MARBLE CLIFF QUARRY UTILITY COOPERATIVE AGREEMENT

THIS UTILITY COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of May 1, 2020, by and among the MARBLE CLIFF QUARRY COMMUNITY AUTHORITY (the "Authority"), a community authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio, the CITY OF COLUMBUS, OHIO, a municipal corporation duly organized and validly existing under the laws of the State of Ohio and its Charter (the "City"), and MARBLE CLIFF CANYON, LLC, an Ohio limited liability company (the "Developer"), under the circumstances summarized in the following recitals (as used herein, "Parties" means, collectively, the Authority, the City and the Developer. "Party" means any one of the Authority, the City or the Developer):

RECITALS:

WHEREAS, the Developer has acquired real property in the City depicted on Exhibit A attached hereto (the "Property"), on which it intends to redevelop with commercial and residential improvements that will create and retain jobs and improve the quality of life in the City; and

WHEREAS, greater than 50 percent of the Property area is a brownfield site comprised of a former quarry that contains a former landfill that is subject to an environmental covenant and an agreement with the Ohio Environmental Protection Agency ("OEPA"), which, among other obligations, requires OEPA approval of all construction within the footprint of the former landfill and that certain environmental controls on the Property are to be operated and maintained by a common entity in compliance with all applicable environmental laws; and

WHEREAS, due to the environmental conditions and required controls, the City and the Developer have agreed that the most expeditious way to provide water and sewer service within the Property and manage the environmental conditions and required controls is to install a master water meter at the boundary of the Property, with the Authority responsible for maintaining the onsite water and sewer infrastructure and paying the master meter usage charges and other fees charged by the City;

WHEREAS, the City and Wagenbrenner Development, an affiliate of the Developer, have entered into an Economic Development Agreement whereby the City committed certain incentives to enable the redevelopment of the Property, including pledging tax increment financing service payments in lieu of taxes generated by the improvements to the Property to pay costs of infrastructure necessary to redevelop the Property as described in the Economic Development Agreement; and

WHEREAS, the Parties desire to set forth their cooperative arrangements for the water and sewer utilities for the Property;

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Authority, the City and the Developer agree as follows:

Section 1. Master Water Meter. The City and the Authority agree that the Authority's new community district will be served by a master water meter. The Developer will pay all fees for the master water meter and taps including all upfront City tap fees, meter service fees,

connection charges and capacity charges. The sewer capacity fees are based on the Domestic water tap size. Inspection and permit fees are required as outlined on the sanitary plan no. CC 18431 and on the storm plan no.CC 18703. The Authority will reimburse the Developer for such fees from available revenues.

The Developer, on behalf of the Authority, shall construct, and the Authority shall maintain in perpetuity, the water distribution system behind the master water meter and including the fire meter and the Authority's sewer system, and make repairs on such systems that from time to time are required. Any modifications made to such systems shall be made in accordance with plans and specifications approved by the Director of Public Utilities of the City, and materials used shall be as per current specifications for water and sewer mains and appurtenances approved for use at the time by the Division of Water or Division of Sewerage and Drainage, as applicable.

The Authority shall be responsible for all water quality or operational issues caused by any extensions, replacements or improvements (including booster stations) to the Authority's water distribution system. If potential water quality or operational issues are identified during design review, the Authority shall provide a written approach on how it will mitigate these issues, and this approach shall be agreed upon by both parties prior to the approval of the detailed plans and specifications by the Director of Public Utilities of the City of Columbus.

The Authority shall, and the City shall have no obligation to, install fire hydrants on the fire loops within the Authority's water distribution system, after approval of the plans therefor by the Director of Public Utilities of the City, and use water from the hydrants for fire protection and fire hydrant maintenance.

The City shall bill the Authority monthly for water service (at the same rates charged to other commercial or industrial users inside the City as set forth in City Code), other than for fire protection and fire hydrant maintenance uses (which shall be billed at the same rates charged to other users inside the City per City Code), for sewer service (at the same rates charged to users inside the City as set forth in City Code), and for stormwater charges (at the same rates charged per City Code). In the event that the City duly establishes any additional or different water, sewer, stormwater, or related charges to which the Authority is subject (at the same rates charged to other commercial or industrial users inside the City as set forth in City Code), the City shall bill the Authority for those charges at the applicable rate. The Authority shall be responsible for billing and collecting all charges from end users and shall be responsible for payment of the charges to the City. The Authority agrees that it will levy a community development charge on delinquent users and certify the charge for collection by the Franklin County Auditor on real property tax bills as necessary in order to make timely payment to the City and to remain current on all charges. The Authority's inability to collect water, sanitary sewer, or stormwater charges from end users shall not relieve the Authority of its responsibility to make timely payment in full to the City.

Section 2. Term of Agreement. This Agreement shall not be terminated without the written approval of the Authority and the City.

Section 3. Estoppel Certificate. Within fifteen (15) days after a request from the Developer, the Authority will execute and deliver to the Developer a certificate stating that, if the same is true to its knowledge: (a) that this Agreement is in full force and effect; (b) that the

Developer is not in default under any of the terms, covenants or conditions of this Agreement, or, if the Developer is in default, specifying same; and (c) such other matters as are reasonably requested.

Section 4. Notices. All notices, certificates, requests, directions, consents or other communications hereunder (each, a "Notice") must be in writing and are deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or nationally recognized overnight delivery service and addressed to the appropriate Notice Address. A duplicate copy of each Notice must also be given to each other Party and the Trustee. A Party, by Notice given hereunder, may designate any further or different addresses to which subsequent Notices must be sent. If, because of the suspension of delivery of certified or registered mail and nationally recognized overnight delivery services or for any other reason, Notices are unable to be given by the required delivery methods, Notices may be given in a manner as in the judgment of the sending Party will most effectively approximate mailing or overnight delivery, and the giving of that Notice in that manner for all purposes of this Agreement will be deemed to be in compliance with the requirements of this Agreement. Except as otherwise provided herein, the mailing or sending of any Notice is deemed complete upon deposit of that Notice in the mail or with the overnight delivery service, and the giving of any Notice by any other means of delivery is deemed complete upon receipt of the Notice by the intended recipient.

"Notice Address" means:

(a) As to the Authority:

Marble Cliff Quarry Community Authority
842 North 4th Street, Suite 200
Columbus, Ohio 43215
Attention: Chair

With copy to:

Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, OH 43215
Attention: Greg Daniels

(b) As to the City:

Department of Public Utilities
910 Dublin Road
Columbus, Ohio 43215
Attention: Director

With a copy to:

Columbus City Attorney
77 North Front Street
Columbus, Ohio 43215
Attention: Chief Counsel

(c) As to the Developer:

Marble Cliff Canyon, LLC
842 North 4th Street, Suite 200
Columbus, Ohio 43215
Attention: Joe Reidy

Section 5. Extent of Obligations; No Personal Liability. All obligations of the Authority and the City contained in this Agreement are effective to the extent authorized and permitted by applicable law. No obligation is an obligation of any present or future member, officer, agent or employee of the Authority, the City or their respective legislative authorities in other than in their official capacity, and neither the members of those legislative authorities nor any official executing this Agreement is liable personally or subject to any personal liability or accountability by reason of the obligations of the Authority or the City contained in this Agreement.

Section 6. No Agency/Partnership Relationship. The Parties each acknowledge and agree that in fulfilling its obligations under this Agreement, the Developer is not acting as an agent of the Parties. This Agreement does not and may not be construed to create a partnership or joint venture between the Parties.

Section 7. Binding Effect. This Agreement inures to the benefit of and is binding in accordance with its terms upon the Authority, the City and the Developer, and their respective permitted successors and assigns.

Section 8. Amendments and Supplements. This Agreement may not be amended except with the written consent of the City, the Authority and the Developer.

Section 9. Assignment. The Developer may, without the consent of the City or the Authority, (i) assign or participate its rights and obligations under this Agreement to a lender or investors for the purpose of obtaining financing, as long as such an assignment provides that the Developer remains liable for all its obligations under this Agreement, (ii) assign its rights and obligations under this Agreement to an entity that is at least 50% controlled by or under common control with the Developer, as long as such an assignment provides that the Developer remains liable for all its obligations under this Agreement; or (iii) designate to any affiliate of the Developer, upon written notice to the City and the Authority, the Developer's rights to receive any payments hereunder. The Developer shall provide prompt written notice to the City and the Authority after any assignment or participation. Notwithstanding the foregoing, any assignment pursuant to (ii) or (iii) will not be effective until the assignee has provided the City and the Authority with a copy of an assignment agreement executed by both the Developer and assignee. The City and the Authority will cooperate with any reasonable assignment request by a lender, investor, the Developer, or entity controlled by or under common control with the Developer.

Except as otherwise provided in this Section, a party hereto may not assign its rights and obligations hereunder without the written consent of each other Party provided that no Developer consent will be required if the Developer has not maintained its existence and has not assigned its rights hereunder to another party.

Section 10. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which are regarded as an original and all of which constitute but one and the same instrument. Counterparts or signatures stored or transmitted by electronic means (such as e-mailed .pdfs) shall be considered original counterparts or signatures for all purposes.

Section 11. Interpretation. Any reference herein to a Party or public body or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State of Ohio, or any section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America or the City of Columbus Charter or its City Code, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Authority, the City or the Developer under this Agreement.

This Agreement shall not be construed more strictly against a party by virtue of the fact that a contract may be more strictly construed against the party preparing the contract, it being understood and agreed that the Parties have equally negotiated the provisions hereof and contributed substantially and materially to the preparation of this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 12. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 13. Severability. If a court determines that any provision of or obligation imposed by this Agreement is invalid or unenforceable, that determination will not affect any other provision or obligation, all of which will be construed and enforced as if the invalid or unenforceable provision or obligation were not contained herein. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each provision or obligation will be deemed to be effective in the manner and to the full extent permitted by law.

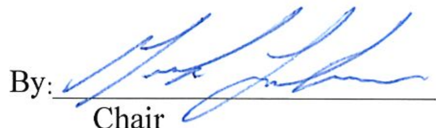
Section 14. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, this Agreement and all of its covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties.

Section 15. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio.

(Signatures on following page)

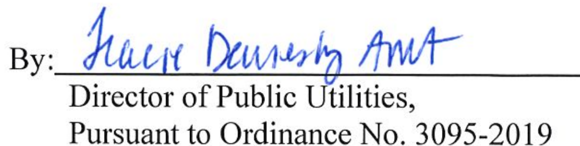
IN WITNESS WHEREOF, the Authority, the City and the Developer have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

MARBLE CLIFF QUARRY COMMUNITY AUTHORITY



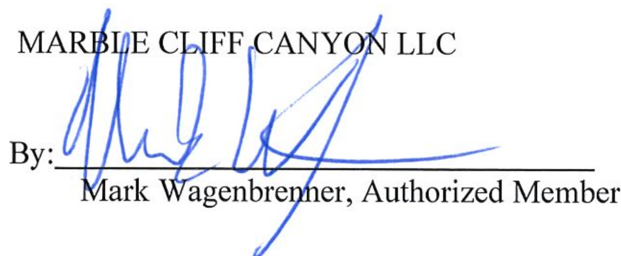
By:________________________
Chair

THE CITY OF COLUMBUS, OHIO

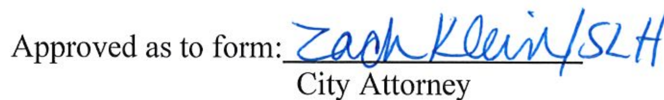


By:________________________
Director of Public Utilities,
Pursuant to Ordinance No. 3095-2019

MARBLE CLIFF CANYON LLC



By:________________________
Mark Wagenbrenner, Authorized Member



Approved as to form:________________________
City Attorney

Exhibit A

The Property consists of the "Proposed New Community Authority" parcels as indicated on the following map: