Reg. No. 0062839)  
Timothy J. Kern (Ohio Reg. No. 0034629)  
Assistant Attorneys General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
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Fax: 614-644-1926  
Email:  
Michael.Idzkowski@OhioAttorneyGeneral.gov  
Timothy.Kern@OhioAttorneyGeneral.gov

***Counsel for State of Ohio on behalf of the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources***

By: /s/ Alan S. Tenenbaum

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Alan S. Tenenbaum  
Patrick M. Casey  
Nicholas A. McDaniel  
Environmental Enforcement Section  
Environment and Natural Resource Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Tel: (202) 514-5409  
Email: [alan.tenenbaum@usdoj.gov](mailto:alan.tenenbaum@usdoj.gov)

***Counsel for The United States Environmental Protection Agency***

By: /s/ Brad M. Kahn

Kate M. Bradley (0074206)  
Marc B. Merklin (0018195)  
Bridget A. Franklin (0083987)  
**BROUSE MCDOWELL LPA**  
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Lisa Beckerman (admitted *pro hac vice*)  
Brad Kahn (admitted *pro hac vice*)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
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[lbeckerman@akingump.com](mailto:lbeckerman@akingump.com)  
[bkahn@akingump.com](mailto:bkahn@akingump.com)

Scott Alberino (admitted *pro hac vice*)  
Kate Doorley(admitted *pro hac vice*)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
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[kdoorley@akingump.com](mailto:kdoorley@akingump.com)

***Counsel to Debtors and Debtors in Possession***

upon the request of the Director, shall release funds for the completion of the work required, as authorized by Ohio EPA.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payments shall amount in the aggregate to the \$15,000,000.00 penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of the penal sum.

The Surety shall send notice of cancellation by certified mail or any other form of mail accompanied by a receipt to AIP and the Director of Ohio EPA. The Surety may only cancel the bond after receiving written approval from the Director of Ohio EPA.

AIP may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination from the Director of Ohio EPA.

The Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the Demolition and Restoration Agreements or in or to the plans or specifications thereof shall in any way affect the obligations of said Surety on this bond.

AIP and Surety agree that no decrease in the \$15,000,000.00 penal sum may occur without the written permission of the Director.

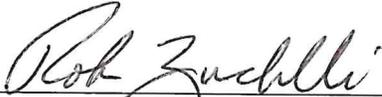
In witness whereof, the AIP and the Surety have executed this performance bond and have affixed their seals on the date set forth above. The persons whose signatures appear below certify that they are authorized to execute this Surety bond on behalf of AIP and the Surety.

Signed this 18th day of September, 2023

**SIGNATURE PAGE TO FOLLOW**

PRINCIPAL:

**ASHTABULA INDUSTRIAL PARK, LLC**

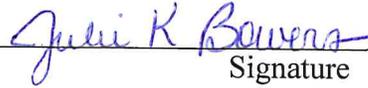


Signature

By: Rob Zuchlewski, CEO

SURETY:

**EVERGREEN NATIONAL  
INDEMNITY COMPANY**



Signature

By: Julie K. Bowers, Attorney-in-Fact

SURETY INFORMATION

EVERGREEN NATIONAL INDEMNITY  
COMPANY

6150 Oak Tree Blvd. Suite 440

Independence, OH 44131

(440) 229-3420

aort@evergreenbonds.com

**END OF DOCUMENT**

---

# EVERGREEN NATIONAL INDEMNITY COMPANY

Independence, Ohio

## POWER OF ATTORNEY

Bond No. **873755**

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint:

Julie K Bowers, Denise M Borowy, Hilarie Frankenberry, Karen M Loconti-Diaz, Lillian Pezzano, Patricia A Temple

its true and lawful Attorney(s)-In-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed TWENTY FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00)

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of July, 2004:

"RESOLVED, That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 1st day of April, 2022.

EVERGREEN NATIONAL INDEMNITY COMPANY



By:

Handwritten signature of Matthew T. Tucker in black ink.

Matthew T. Tucker, President

By:

Handwritten signature of David A. Canzone in black ink.

David A. Canzone, CFO

Notary Public)  
State of Ohio)

SS:

On this 1st day of April, 2022, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Matthew T. Tucker and David A. Canzone of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio, the day and year above written.



Julie K. Bowers  
Notary Public  
in and For the State of Ohio  
My Commission Expires  
August 13, 2024

Handwritten signature of Julie K. Bowers in black ink.

Julie K. Bowers, Notary Public  
My Commission Expires August 13, 2024

State of Ohio )

SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Independence, Ohio, this **18th** day of **September, 2023**.



Handwritten signature of Wan C. Collier in black ink.

Wan C. Collier, Secretary

Effective Date: January 19, 1940

Expiration Date: June 30, 2024

**State of Ohio**  
**Department of Insurance**  
*Certificate of Authority*

This is to Certify, that

**EVERGREEN NATIONAL INDEMNITY COMPANY**

NAIC No. 12750

is organized under the laws of this State as of December 30, 1939 and is authorized to issue policies and transact business under the following section(s) of the Ohio Revised Code:

**Section 3929.01 (A)**

Aircraft	Private Passenger Auto - Liability
Allied Lines	Private Passenger Auto - No Fault
Boiler & Machinery	Private Passenger Auto - Physical Damage
Burglary & Theft	Surety
Commercial Auto - Liability	Workers Compensation
Commercial Auto - No Fault	
Commercial Auto - Physical Damage	
Earthquake	
Fidelity	
Fire	
Glass	
Inland Marine	
Multiple Peril - Commercial	
Multiple Peril - Farmowners	
Multiple Peril - Homeowners	
Ocean Marine	
Other Liability	

This Certificate of Authority is subject to the laws of the State of Ohio.



**Mike DeWine, Governor**

*Judith L. French*

**Judith French, Director**



## Evergreen National Indemnity Company

### *Certificate*

2022

The following financial information was obtained from the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance.

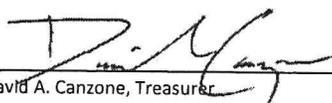
#### Statement of Income

Direct Written Premium	37,465,662
Reinsurance Assumed	2,510,439
Reinsurance Ceded	(23,071,703)
Net Written Premium	16,904,398
Change in Unearned	(87,859)
Net Earned Premium	16,816,539
Losses & LAE Incurred	3,514,447
Net Commission Expense	6,711,258
Other Expenses	4,392,816
Underwriting Gain/ (Loss)	2,198,018
Net Investment Income	2,249,785
Net Realized Capital Gains (Loss)	130,133
Other Income/ (Expense)	6,053
Income Before FIT	4,583,989
Federal Income Tax	778,092
<b>Net Income</b>	<b>3,805,897</b>

#### Balance Sheet

<u>Assets</u>	
Invested Assets	60,331,980
Uncollected premium and agents' balances	1,322,166
Reinsurance Recoverable	227,141
Other Assets	280,277
<b>Total Assets</b>	<b>62,161,564</b>
<u>Liabilities &amp; Surplus</u>	
Unearned Premium Reserve	7,469,996
Loss & LAE Reserves	6,623,014
Ceded Reinsurance Payable	2,738,823
Amounts retained for others	1,607,393
Other Liabilities	2,731,838
<b>Total Liabilities</b>	<b>21,171,064</b>
<b>Surplus</b>	<b>40,990,500</b>
<b>Total Liabilities &amp; Surplus</b>	<b>62,161,564</b>

I hereby certify that the above information is that contained in the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance for the year ending December 31, 2022.

  
\_\_\_\_\_  
David A. Canzone, Treasurer



Point House  
6 Front Street  
Hamilton HM11  
Bermuda

Richard Tomkins  
Managing Director  
Reinsurance Solutions  
+1 441 278 5101 (w)  
+1 441 532 6692 (c)

September 18, 2023

Ohio Environmental Protection Agency  
Lazarus Government Center  
50 West Town St., Suite 700  
PO Box 1049  
Columbus, OH 43215

Re: Ashtabula Industrial Park, LLC  
Demolition and Restoration Agreements  
Bond #873755 for \$15,000,000.00

Dear Ohio Environmental Protection Agency:

We are writing to you to summarize the reinsurance program between Evergreen National Indemnity Company ("ENIC") and its reinsurance partners. This program provides coverage to the above captioned bond. Aon Reinsurance Solutions places and maintains the reinsurance program and ongoing servicing of the ENIC Landfill Reinsurance Program.

We hereby certify that ENIC maintains a reinsurance program with the following participants:

ACE Property & Casualty (Through Chubb Tempest Reinsurance US)	28.00%
AXIS Reinsurance Company	13.25%
Endurance Assurance Corporation	19.00%
Ohio Indemnity Company	12.50%
Partner Reinsurance Company	17.25%
Swiss Reinsurance America Corporation	<u>10.00%</u>
<b>TOTAL</b>	<b>100.0%</b>

The program provides protection in conformance with our reinsurers and U.S. Treasury Department certification. ENIC cedes to the Reinsurer the following percentage:

<u>Bond Penal Sum</u>	<u>Percentage Ceded</u>	<u>Percentage Retained by Evergreen</u>
\$0-\$2,000,000	50.00%	50.00%
\$2,000,001-\$5,000,000	60.00%	40.00%
\$5,000,001-\$8,000,000	70.00%	30.00%
\$8,000,001-\$10,000,000	75.00%	25.00%
\$10,000,001-\$15,000,000	82.50%	17.50%
\$15,000,001-\$25,000,000	85.00%	15.00%

In this particular instance, per the contract, the above bond is ceded 82.5% (\$12,375,000.00) to reinsurers and ENIC retains 17.5%, or \$2,625,000.00. This amount is well within ENIC's Treasury Listing of \$4,099,000.

The specific financial information by reinsurer based on the most recent data available and per the Department of the Treasury's Circular 570 dated July 1, 2023 is:



Name	Underwriting Limitation	AM Best Rating	Surplus (in 000's)	Surplus Date
ACE Property & Casualty through Chubb Tempest Reinsurance USA	\$456,918,000	A++	\$4,569,000	12/31/2022
AXIS Reinsurance Company	\$98,890,000	A	\$988,900	12/31/2022
Endurance Assurance Corporation	\$292,559,000	A+	\$2,925,559	12/31/2022
Ohio Indemnity Company	\$6,181,000	A-	\$61,181	12/31/2022
Partner Reinsurance Company of the U.S.	\$192,835,000	A+	\$1,928,350	12/31/2022
Swiss Reinsurance America Corporation	\$399,647,000	A+	\$399,647,000	12/31/2022

Bonds written by ENIC are reported on a quarterly basis to the U.S. Department of Treasury, which fully recognizes the aforementioned ENIC reinsurance program.

We trust this summary will be of assistance. Should you have any questions, please do not hesitate to contact me directly at +1 441 532 6692.

Regards,

Richard Tomkins  
Managing Director - Aon Reinsurance Solutions (Bermuda)

cc: Julie Bowers, Bond Manager, Evergreen

**DEVELOPERS SURETY AND INDEMNITY COMPANY  
EVERGREEN NATIONAL INDEMNITY COMPANY**

**Bond Number: ESD1000007  
Bond Number: 873749**

**SURETY BOND**

**KNOW ALL PERSONS BY THESE PRESENTS**, that we, the undersigned **ASHTABULA INDUSTRIAL PARK (“AIP”)** as Principal with **DEVELOPERS SURETY AND INDEMNITY COMPANY** and **EVERGREEN NATIONAL INDEMNITY COMPANY** as Sureties, are hereby held and firmly bound unto the **OHIO DEPARTMENT OF NATURAL RESOURCES (“ODNR”)** as Obligee, in the following specified individual maximum aggregate limits of liability for each Surety which, in the aggregate, amount to **TWELVE MILLION DOLLARS (\$12,000,000.00)**:

Developers Surety and Indemnity Company	EIGHT MILLION DOLLARS (\$8,000,000.00)
Evergreen National Indemnity Company	FOUR MILLION DOLLARS (\$4,000,000.00)

for the payment of which well and truly to be made, we hereby severally bind ourselves, our administrators, successors, and assigns.

Signed this 13<sup>th</sup> day of September, 2023

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH**, that whereas: (1) on the 15th day of August, 2019, a Stipulation Resolving Confirmation Objections of Environmental Agencies (the “Stipulation”), was filed in the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (Case No. 18-50757 (AMK)); (2) the Stipulation specified in Paragraph 2 the demolition and restoration obligations of FirstEnergy Solutions Corp. (“Debtor”) with respect to Debtor’s submerged land lease with ODNR, including the obligation to perform demolition and restoration in accordance with a work plan to be reasonably agreed to between the parties; (3) during or about September, 2020 Debtor (or Debtor’s successor) and ODNR agreed upon a work plan developed by Environmental Resources Management, Inc. for the demolition and restoration work with respect to Debtor’s submerged land lease with ODNR (the “Work Plan”); (4) on or about May 23, 2022 AIP and ODNR entered into a Modification to Stipulation Resolving Confirmation Objections of Environmental Agencies (the “Modification”), whereby AIP agreed to assume the obligations of Debtor’s successor, Energy Harbor Generation, under Paragraph 2 of the Stipulation, subject to a revised timetable; (5) under the Modification AIP agreed to provide financial assurance in the form of a security bond, approved by ODNR, with respect to AIP’s demolition and restoration obligations under Paragraph 2 of the Stipulation; and (6) contemporaneously with the issue of this Surety Bond AIP and ODNR have entered into an Amended Modification to Stipulation Resolving Confirmation Objections of Environmental Agencies (“Amended Modification”) which makes certain changes to the timetable for performing the demolition and restoration obligations of the Stipulation and Modification and the financial assurance requirements. The Stipulation, Modification, Amended Modification, and Work Plan (collectively the “Demolition and Restoration Agreements”) are made a part of this bond the same as though set forth herein;

Now, if the said Principal shall well and faithfully do and perform the things agreed by the Principal to be done and performed according to the terms of the Demolition and Restoration Agreements; and shall pay all lawful claims of subcontractors, material suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any material supplier or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

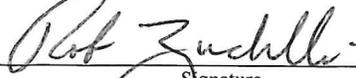
The said Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said Demolition and Restoration Agreements shall in any way affect the obligations of said Surety on its bond.

The obligation of the Sureties shall be several and not joint and shall be determined on a pro rata basis and no Surety shall be responsible for any payment in an amount exceeding the penal sum of its obligation as set forth hereunder, nor shall any Surety's liability and/or pro rata obligation be increased or otherwise affected hereunder in any way whatsoever irrespective of, the performance or non- performance by any other Surety or any other Surety's obligation under this bond.

**SIGNATURE PAGE TO FOLLOW**

PRINCIPAL:

ASHTABULA INDUSTRIAL PARK, LLC

A handwritten signature in cursive script, appearing to read "Rob Zuchlewski", written over a horizontal line.

Signature

By: Rob Zuchlewski, CEO

**SURETY:  
DEVELOPERS SURETY  
AND INDEMNITY COMPANY**

  
\_\_\_\_\_  
Signature  
By: Scott T. Hoffman, Attorney-in-Fact

**SURETY:  
EVERGREEN NATIONAL INDEMNITY  
COMPANY**

*Julie K Bowers*

Signature

By: Julie K Bowers, Attorney-in-Fact

SURETY INFORMATION:

DEVELOPERS SURETY AND INDEMNITY COMPANY

59 Maiden Lane, 43rd Floor

New York, NY 10038-4639

(646) 901-1915

[ccygal@euclidsurety.com](mailto:ccygal@euclidsurety.com)

EVERGREEN NATIONAL INDEMNITY COMPANY

6150 Oak Tree Blvd, Suite 440

Independence, OH 44131

(440) 229-3420

[aort@evergreenbonds.com](mailto:aort@evergreenbonds.com)

**END OF DOCUMENT**

# EVERGREEN NATIONAL INDEMNITY COMPANY

Independence, Ohio

## POWER OF ATTORNEY

Bond No. 873749

KNOW ALL MEN BY THESE PRESENTS: That the Evergreen National Indemnity Company, a corporation in the State of Ohio does hereby nominate, constitute and appoint:

Julie K Bowers, Denise M Borowy, Hilarie Frankenberry, Karen M Loconti-Diaz, Lillian Pezzano, Patricia A Temple

its true and lawful Attorney(s)-In-Fact to make, execute, attest, seal and deliver for and on its behalf, as Surety, and as its act and deed, where required, any and all bonds, undertakings, recognizances and written obligations in the nature thereof, PROVIDED, however, that the obligation of the Company under this Power of Attorney shall not exceed TWENTY FIVE MILLION AND 00/100 DOLLARS (\$25,000,000.00)

This Power of Attorney is granted and is signed by facsimile pursuant to the following Resolution adopted by its Board of Directors on the 23rd day of July, 2004:

"RESOLVED, That any two officers of the Company have the authority to make, execute and deliver a Power of Attorney constituting as Attorney(s)-in-fact such persons, firms, or corporations as may be selected from time to time.

FURTHER RESOLVED, that the signatures of such officers and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile; and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company; and any such powers so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN WITNESS WHEREOF, the Evergreen National Indemnity Company has caused its corporate seal to be affixed hereunto, and these presents to be signed by its duly authorized officers this 1st day of April, 2022.

EVERGREEN NATIONAL INDEMNITY COMPANY



By:

Matthew T. Tucker, President

By:

David A. Canzone, CFO

Notary Public)  
State of Ohio)

SS:

On this 1st day of April, 2022, before the subscriber, a Notary for the State of Ohio, duly commissioned and qualified, personally came Matthew T. Tucker and David A. Canzone of the Evergreen National Indemnity Company, to me personally known to be the individuals and officers described herein, and who executed the preceding instrument and acknowledged the execution of the same and being by me duly sworn, deposed and said that they are the officers of said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of said Corporation, and that the resolution of said Company, referred to in the preceding instrument, is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio, the day and year above written.



Julie K Bowers  
Notary Public  
in and For the State of Ohio  
My Commission Expires  
August 13, 2024

Julie K. Bowers, Notary Public  
My Commission Expires August 13, 2024

State of Ohio )

SS:

I, the undersigned, Secretary of the Evergreen National Indemnity Company, a stock corporation of the State of Ohio, DO HEREBY CERTIFY that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth herein above, is now in force.

Signed and sealed in Independence, Ohio, this 13th day of September, 2023.



Wan C. Collier, Secretary

Effective Date: January 19, 1940

Expiration Date: June 30, 2024

**State of Ohio**  
**Department of Insurance**  
*Certificate of Authority*

This is to Certify, that

**EVERGREEN NATIONAL INDEMNITY COMPANY**

NAIC No. 12750

is organized under the laws of this State as of December 30, 1939 and is authorized to issue policies and transact business under the following section(s) of the Ohio Revised Code:

**Section 3929.01 (A)**

Aircraft

Allied Lines

Boiler & Machinery

Burglary & Theft

Commercial Auto - Liability

Commercial Auto - No Fault

Commercial Auto - Physical Damage

Earthquake

Fidelity

Fire

Glass

Inland Marine

Multiple Peril - Commercial

Multiple Peril - Farmowners

Multiple Peril - Homeowners

Ocean Marine

Other Liability

Private Passenger Auto - Liability

Private Passenger Auto - No Fault

Private Passenger Auto - Physical Damage

Surety

Workers Compensation

This Certificate of Authority is subject to the laws of the State of Ohio.



**Mike DeWine, Governor**

*Judith L. French*

**Judith French, Director**



## Evergreen National Indemnity Company

### Certificate

2022

The following financial information was obtained from the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance.

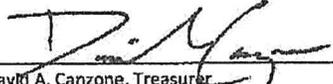
#### Statement of Income

Direct Written Premium	37,465,662
Reinsurance Assumed	2,510,439
Reinsurance Ceded	(23,071,703)
Net Written Premium	16,904,398
Change in Unearned	(87,859)
Net Earned Premium	16,816,539
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Net Commission Expense	6,711,258
Other Expenses	4,392,816
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Net Investment Income	2,249,785
Net Realized Capital Gains (Loss)	130,133
Other Income/ (Expense)	6,053
Income Before FIT	4,583,989
Federal Income Tax	778,092
Net Income	3,805,897

#### Balance Sheet

<u>Assets</u>	
Invested Assets	60,331,980
Uncollected premium and agents' balances	1,322,166
Reinsurance Recoverable	227,141
Other Assets	280,277
Total Assets	62,161,564
<u>Liabilities &amp; Surplus</u>	
Unearned Premium Reserve	7,469,996
Loss & LAE Reserves	6,623,014
Ceded Reinsurance Payable	2,738,823
Amounts retained for others	1,607,393
Other Liabilities	2,731,838
Total Liabilities	21,171,064
Surplus	40,990,500
Total Liabilities & Surplus	62,161,564

I hereby certify that the above information is that contained in the Statutory Annual Statement filed by Evergreen National Indemnity Company with the Ohio Department of Insurance for the year ending December 31, 2022.

  
David A. Canzone, Treasurer

**POWER OF ATTORNEY FOR  
COREPOINTE INSURANCE COMPANY  
DEVELOPERS SURETY AND INDEMNITY COMPANY**

59 Maiden Lane, New York, NY 10038  
(212) 220-7120

KNOW ALL BY THESE PRESENTS that, except as expressly limited herein, COREPOINTE INSURANCE COMPANY and DEVELOPERS SURETY AND INDEMNITY COMPANY, do hereby make, constitute and appoint:

**Scott T. Hoffman, Jack Fuller, Jim Demer, Adrienne Dabrowski of Buffalo, NY**

as its true and lawful Attorney(s)-in-Fact, jointly and severally, to make, execute, deliver and acknowledge, for and on behalf of said companies, as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said company could do, but reserving to each of said company full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed. This Power of Attorney is effective December 31, 2022 and shall expire on December 31, 2023.

This Power of Attorney is granted and is signed under and by authority of the following resolutions adopted by the Board of Directors of COREPOINTE INSURANCE COMPANY and DEVELOPERS SURETY AND INDEMNITY COMPANY (collectively, "Company"), effective as of September 1, 2022.

RESOLVED, that Charles Cygal, Principal and Chief Underwriting Officer, an officer of Euclid Surety LLC (the "Euclid Officer"), is hereby authorized to execute a Power of Attorney, qualifying the attorney(s)-in-fact named in this Power of Attorney to execute, on behalf of the Company, bonds, undertakings and contracts of suretyship, or other suretyship obligations; and that the Secretary or any Assistant Secretary of the Company be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney.

RESOLVED, that the signature of the Euclid Officer and the Secretary or any Assistant Secretary of the Company, and the seal of the Company must be affixed to any such Power of Attorney, and any such signature or seal may be affixed by facsimile, and such Power of Attorney shall be valid and binding upon the Company when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, COREPOINTE INSURANCE COMPANY and DEVELOPERS SURETY AND INDEMNITY COMPANY have caused these presents to be signed by the Euclid Officer and attested by their Secretary or Assistant Secretary this November 17, 2022.

By:   
Charles Cygal, Principal and  
Chief Underwriting Officer  
Euclid Surety LLC



STATE OF IL

COUNTY OF Kane

On this 22 day of November, 2022, before me, Mary E Pettey, personally appeared CHARLES CYGAL, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to within the instrument and acknowledged to me that they executed the same in their authorized capacity, and that by the signature on the instrument the entities upon behalf which the person acted, executed this instrument.

I certify, under penalty of perjury, under the laws of the State of IL that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



**CORPORATE CERTIFICATION**

The undersigned, the Secretary or Assistant Secretary of COREPOINTE INSURANCE COMPANY and DEVELOPERS SURETY AND INDEMNITY COMPANY, does hereby certify that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in this Power of Attorney are in force as of the date of this Certification.

This Certification is executed in the City of Cleveland, Ohio, this December 29, 2022 | 9:35 AM PST

DocuSigned by:  
By: Barry W. Moses  
6B6415E7ADE548C...

Barry W. Moses, Assistant Secretary

POA No. 8.2

Signed and Sealed this 13<sup>th</sup> day of September, 2023

Effective Date: August 15, 2000

Expiration Date: April 1, 2024

**State of Ohio**  
**Department of Insurance**  
*Certificate of Authority*

This is to Certify, that

**DEVELOPERS SURETY AND INDEMNITY COMPANY**

NAIC No. 12718

is authorized in Ohio to transact the business of insurance as defined in the following section(s) of the Ohio Revised Code:

**Section 3929.01 (A)**

Fidelity

Surety

This Certificate of Authority is subject to the laws of the State of Ohio.



**Mike DeWine, Governor**

*Judith L. French*

*Judith French, Director*

# Developers Surety and Indemnity Company

## BALANCE SHEET AS OF DECEMBER 31, 2022

(Statutory Basis)

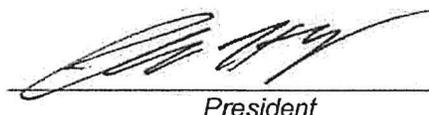
Assets		Liabilities, Capital and Surplus	
<b>Cash and Invested Assets:</b>		<b>Liabilities:</b>	
Cash	\$ 29,182,797	Outstanding Losses and Loss Expenses	\$374,744,959
Bonds	430,064,829	Unearned Premiums	127,962,879
Common Stocks	20,848,150	Ceded Reinsurance Premium	893,263
Receivable for Securities	1,500,000	Commissions, Taxes and Other Liabilities	39,192,379
<b>Total Cash and Invested Assets</b>	<b>\$481,595,776</b>	<b>Total Liabilities</b>	<b>\$542,793,480</b>
<b>Other Assets:</b>		<b>Capital and Surplus:</b>	
Premium and Considerations	\$ 142,100,579	Common Capital Stock	\$ 3,100,000
Reinsurance Recoverable on Paid Losses	7,785	Gross Paid In and Contributed Surplus	83,003,432
Receivable from Parent, Subsidiaries and Affiliates	9,179,511	Unassigned Funds (Surplus)	47,498,994
Miscellaneous	64,814,975	Special Surplus-Retroactive Reinsurance	21,302,720
<b>Total Other Assets</b>	<b>\$216,102,850</b>	<b>Total Equity</b>	<b>\$154,905,146</b>
<b>Total Assets</b>	<b>\$697,698,626</b>	<b>Total Liabilities and Equity</b>	<b>\$697,698,626</b>

Valuation of securities were provided by pricing service Interactive Data (IDC)

### CERTIFICATION

I, Christopher Foy, President of Developers Surety and Indemnity Company, hereby certify that the foregoing is a full, true and correct copy of the Balance sheet of said Corporation, as of December 31, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation on this 25<sup>th</sup> day of April 2023.

  
\_\_\_\_\_  
President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF NEW YORK  
COUNTY OF NEW YORK

On this 25<sup>th</sup> day of April 2023, before me, Patricia A. Nelson, a Notary Public, personally appeared, Christopher Foy, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument and the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature \_\_\_\_\_

Signature of Notary Public

Kyra Dowd  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01DO6414657  
Qualified in Kings County  
Commission Expires March 1, 2025

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PARID: 030100001102  
 NBHD: 8310C  
 EMC ASHTABULA INC

JUR: 04  
 ROLL: RP  
 2700 LAKE (SR 531) RD E

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Land Summary

Line #	Land Class	Land Type	Land Code	Square Feet	Acres	Rate	Market Land Value
2	-	A-ACREAGE 1-PRIMARY SITE		3,225,357	74.0440	20,000.00	\$370,220.00
3	-	A-ACREAGE 0-RIGHT OF WAY		10,062	.2310	.00	\$0.00
<b>Total:</b>				<b>3,235,419</b>	<b>74.2750</b>		<b>\$370,220.00</b>

Land

1 of 2 >

Line #	2
Land Type	A-ACREAGE
Land Code	1-PRIMARY SITE
Square Feet	3,225,357
Acres	74.0440
Land Units	
Actual Frontage	
Effective Frontage	
Override Size	74
Actual Depth	
Table Rate	5,250.00
Override Rate	20,000.00
Depth Factor	1
Influence Factor	-75
Influence Codes	9 E
Nbhd Factor	1
Notes	0
Value	\$370,220.00
Exemption Pct	
Homesite Value	

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PARID 030000014200 JUR: 04  
 NBHD: 8310C ROLL: RP  
 ASHTABULA COUNTY PORT AUTHORITY 2715 LAKE (SR 531) RD E

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**Land Summary**

Line #	Land Class	Land Type	Land Code	Square Feet	Acres	Rate	Market Land Value
1	-	A-ACREAGE	1-PRIMARY SITE	920,946	21.1420	15,000.00	\$237,850.00
<b>Total:</b>				920,946	21.1420		\$237,850.00

**Actions**

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**Reports**

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**Land**

Line #	1
Land Type	A-ACREAGE
Land Code	1-PRIMARY SITE
Square Feet	920,946
Acres	21.1420
Land Units	
Actual Frontage	
Effective Frontage	
Override Size	21
Actual Depth	
Table Rate	6,300.00
Override Rate	15,000.00
Depth Factor	1
Influence Factor	-25
Influence Codes	9
Nbhd Factor	1
Notes	0
Value	\$237,850.00
Exemption Pct	
Homesite Value	

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