

MASSACHUSETTS COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM GUIDELINES

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Massachusetts Development Finance Agency
99 High Street
Boston, MA 02110

and

Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114



ABOUT MASSDEVELOPMENT

As the Commonwealth's economic development and finance authority, MassDevelopment is committed to achieving three goals:



- Stimulating business
- Driving economic growth
- Helping communities thrive across Massachusetts

At MassDevelopment, we offer financing and real estate solutions to support companies and nonprofits, increase housing, eliminate blight, and drive economic growth across Massachusetts. We help businesses, developers, housing, manufacturers, municipalities, and nonprofits at every stage of development.

For more information on MassDevelopment, visit our website www.massdevelopment.com.

ABOUT THE MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES (DOER)

The Massachusetts Department of Energy Resources (DOER) develops and implements policies and programs aimed at ensuring the adequacy, security, diversity, and cost-effectiveness of the Commonwealth's energy supply to create a clean, affordable and resilient energy future. To that end, DOER strives to:



- Ensure deployment of all cost-effective energy efficiency
- Maximize development of clean energy resources
- Create and implement energy strategies to assure reliable supplies and improve the cost of clean energy relative to fossil-fuel based generation
- Support Massachusetts' clean energy companies and spur Massachusetts' clean energy employment

DOER is an agency of the Executive Office of Energy and Environmental Affairs (EEA). For more information on DOER, visit our website www.mass.gov/doer.

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1. INTRODUCTION

Property Assessed Clean Energy (PACE) financing is an economic development tool that gives commercial and industrial building owners access to affordable, long-term financing for energy improvements to their buildings. It is a national policy that promotes clean energy upgrades being charged and repaid as a property assessment in the same way that local public benefits (sidewalks, sewers) have been for decades. PACE financing serves an important public purpose by encouraging the construction of projects that reduce energy costs, improve property values, reduce greenhouse gas emissions, stimulate the economy and create jobs. Property owners use PACE financing because it saves them money and makes their buildings more valuable.

In Massachusetts, Governor Baker signed into law An Act to Promote Energy Diversity, which authorized the creation of a PACE program in Massachusetts. The statute, M.G.L. c. 23M (the “PACE Act”), allows for the establishment of a commercial Property Assessed Clean Energy program (PACE Massachusetts) to be administered by the Massachusetts Development Finance Agency (MassDevelopment) in consultation with the Massachusetts Department of Energy Resources (DOER).

Eligible properties include qualifying commercial or industrial properties, as well as multi-family buildings with five or more units, owned by any person or entity other than a municipality or other governmental entity. Eligible measures that can be financed include improvements that reduce energy consumption, the installation of renewable energy systems, and natural gas line extensions to supply gas to displace fuel oil, electricity or other fossil fuel energy sources.

PACE Massachusetts financing is different from other conventional forms of energy financing because the financing of the energy improvements are repaid through a voluntary betterment assessment added to the owner’s municipal property tax bill. The betterment assessment, which is levied on the property at the financing close, cannot be accelerated. The financing is secured by a lien placed on the property. If the property is sold, the repayment obligation (remaining PACE betterment assessments) and lien transfer to the next owner. Projected savings from the energy improvements must cover the cost of the improvements in the allowed financing period so that, over the financing period, a property owner is not projected to spend more than what their energy costs would have been without the improvements. PACE Massachusetts provides property owners the option to finance projects for longer periods of up to 20 years which allows a property owner to include and prioritize needed improvements that could be more difficult to fund because of the longer payback(s).

PACE Massachusetts guidelines were developed in accordance with the PACE Act and contain program requirements that participants must adhere to in order to access financing and contain the terms and conditions that proposed projects must comply with to receive approval. MassDevelopment and DOER may amend these guidelines from time to time with or without notice. Prospective PACE Massachusetts participants are advised to access the current version of the PACE Massachusetts guidelines on the MassDevelopment website [MassDevelopment.com/PACE](https://www.massdevelopment.com/PACE).

2. TECHNICAL GUIDELINES OVERVIEW

Under PACE Massachusetts, energy improvements that are renovations or retrofits to a commercial or industrial property or multifamily building with five or more units are eligible for financing, provided these energy improvements are permanently affixed to the property. Eligible commercial energy improvements include:

- Measures that reduce energy consumption;
- Installation of renewable energy systems;
- Existing natural gas line extensions are also eligible under PACE, provided the natural gas service displaces fuel oil, electricity, or other fossil-fuel energy sources.

The specific project items in a commercial PACE project that are eligible for financing are:

- Design and procurement, including engineering and consulting services to prepare a PACE application, as well as legal fees and other related project costs;
- Construction, installation, and implementation of Energy Improvements, including barrier mitigation;
- Related energy audits;
- Renewable energy system feasibility studies;
- Measurement and verification reports of the installation and effectiveness of Energy Improvements (including commissioning);
- Financing and application fees.

PACE projects must meet the savings to investment ratio (SIR) test to qualify for PACE Massachusetts financing. This means that the energy cost savings from the energy improvements must exceed the costs of the improvements over the life of the measures, including any financing costs and associated fees. PACE Massachusetts will help building owners reduce the impact that energy has on buildings and operations through cost-effective energy efficiency and development of clean energy resources. An effort has been made to align PACE Massachusetts financing with Massachusetts' nation-leading energy efficiency and renewable energy programs. Building owners must consider both energy use reduction and renewable energy when planning projects for PACE financing¹.

The specific eligibility of improvements and the detailed technical requirements are described in more detail in [Appendix B: Technical Guidelines](#).

¹ Consideration does not mean implementation, but rather that proof that thought into both energy reduction and renewable energy options has been undertaken.

3. FINANCIAL GUIDELINES OVERVIEW

PACE Massachusetts employs an open market, third party direct financing model that provides property owners the power to choose who will fund their project. It allows multiple capital providers to operate within the PACE Massachusetts program and allows property owners access to the different sources of funds that are available in the commercial PACE market. A Request for Information (RFI) process is undertaken for capital providers that are interested in offering financing for PACE Massachusetts projects. The process and other information relevant for capital provider participation are included in [Appendix C: Financial Guidelines](#).

The financial guidelines describe the steps that an applicant goes through to apply for project review and financing approval under PACE Massachusetts. Upon acceptance of an application, MassDevelopment will review for compliance with financial requirements and DOER will review for compliance with the technical requirements. See [Appendix C](#) for the key financial guideline criteria. We encourage participants to review the project steps and information that is contained in [Appendix C](#) to help expedite the time needed to develop projects and originate and close financing.

Key components of the PACE Massachusetts financing guidelines are:

- Written consent is required from any mortgage holder(s) on the property
- Repayment of financing will be made via the municipal property tax collection process for remittance to a MassDevelopment-designated servicer for disbursement to PACE capital providers
- Annual PACE betterment assessment is senior to and has priority over all private mortgage liens on the property (with consent, if applicable) but is junior in priority to a municipal tax lien
- Each municipality must opt into PACE Massachusetts (one time only) by adopting a PACE resolution via the appropriate municipal process.

See [Appendix C](#) for further details on these key components.

APPENDIX A: PACE MASSACHUSETTS APPLICATION

This is the application that must be completed and submitted to MassDevelopment for each proposed project for PACE Massachusetts.





Application for
PACE Massachusetts



PROPERTY OWNER'S INFORMATION (Person to whom all correspondence will be directed)

Property Owner's Name

Primary Contact Title

Property Owner's Address City State Zip Code

Telephone Email

Primary Contact Relationship to Property:

Owner / Co-Owner Manager Investor Other (describe):

Property Owner Type

Corporation Sole Proprietorship Nonprofit Corporation S-Corporation
 Partnership Limited Liability Corporation Other (describe):

Date Property Ownership Began

List Property Owner(s) Legal Name(s) / Legally Authorized Representative (as they appear on property title; attach additional pages if necessary)

PREPARER'S INFORMATION (If different from Property Owner)

Preparer's Name

Preparer's Company Title

Address City State Zip Code

Telephone Email

PROJECT SITE LOCATION

Project Address City State Zip Code

County Assessor Parcel ID Number

PROPERTY INFORMATION

Year building was built Total gross building square footage

Conditioned Building Size Building footprint, number of stories

Total roof area and description: Sloped Flat Other (describe)

Building use (List uses and Percentage)

Percentage of building currently occupied: _____ Occupants: Owner-occupied Tenants/Leased

If tenant/leased, percentage of building occupied by tenants: _____

Hours of operation:

Property Type: Commercial Industrial Multi-family (5+ units) Retail Non-profit Other (describe):

PROJECT INFORMATION

Proposed improvements include (check all that apply)

- | | | | | | |
|----------------------------|--------------------------|----------------|--------------------------|--------------------|--------------------------|
| Lighting | <input type="checkbox"/> | HVAC | <input type="checkbox"/> | Water Heating | <input type="checkbox"/> |
| Roof | <input type="checkbox"/> | Walls/Envelope | <input type="checkbox"/> | Windows | <input type="checkbox"/> |
| CHP | <input type="checkbox"/> | Solar thermal | <input type="checkbox"/> | Solar PV | <input type="checkbox"/> |
| Other Renewable Technology | <input type="checkbox"/> | | | Gas line extension | <input type="checkbox"/> |

Does the proposed project include both energy consumption reduction and renewable energy components? Yes No
 If no, please explain why:

For solar, CHP and other renewable technologies, what is the proposed size of the system?

Have you applied for and been awarded energy efficiency financial incentives through Mass Save or your MLP EE service provider? Yes No

Have you checked for, applied for, and/or been awarded renewables financial incentives with the Massachusetts Clean Energy Center? Yes No

Are at least 12 months of data available for all spaces and all systems for this building?(Please attach) Yes No

If not, did the project include an energy model baseline in line with PACE Technical Guidelines? (Please attach) Yes No

TECHNICAL INFORMATION

Name of Project Developer (if known):

- Check any energy efficiency audits completed (Please attach):
- | | |
|---------------------------------|--------------------------|
| ASHRAE Preliminary Energy audit | <input type="checkbox"/> |
| Building system specific study | <input type="checkbox"/> |
| ASHRAE Level 1 | <input type="checkbox"/> |
| ASHRAE Level 2 | <input type="checkbox"/> |
| ASHRAE Level 3 | <input type="checkbox"/> |

- Check studies completed (Please attach):
- | | |
|------------------------|--------------------------|
| Solar PV study | <input type="checkbox"/> |
| Solar thermal study | <input type="checkbox"/> |
| Other Renewables study | <input type="checkbox"/> |
| CHP study | <input type="checkbox"/> |

TOTAL ESTIMATED PROJECT FINANCING SOURCES

List all anticipated sources of financing (including energy efficiency and/or renewables financial incentives, equity, etc.)

Total Estimated Gross Project Costs		\$	
Less Upfront:			
Energy efficiency incentives		\$	
Renewable energy incentives		\$	
Equity		\$	
Other: _____		\$	
Less Ongoing:			
Energy efficiency incentives		\$	
Renewable energy incentives		\$	
Equity		\$	
Other: _____		\$	
Total Estimated Net Project Costs		\$	

Note: Additional technical information will be required; refer to the technical guidelines for more information.

PROPERTY OWNER FINANCIAL INFORMATION

REQUESTED FINANCING AMOUNT \$ _____

FINANCIAL INFORMATION *(Enter existing mortgage information)*

First Mortgage Holder : _____

Outstanding mortgage balance: \$ _____ Repayment terms: _____

Monthly payment: \$ _____ Remaining term of mortgage: _____

Second Mortgage Holder: _____

Outstanding mortgage balance: \$ _____ Repayment items: _____

Monthly payment: \$ _____ Remaining term of mortgage _____

(Attach additional mortgage lenders information if necessary.)

What is the assessed value of the property? *(Attach a copy of current property tax bill.)* Year: _____ Assessed Value: \$ _____

Has an appraisal been done on the property in the past three years? Yes No Year: _____ Appraised Value: \$ _____

In the last 3 years, has there been a major renovation? Yes No If so, in what year? _____ Year: _____

In the next 5 years, are any renovations planned? Yes No

Are there any current betterment assessments on the property? Yes No

Have there been any releases of hazardous materials at or affecting the property? Yes No

Is there a lien under M.G.L. Chapter 21E on the property? Yes No

Do you currently pay property taxes on the property? Yes No

Are all mortgage payments current? Yes No

Have there been any delinquencies in mortgage payments for 60 days or more in the past 24 months? Yes No

Has a foreclosure proceeding been commenced against the property in the prior 24 months? Yes No

Is the property in a bankruptcy proceeding? Yes No

Is the property owner in a bankruptcy proceeding? Yes No

Has the property owner been subject to a bankruptcy proceeding in the past seven years? Yes No

Have your property taxes ever been delinquent (by 30 days or more) in the past 3 years? Yes No

Are there any tax liens or notices of default on the property? Yes No

Does the owner have sufficient net cash flow equal to or greater than the proposed annual PACE assessment? Yes No

Please provide financial statements for the past three years.

Note: A capital provider will likely request additional financial information in considering an application for financing.

IMPORTANT NOTICE

MassDevelopment will be represented by attorneys of their choice in the review of the terms of the transaction documents and in any related legal matters arising prior to the closing of the financing. In addition, MassDevelopment will charge a fee upon closing based upon a predetermined fee schedule. The Department of Energy Resources may also charge a Project Review Fee. By submitting this Application, the Applicant agrees that all incurred fees will be the responsibility of the applicant even if the financing fails to close.

The representations included in this application shall survive the closing of any resulting PACE Massachusetts financing.

The owner agrees that if it participates in PACE Massachusetts, it shall include MassDevelopment in any public relations events or materials related to the project, and cooperate with and permit MassDevelopment to publicize its assistance, for marketing and public relations purposes, including, but not limited to, signage, press releases, public events, and promotional materials.

By submitting this request, I represent and certify to the best of my knowledge and belief that the information provided herein, and any exhibits or attachments hereto, is true and complete and accurately describes the proposed project. I agree to promptly inform MassDevelopment of any changes which may occur.

SIGNATURE(S)

Owner: _____	Preparer (if different): _____
Name: _____ <i>(Please print clearly)</i>	Name: _____ <i>(Please print clearly)</i>
Company: _____ <i>(Please print clearly)</i>	Company: _____ <i>(Please print clearly)</i>
Date: _____	Date: _____

This application will be reviewed when the above requested information.

If you are not already working with us, we encourage you to contact us at pace@massdevelopment.com before submitting materials.

MassDevelopment
99 High Street, 11th Floor
Boston, MA 02110
Attn: PACE Program Manager

APPENDIX B: TECHNICAL GUIDELINES

The technical guidelines describe the eligibility and requirements an applicant and project developer must follow to demonstrate energy and cost savings for a PACE project.



Pursuant to its authority under G.L. c. 25A, sec. 6(13), the Massachusetts Department of Energy Resources hereby publishes these technical guidelines for the implementation of the Commercial Property Assessed Clean Energy program, as set forth in G.L. c. 23M.

1. Project Technical Review

The Department of Energy Resources (DOER) will review project technical applications submitted to Mass Development.² Project reviews will confirm whether projects meet the eligibility criteria and requirements set forth in this Technical Guideline.

DOER will issue an approval letter after a satisfactory technical review, which will contain the following information:

- Project owner and project address
- Outline of the Energy Improvements financed under PACE Massachusetts
- Applicant, with credentials
- Lifetime for the project
- If Mass Save®, MassCEC or other incentives were leveraged
- If benefits will flow through to tenants
- Any notes from DOER

DOER approval letters are valid for 12 months from the date of issue. Up to two six-month extensions are available, at the discretion of MassDevelopment and DOER. If an application for PACE Massachusetts does not meet one or more technical requirements, DOER may take any of the following remedial steps:

1. Encourage continued communication between parties.
2. Speak directly with the applicant and their project team to discuss any items that do not comply with the PACE Massachusetts program guidelines.
3. Request the timely submission of remedial information.
4. Review remedial information submitted by the applicant.

If the application still has significant deficiencies after remedial steps have been taken, DOER may reject the application for not complying with the PACE Massachusetts technical program guidelines. After an application has been rejected, it may be updated and resubmitted for review. If an application for a project is resubmitted after a formal rejection, the Applicant will need to restart the application process, including new application fees.

To ensure that the PACE application process is efficient, Applicants with questions should contact MassDevelopment via email or phone to collaboratively work through issues before and during the

² G. L. c. 25A, § 6 (13) <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25A/Section6>

application process. A short phone call may be helpful to clarify questions about the appropriate technical protocol, the level of documentation required, or other details.

2. Project Eligibility

A. General Eligibility

Energy Improvements that qualify for PACE Massachusetts financing include renovations or retrofits of a commercial, industrial, or multifamily (five or more units) property, that are permanently fixed to the property. Energy Improvements must be owned by the property owner – power purchase agreements and equipment lease agreements are not eligible for financing. PACE Massachusetts financing is only available for existing buildings; new construction and additions are not eligible. However, Energy Improvements included in comprehensive projects that are significant enough to be considered a gut renovation may be eligible if the project savings exceed Massachusetts base code and pass the SIR test. For example, if a building owner is considering a gut renovation of an existing building and constructing a new building on a single site, the Energy Improvements in the renovation would be eligible for PACE financing but the energy measures in the new building would not be eligible because they are in new construction.

B. Energy Improvements eligible under PACE Massachusetts include:

- *Measures that reduce energy consumption (Energy Consumption Reduction Improvements):* energy efficiency and conservation measures including, but not limited to, lighting and lighting control upgrades, HVAC equipment upgrades, building envelope improvements, efficient electrification, and combined heat and power (CHP). Stand-alone energy storage systems as defined in this guideline are also eligible, as defined above.
- *Installation of renewable energy systems (Renewable Energy Improvements):* installation of technologies that meet requirements for RPS Class I or technologies that meet requirements as renewable thermal generating units under the APS program, including but not limited to solar photovoltaic panels, wind systems, anaerobic digestion, solar thermal, ground-source heat pumps, air-source heat pumps, and biomass, as defined above. Energy storage systems paired with eligible Renewable Energy Improvements may qualify for PACE without meeting the consumption reduction standard for a stand-alone energy storage system, if the total project SIR is greater than one, as discussed below.
- Existing gas line extensions are eligible for PACE if gas end uses will displace fuel oil, electric resistance or other *fossil-fuel based* energy sources. Projects including extensions of existing gas mains, gas service on the customer's property, and the meter are eligible for financing. Projects displacing renewable energy systems are not eligible.

C. Eligible Costs

The specific items in a commercial PACE project that are eligible for financing are:

- Design and procurement, including engineering and consulting services to prepare a PACE application, as well as legal fees and other related project costs
- Construction, installation, and implementation of Energy Improvements, including barrier mitigation
- Related energy audits
- Feasibility studies
- Measurement and verification reports of the installation and effectiveness of Energy Improvements (including commissioning)
- Financing and application fees

D. Savings to Investment Ratio Test

To qualify for PACE Massachusetts financing, PACE projects must meet the savings to investment ratio (SIR) test, as detailed in section 4(b) below. This means that the energy cost savings from the Energy Consumption Reduction or Renewable Energy Improvements must exceed the costs of the improvements over the life of the measures, including any financing costs and associated fees. For gas line extensions, energy costs and savings from Energy Consumption Reduction Improvements such as heating equipment upgrades will be considered in the SIR test and savings must exceed the total costs of the Energy Consumption Reduction Improvements and Gas Line Extension combined.

E. Project Comprehensiveness Requirements

Owners and Project Developers (PD) must consider both Energy Consumption Reduction and Renewable Energy Improvements when proposing PACE projects:

- For Energy Consumption Reduction Improvement projects, Renewable Energy Improvements, such as cold-climate air source heat pumps, must also be considered. Consideration does not require implementation but does require documentation of the evaluation of specific Renewable Energy Improvements.
- For Renewable Energy Improvement projects, evidence of adopted Energy Consumption Reduction Improvements is required.
- For Gas Line Extension projects, evidence of adopted Energy Consumption Reduction Improvements is required, and must be implemented to offset the investment in the SIR calculation. Renewable Energy Improvements must also be considered, including renewable or alternative heating and cooling technologies.

Substantiation of costs and evidence of engagement with incentive programs is required to ensure that the Applicant utilizes all possible financial incentives and explores all economically feasible Energy Improvements.

PACE Massachusetts requires proposed Renewable Energy Improvement and Gas Line Extension projects to include evidence of adopted Energy Consumption Reduction Improvements. If a building

owner has already implemented all feasible energy efficiency measures, the application must include documentation. Mass Save® and Municipal Utilities provide significant financial incentives and technical resources for energy efficiency projects to building owners, so they are required to engage with these programs and show evidence of involvement. Examples of satisfactory documentation of engagement include, but are not limited to, a letter from the energy efficiency vendor, a copy of a rebate check, or a copy of a previous audit with documentation of steps taken in response. If an applicant has interacted with the programs but has chosen to forgo incentives or technical assistance, the reason should be stated in writing in the application.

Example:

An Energy Reduction Improvement project is required to consider renewable energy improvements. A successful project would show that the PD assessed the feasibility of solar photovoltaic panels (or another technology), understood the approximate cost of the system, identified applicable incentives, and calculated the rate of return to the owner or benefits to the tenant. If the PD concludes that the technology will not be pursued, that decision should be stated and substantiated in the application.

F. Unsatisfactory PACE Applications

Applications that fail to follow the PACE Massachusetts technical guidelines may be rejected for reasons including, but not limited to, the following:

- Project does not have an SIR greater than one (1)
- Proposed Energy Improvements are not designed to conserve energy
- Failure to consider Energy Consumption Reduction for Renewable Energy Improvements
- Failure to consider energy use reduction and renewable energy alternatives for gas line extension projects
- Failure to demonstrate engagement with energy efficiency programs offered by Mass Save® or MLPs
- Unsubstantiated or unreasonable cost or savings estimates
- Stand-alone electric energy storage systems that do not meet the performance qualifications established in the Guideline definition.
- Energy Improvements are not owned by the property owner. Financing of power purchase agreements and equipment leases are not eligible under PACE Massachusetts.
- Gas line extensions are proposed to displace renewable energy systems. Gas line extensions may only be proposed when displacing oil, electricity (electric resistance heating), or other fossil-fuel sources.

If an application for PACE Massachusetts does not meet one or more of the technical requirements, DOER will take the following remedial steps before rejecting an application:

- Encourage continued communication between parties.
- Speak directly with the applicant and their project team to discuss any items that do not comply with the PACE Massachusetts program guidelines.
- Request the timely submission of remedial information.
- Review remedial information submitted by the applicant.

If the application still has significant deficiencies after remedial steps have been taken, DOER may reject the application for not complying with the PACE Massachusetts technical program guidelines. After an application has been rejected, it may be updated and resubmitted for review. If an application for a project is resubmitted after a formal rejection has been issued, the PD will need to restart the application process, including paying new application fees.

3. Project Developer Eligibility

PACE Massachusetts requires a qualified energy project developer (PD) to prepare the technical application package, baseline, and savings calculations and use this information to calculate the SIR for the project. A PD must have at least one of the following qualifications:

- Professional Engineer License³
- Investor Confidence Project (ICP) PD Credential⁴
- Association of Energy Engineers Certified Energy Manager® Certification⁵
- The North American Board of Certified Energy Practitioners (NABCEP) Photovoltaic Design Specialist certification
- For Energy Consumption Reduction Improvements that use the standard or targeted ICP protocols only, at least five years (minimum) of demonstrated experience calculating energy savings in lieu of formal certification.

Please note: Neither DOER nor MassDevelopment will recommend a PD or assist a building owner with PD selection.

4. Application Requirements

A. Overview

The components of a PACE Massachusetts project required for technical review are:

- PACE Massachusetts application
- Building energy use baseline as specified in the applicable project type section in this guideline
- Savings calculations documentation using the standards set forth in this guideline
- Estimated project costs, including PACE financing costs and fees provided by MassDevelopment
- Supporting documentation for the Energy Improvements, as specified in this guideline, including:
 - Evidence of consideration of both Energy Consumption Reduction and Renewable Energy Improvements

³ <http://www.mass.gov/ocabr/licensee/dpl-boards/en/> (PE Project Developers do not need to be licensed in Massachusetts. This does not negate the requirement that a PE must have a Massachusetts license to stamp engineering drawings.)

⁴ <http://www.eepformance.org/how-does-pd-credentialing-work.html> ⁵ <http://www.aeecenter.org/i4a/pages/index.cfm?pageid=3351>

- Documentation of Energy Consumption Reduction Improvements implemented
- Evidence of engagement with energy efficiency programs offered by Mass Save® or Municipal Light Plants (MLPs)
- Documentation and estimation of other financial incentives including APS, RPS, etc. For RPS or APS, Conditional Statement of Qualification approved by the DOER is required.
- An explanation of the extent to which project benefits will be passed down to tenants (if applicable)
- SIR workbook showing that the projected energy cost savings is greater than the cost of the project (the SIR is greater than 1).
- Signed and stamped (if applicable) affidavit from PD certifying that the application information is correct based on the professional's opinion.

B. Savings to Investment Ratio

An Energy Improvement Project must have a positive Savings to Investment Ratio (SIR) to qualify for PACE financing. An SIR greater than one demonstrates that the energy cost savings of improvements over their useful life exceed the cost of the improvements. SIR costs should include any financing costs and associated fees. Upfront incentives and ongoing value streams available to the project, including but not limited to energy efficiency or renewable incentives (e.g. Mass Save® efficiency incentives, RECs, SMART, AECs, CPECs, Mass Save® active demand performance payments) and tax credits, should be included in the savings calculation of the SIR. The PD must use the SIR workbook tool provided on the PACE Massachusetts web site⁶ to provide a summary of all SIR inputs for technical review. The PD must also provide additional documentation to substantiate the values used in the workbook tool. If applicable, the following data points should be included:

- Savings calculation data points include:
 - Avoided energy usage
 - Unit costs for energy used in the building (e.g. cost per kilowatt hour, cost per therm, cost for propane, demand charges, etc.) and cost-escalation assumption
 - Annual demand reduction
 - Annual electricity sales to grid, for Renewable Energy Improvements (if applicable)
 - Annual revenue from production incentives including, but not limited to, REC, AEC, and CPEC sales, tax credits, and Mass Save® rebates
 - Tax credits and/or MACRS depreciation
 - Any other energy market revenues (ISO-NE Forward Capacity Market, etc.)
 - If the useful life of a system is greater than the maximum financing term of 20 years, the savings in the years past the financing term (up to 30 years) may be included in the savings calculation.
- Investment calculation data points
 - Cost for design, procurement, construction, installation, and implementation of Energy Improvements
 - Cost for related energy audits

⁶ <https://www.massdevelopment.com/PACE>

- Cost for feasibility studies
- Cost for measurement and verification reports of the installation and effectiveness of Energy Improvements
- PACE financing costs (including principal, interest, fees) and associated fees, including application fees (estimates can be provided by MassDevelopment)
-

If RECs, AECs, or other environmental attributes are retired to realize the environmental benefits, please state this in the application and account for retirement in the SIR calculations.

C. Supporting Documentation

The PACE application must include studies or other documentation that show how savings calculations were determined. The SIR should be submitted with the following supporting documents, as applicable:

- Full Engineering Drawings
- Equipment and Installation Cost Schedule
- Relevant Warranty Information
- Equipment Useful Life Assumptions
- Proof of Incentive
- Measurement and Verification Plan
- Commissioning Plan
- Operation and Maintenance Plan
- Dispatch Schedule
- Interconnection Agreement
- Tax Credit Schedule
- Full Savings Calculations
- Energy Generation Schedule
- SMART Payment Schedule
- RECs, AECs, & CPECs Sales Schedule

D. Energy Consumption Reduction Projects

i. Retrofits

To receive technical approval from DOER, an Energy Consumption Reduction project application for retrofits must adhere to Investor Confidence Project (ICP) baseline and savings calculation

requirements.⁷ The goal of using ICP protocols in PACE is to streamline the application process for building owners, project developers, project reviewers, and capital providers. In the case of a conflict between the ICP protocols and the PACE Massachusetts program guidelines, the PACE Massachusetts program guidelines take precedence.

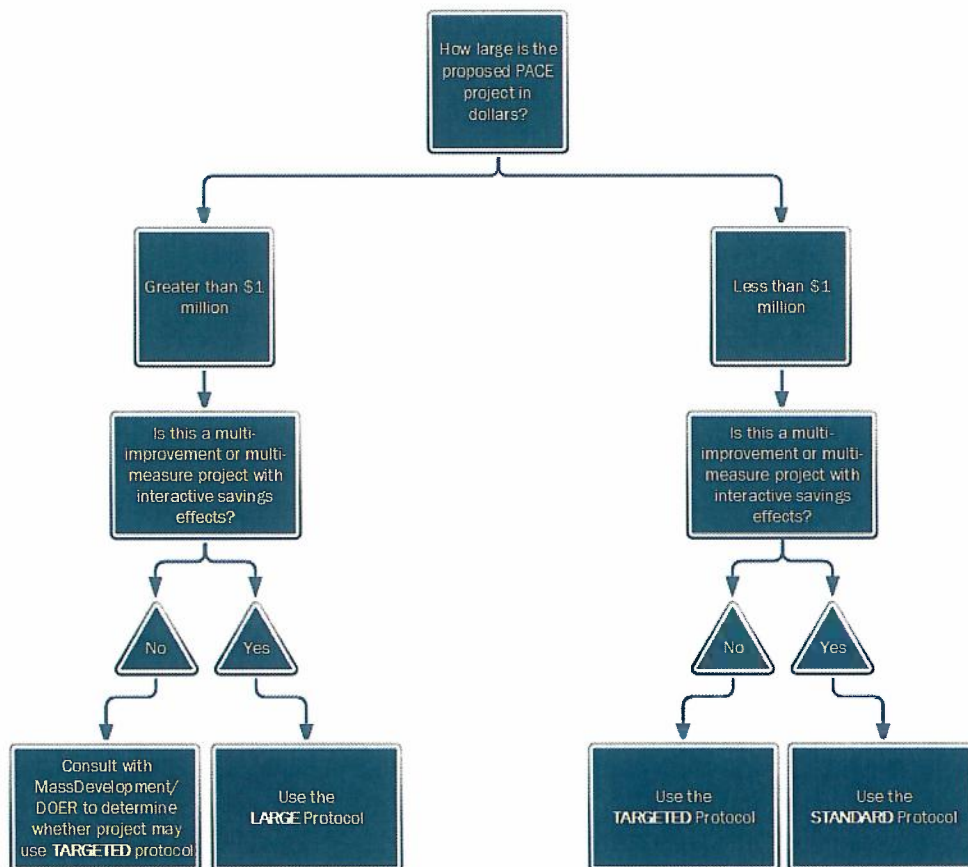
Determine ICP Protocol for Supporting the SIR Calculation

Commercial PACE Energy Consumption Reduction project applications shall be prepared using one of six ICP protocols. The specific protocol used will depend on project size, building type, and the nature of proposed Energy Improvements. Applicants should take the following steps to determine which ICP protocol to use.

Step 1: Commercial or Multifamily?

1. For Commercial or Industrial projects, use the **Commercial** version of the selected protocol.
2. For multifamily residential with five or more dwelling units, use the **Multifamily** version of the selected protocol.

Step 2: Which protocol should be used for a PACE project?



⁷ <http://www.eepformance.org/>

1. A PACE application with proposed Energy Improvements over \$1M must use the **large** protocol. However, any project can elect to use the **large** protocol if the PD determines that it is appropriate.
 - a. Exception: In cases where the proposed Energy Improvement(s) will not have interactive effects on other building systems but has a cost of over \$1,000,000, the project may use the **targeted** protocol, following consultation with and confirmation by DOER. For instance, a PACE project may consist solely of a geothermal heat pump which could make the targeted protocol appropriate. However, many Energy Improvements have interactive effects. For instance, window upgrades could result in lower heating needs which justify a smaller heating system.

2. PACE applications under \$1,000,000 will use either the **standard** or **targeted** ICP protocols.
 - a. A project may use the **targeted** protocol if the proposed Energy Improvement consists of a single measure or a smaller set of related Energy Consumption Reduction improvements that have limited or no interactive effects with other building systems.
 - b. If the project is too complex for the **targeted** protocol but not complex enough for the **large** protocol, the PD can use the **standard** protocol.

Building Type	Project Type	Criteria	ICP Protocol
Commercial ⁸	Large	>\$1,000,000 in project costs	Large Commercial v1.2a ⁹
	Standard	<\$1,000,000 in project costs; interactive	Standard Commercial v1.1a ¹⁰
	Targeted	<\$1,000,000 in project costs; limited or no interactive effects	Targeted Commercial v2.0 ¹¹
Multifamily ¹² (residential structure with 5 or more units)	Large	>\$1,000,000 in project costs	Large Multifamily v1.0a ¹³
	Standard	<\$1,000,000 in project costs; interactive	Standard Multifamily v1.1a ¹⁴
	Targeted	<\$1,000,000 in project costs; limited or no interactive effects	Targeted Multifamily v2.0 ¹⁵

A companion to the ICP protocol documents is the ICP Project Development Specification¹⁶ which can clarify details of specific ICP protocols.

⁸ <http://www.eepformance.org/commercial-protocols.html>

⁹ <http://www.eepformance.org/large-commercial.html>

¹⁰ <http://www.eepformance.org/standard-commercial.html>

¹¹ <http://www.eepformance.org/targeted-commercial.html>

¹² <http://www.eepformance.org/multifamily-protocols.html>

¹³ <http://www.eepformance.org/large-multifamily.html>

¹⁴ <http://www.eepformance.org/standard-multifamily.html>

¹⁵ <http://www.eepformance.org/targeted-multifamily.html>

¹⁶ <http://www.eepformance.org/project-development-specification.html>

Building Energy Use Baseline

All Energy Consumption Reduction retrofit projects shall include baseline calculations performed using ICP Part 2.0 “Baselining – Core Requirements” or Part 3.0 “Baselining – Rate Analysis, Demand, Load Profile, Interval Data” of the appropriate protocol.

If a building has not operated long enough to have consumption data in line with the ICP protocols or will be renovated substantially enough to trigger a change of use and/or the requirements to meet building code, the baseline should use current version of 780 CMR – Massachusetts State Building Code¹⁷ Energy Efficiency Amendments. Baseline conditions shall utilize the same primary fuel as the proposed system. Alternatively, the project may use the Mass Save[®] New Construction baseline¹⁸.

Savings Calculations

PACE applications must include projected savings calculated using a methodology based on project type. The methodology should be determined using this guidance. For a methodology to calculate savings from Energy Consumption Reduction Project, use ICP “Savings Calculation” of the selected protocol.

Gut Renovations

If an Energy Consumption Reduction project requires a gut renovation or includes a major change of use (e.g. from office to lab), the Project Developer should use 780 CMR – Massachusetts State Building Code Energy Efficiency Amendments as a baseline. Any savings above base code can offset the cost of investment for a project.

ii. Additional Application Requirements

Useful Life

The useful life of Energy Consumption Reduction Improvements should conform to the useful measure lives listed in the current Massachusetts Electronic Technical Reference Manual for Estimating Savings from Energy Efficiency Measures¹⁹ (e-TRM). The PD must clearly state the reason why any measure lives deviate from e-TRM guidelines in the supporting documentation for the PACE application. Useful life calculation should also be substantiated by relevant warranty information. If the useful life is greater than the maximum financing term of 20 years, the savings in the years beyond the financing term, up to 30 years, may be included in the SIR calculation.

Supporting Documentation

The PD must include studies or other documentation that show how savings calculations were determined. See the SIR workbook for more detailed requirements.

For projects that participate in Mass Save[®] programs that prepare technical assistance (TA) studies, the TA studies should be included as supporting documentation.

¹⁷ <https://www.mass.gov/massachusetts-state-building-code-780-cmr>

¹⁸ https://www.masssave.com/-/media/Files/PDFs/Business/MassSave_EnergyCodeBaseline_01312017.pdf

¹⁹ <https://www.masssavedata.com/Public/TechnicalReferenceLibrary>

All PACE applications must include evidence of engagement with energy efficiency programs offered by Mass Save® or MLPs. If the project has neither engaged nor participated in these incentive programs, the supporting documentation must state the reason.

The following types of building documentation may be used as part of a PACE application if it was completed no more than two years (24 months) prior to the date of application submission:

- American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) Level II energy audit
- ASHRAE Level III energy audit
- Building energy use baseline
- Technical assistance study prepared under a Mass Save® or MLP program
- Other Energy Improvement project documentation prepared for a Mass Save® or MLP program

Please submit the documentation as an attachment to the PACE application. DOER will review baseline and audit information on a case-by-case basis and evaluate in accordance with current PACE program guidelines.

E. Renewable Energy Improvement Projects

The following Energy Improvements are considered renewable in PACE Massachusetts:

- Massachusetts RPS Class I eligible technologies²⁰
- Massachusetts APS²¹ renewable thermal eligible technologies
- Energy storage technologies eligible for the SMART Massachusetts program²²

Please note: Renewable Energy Improvements must be owned by the benefitted property owner. Power purchase agreements and equipment leases are not eligible for PACE Massachusetts financing. Always refer to the latest APS and RPS Class I Regulations posted on the MA DOER web site.²³

²⁰ <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr14.pdf>

²¹ <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr16.pdf>

²² For the purposes of Massachusetts PACE, energy storage is defined as a commercially available technology that can absorb energy, store it for a period, and thereafter dispatch the energy.

²³ <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-and-aps-statutes-and-regulations.html>

As of April 2020, the following fuels, energy resources and/or technologies are eligible for financing under PACE:

RPS Class I	APS Renewable Thermal	Other
Solar photovoltaic	Air Source Heat Pumps	Energy Storage ²⁴
Solar thermal electric	Ground Source Heat Pumps	
Wind energy	Solar Hot Water	
Small hydropower	Solar Hot Air	
Landfill methane and anaerobic digester gas	Eligible Biomass	
Marine or hydrokinetic energy		
Geothermal energy		
Eligible biomass fuel		

Savings Calculations

For Renewable Energy Improvements, the PACE Massachusetts application must include:

- 1) A description of the proposed renewable electric, renewable thermal energy, or paired storage system
- 2) Identification and evaluation of site/building suitability
- 3) Identification of metering specifications (locations, # of meters, etc.)
- 4) Identification of the electricity and/or fuel rate structure
- 5) Assessment of the expected system performance and maintenance requirements
- 6) Comparison of the expected system performance against the baseline energy consumption of the commercial or industrial property
- 7) Identification of performance guarantees and calculation of useful life of Renewable Energy Improvements
- 8) Operational information for storage projects:
 - a. Application must contain information about the proposed dispatch strategy for storage systems, including how the storage will be dispatched during times of peak electric grid load.
 - b. Application must propose the annual number of full charge and discharge cycles for the energy storage system.
- 9) Assessment of total project capital expenditures
- 10) Analysis of building energy savings, including assumed electricity/fuel rate escalations

When paired with a Renewable Energy Improvement, an energy storage system may follow a dispatch strategy that does not conform to the strict operational standard outlined in the section about calculating savings for Energy Consumption Reduction Improvement measures. An energy storage system can be considered a part of a renewable measure if the SIR of the whole system is greater than one.

²⁴ For the purposes of Massachusetts PACE, energy storage is defined as a commercially available technology that can absorb energy, store it for a period, and thereafter dispatch it. Eligible technologies can store electricity or thermal energy but cannot store fossil fuels on-site.

Useful life

The useful life of Renewable Energy Improvements is determined by the product manufacturer or PD. All relevant product documentation (e.g. warranties or cut sheets) for all components of the Renewable Energy Improvements must be submitted in the PACE Massachusetts application. If the useful life is greater than the maximum financing term of 20 years, the savings in the years past the financing term (up to 30 years) may be included.

Note on Resiliency and Microgrids

PACE Massachusetts will consider all equipment that is required for a PACE project to be eligible for financing, provided the overall project meets the SIR test. For example, for a project that requires microgrid controls such as black start switch gears, main transfer switches and/or master controllers, the resiliency equipment may be included in the investment side of the SIR calculation and financed through the PACE loan.

If the PD can quantify and substantiate avoided costs associated with resiliency, they can be included in the savings for the SIR calculation. For example, if the PD can provide a quote from an insurance company that use of a battery storage system as designed will decrease insurance premiums, that reduction may be included.

F. Gas Line Extensions

Construction of an extension of an existing natural gas distribution line to a qualifying commercial or industrial property may be financed through PACE Massachusetts, provided the natural gas service displaces fuel oil, electricity, or other fossil-fuel energy sources. Displacement of renewable energy systems is not allowed under PACE Massachusetts.

Savings Calculations

The savings associated in gas line extension projects must come from accompanying Energy Consumption Reduction projects. Costs for natural gas line extensions will be calculated as an investment of the SIR, along with the cost of new gas end-use equipment. The net energy displaced by use of efficient gas equipment should be calculated as savings in the same manner as Energy Consumption Reduction Improvements, outlined in PACE Massachusetts Guideline [Appendix B, section 4\(C\)](#). See SIR workbook tool for more information.

PACE applications for gas line extensions must include evidence that Energy Consumption Reduction and Renewable Energy Improvements were considered. Gas line extension projects are subject to the SIR test so the costs must be offset by substantiated savings

The following components of a gas line extension project are eligible for financing through PACE Massachusetts:

- Extension of an existing natural gas distribution line (new gas mains are not eligible)
- Service piping from the gas distribution line to the building gas meter(s)
- Natural gas meter(s)

Useful life

The useful life of gas line extension improvements will be determined by the lesser of the length of the contract between the customer and the natural gas Local Distribution Company (LDC,) or 10 years. Supporting documentation from the LDC to substantiate the length of the contract must be provided in the application.

Supporting Documentation

The following information must be provided in a PACE application to substantiate the costs and savings of a natural gas line extension:

- Current fuel used (including quantity and type)
- Current and proposed number of meters
- Manufacturers' equipment specifications for, and quantity of, all new natural gas end use equipment
- Assessment of the expected performance of all end use equipment as a system and associated maintenance requirements
- Any identified performance guarantees and useful life of the equipment
- Contributions in Aid of Construction documentation from the LDC
- The Energy Consumption Reduction and Renewable Energy Improvements that were considered and a statement of why considered Improvements were not implemented.

G. Design, Construction, Operation

Technical approval will require evidence of a sustainable plan for operations, maintenance, and monitoring of the Energy Improvements. ICP Protocols for "Design, Construction and Verification" and "Operations, Maintenance, and Monitoring" are the preferred protocols for this documentation in Energy Consumption Reduction Improvements, but DOER may consider other protocols if written justification is provided by the PD.

Commissioning of all Energy Improvements is required under PACE Massachusetts, and costs thereof are eligible for financing.

H. Measurement and Verification (M&V)

All PACE projects that receive PACE Massachusetts financing shall report building energy use annually through ENERGY STAR Portfolio Manager²⁵ for as long as the PACE lien is active. This information shall be shared with the DOER ENERGY STAR Portfolio Manager account, and energy consumption data will be available publicly.

All Energy Consumption Reduction Improvement projects are encouraged, but not required, to undertake the detailed measurement and verification requirements of ICP "Measurement and Verification". Costs for detailed measurement and verification of Energy Improvements may be included as part of the PACE financing.

²⁵ <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>

DOER reserves the right to perform measurement and verification activities on any PACE project for the purpose of program evaluation for up to 24 months while a PACE lien is active. DOER will be responsible for costs associated with its own evaluation of a project. DOER will coordinate any additional M&V activities with the building owner.

I. Project Developer Affidavit

The PD must include written certification of the veracity of the project details in the application using the PACE Massachusetts Project Developer Affidavit ([Appendix K](#)).

APPENDIX C: FINANCIAL GUIDELINES

The financial guidelines describe the financing model that PACE Massachusetts will employ and all the steps an applicant must follow to access financing under the program.



1. Open Market Third Party Financing Structure

An open market, third party financing structure is employed for PACE Massachusetts to create a robust market that attracts a diverse range of capital providers including banks, credit unions and PACE focused capital providers. The open market third party financing structure allows different paths to financing for PACE projects and it allows a property owner to select a capital provider that best suits the owner's needs, and to select them at any time during the process.

For a property owner with a proposed PACE project that has not yet selected a capital provider, MassDevelopment may assist with solicitation of proposals from capital providers. Proposals allow a property owner to see different financing terms and interest rates. Property owner(s) will evaluate capital provider proposals and select a capital provider based on their own criteria. MassDevelopment will not make capital provider selections.

PACE Massachusetts requires capital providers to register with MassDevelopment before financing PACE projects in Massachusetts. Entities interested in becoming a PACE Massachusetts registered capital provider should respond to the open Request for Information for Capital Providers for the Commercial Property Assessed Clean Energy Massachusetts Program ("RFI") ([Capital Provider RFI](#)). If a capital provider provides the required RFI information, they may be registered as an interested PACE Massachusetts capital provider. Registered capital providers may receive information regarding PACE Massachusetts project financing opportunities from property owners or MassDevelopment. Property owners may access a central registry of potential capital providers. The list of registered capital providers is maintained by MassDevelopment and available upon request to a property owner pursuing PACE financing.

Please note MassDevelopment makes no assurances or certifications about registered capital providers.

2. Underwriting Standards

The PACE Massachusetts minimum financial underwriting standards required for projects are described below. The guideline standards will govern the terms and conditions under which financing for PACE Massachusetts projects will be made available. Additional underwriting standards will be required by capital providers.

In order for projects to pursue financing under PACE Massachusetts, the property owner must provide three (3) years of financial statements and certify in its application that:

- It is current with respect to mortgage loans and tax assessments, there have been no significant delinquencies in the recent past, and it is not currently and has not been in the prior seven years in a bankruptcy proceeding. See [Appendix A](#) for further details.
- It will have met the requirements in the technical standards to receive DOER approval. See [Appendix B](#) for further details.

- The PACE assessment financing term will not exceed the lesser of: (1) the useful life of the longest-lived asset of the commercial energy improvements comprising the commercial PACE project financed by such betterment assessment; or (2) twenty years.

Property owners must also provide three (3) years of financial statements, or if owned less than three (3) years financial statements from the date they began ownership, with their application.

3. Municipal Opt-In Provision

PACE Massachusetts is available to property owners located in all municipalities within the Commonwealth, subject to the applicable municipality's initial, one time election to participate in the program. A municipality must authorize its participation in PACE Massachusetts through adoption of the PACE Resolution by the appropriate municipal process. Municipalities are not responsible for and do not authorize participation in PACE by each project. MassDevelopment will coordinate and support the efforts to assist each municipality that wishes to opt-in to PACE Massachusetts. Municipalities interested in PACE should contact MassDevelopment directly to discuss the PACE Massachusetts program. To facilitate adoption, a model template municipal opt-in resolution is included as [Appendix J](#).

Entities desiring to use PACE Massachusetts are urged to contact MassDevelopment early to determine whether the municipality in which the project is located already has elected to participate in the program. If a municipality has not already been introduced to PACE Massachusetts, MassDevelopment will initiate discussions with them to do so.

4. Program Fees

PACE Massachusetts program costs that will be charged to participants are to cover the administration of the program. A program administration and annual servicing fee schedule, set by MassDevelopment, will be applicable and charged to each project. The program administration and annual servicing fee schedule is available from MassDevelopment upon request and is subject to change. Such fees will be included in the amount of the PACE betterment assessment. Prior to the closing of the PACE financing, MassDevelopment will provide to the property owner in writing information regarding the proposed financing, including the aggregate amount of the PACE betterment assessment, the payment schedule, the applicable interest rate, and a description of all applicable fees.

5. Interest Rates

The applicable interest rate and capital provider fees (if any), and any capital provider imposed fees and financing terms will be established by the capital provider selected by the property owner, but must be commercially reasonable and incorporated in the PACE Massachusetts Financing Agreement.

6. Financing Agreement

The PACE Massachusetts Financing Agreement must be used by all capital providers for PACE Massachusetts financing. The form of Agreement is included as [Appendix F](#).

7. Application Process

The following documents will be used in each PACE Massachusetts transaction:

- Project Application ([Appendix A](#))
- Notice of Proposed Betterment Assessment and Request for Mortgage Holder Consent ([Appendix D](#))
- Mortgage Holder Consent to PACE Betterment Assessment ([Appendix E](#))
- PACE Massachusetts Financing Agreement ([Appendix F](#))
- Municipal Assessment and Assignment Agreement ([Appendix G](#))
- Owner Disclosure Statement and Agreement ([Appendix H](#))
- Capital Provider Assignment Agreement ([Appendix I](#))
- Project Developer Affidavit Form ([Appendix K](#))

The municipality in which the property is located must elect, or have already elected, to participate in PACE Massachusetts. This is only done one time by the municipality by adopting the PACE Resolution through the appropriate municipal process (see [Appendix C](#) and [Appendix J](#)).

8. Application Steps

Below are the steps that a PACE Massachusetts applicant follows once a project is ready for review. The first step helps an applicant determine if they are eligible before investing additional time and resources to compile the data for necessary for technical submission approval. Applicants should take special note of each step as some may need special attention throughout the development and financing of a PACE project. The information provided is intended to act as a guide for participants and to help expedite financing. All projects are different and applicants may go through steps in a different succession. We encourage participants to contact and start early discussions with MassDevelopment if considering PACE Massachusetts financing. Property owners may select and begin working with a Capital provider at any point in their energy project development or the application process.

A. Project Application

First, an interested property owner will submit a completed PACE Massachusetts project application ([see Appendix A](#)) with a \$250 fee to MassDevelopment. The application requires basic information about the proposed project in order to confirm the eligibility of a particular property/project for

participation in PACE Massachusetts. MassDevelopment or DOER may contact the property owner to discuss the application.

B. Technical Review

If a project application has been positively reviewed and accepted, MassDevelopment and DOER will inform the applicant and invite them to submit the remaining required data for technical review (see [Appendix B, section 1](#)) and to pursue selection of a capital provider for the financing (if a capital provider has not already been selected).

C. Mortgage Holder Consent

If there is an existing mortgage on the property, the consent of each mortgage holder will be required. Mortgage holder(s) will be asked by the property owner to consent to a PACE Massachusetts financing through a standard Notice of Proposed Betterment Assessment and Request for Mortgage Holder Consent form ([Appendix D](#)). Each mortgage holder will be required to execute and return a Mortgage Holder Consent to PACE Betterment Assessment in the form of [Appendix E](#). If requested, MassDevelopment can work with the property owner to notify mortgage holder(s) of the consent requirement and assist in obtaining it (if possible).

D. Financing Agreement between Property Owner and Capital provider

The capital provider selected by the property owner will enter into a financing agreement with the owner to finance the project. The form of the PACE Massachusetts financing agreement is included as Appendix F. Each capital provider will determine the interest rate, term, and any fees they require. Capital providers will use their own underwriting criteria in determining whether or not to finance a PACE Massachusetts project.

E. Betterment Assessment and Repayment

As part of closing of the financing, MassDevelopment will facilitate the levying of a PACE Massachusetts betterment assessment on the property and the recording of a corresponding lien on the property by the applicable municipality. Billing and collection of the PACE Massachusetts betterment assessment will be done via the municipality's property tax billing and collection process. The municipality will bill the PACE Massachusetts betterment assessment in the same manner as it bills its real property taxes and other municipal betterment assessments. Payment of the PACE Massachusetts betterment assessment will be synchronized with the municipality's existing tax collection schedule. The PACE Massachusetts betterment assessment will be listed on the municipality's property tax bill as a separate line item and will be due to the municipality on same date as the other items. Once received, the municipality will be required to disburse those funds to MassDevelopment's designated servicer for disbursement to the project's capital provider. Depending on the date that a PACE Massachusetts financing has closed, it may not be possible to place the PACE Massachusetts betterment assessment on the property tax bill until the following cycle. Where such a delay occurs, the interest payments that the property tax owner would have paid will be capitalized in the principal amount.

MassDevelopment will work with each municipality to understand its existing or preferred procedure for billing and collection of the PACE Massachusetts betterment assessments to ensure the procedure employed by PACE Massachusetts requires no undue effort by the municipality. The form of Municipal Assessment and Assignment agreement is included as [Appendix D](#).

F. Security

Each PACE Massachusetts financing will be secured by a non-accelerating PACE betterment assessment levied on the property and a corresponding lien placed on the property by the applicable municipality. As previously noted, a prerequisite for the placement of the lien and for participation in PACE Massachusetts is the prior written consent of all existing mortgage holders to the levying of the PACE betterment assessment and the placement of such lien. The lien will be assigned by the municipality to MassDevelopment, and by MassDevelopment to the applicable capital provider. The lien will be senior to other private mortgage liens or encumbrances on the property, except a lien for municipal property taxes. This means that the PACE Massachusetts betterment assessment lien will be senior to and have priority over all private mortgage liens on the property (if any), and be junior in priority only to a municipal tax lien. The PACE Massachusetts betterment assessment lien can be enforced in the same manner as any private party holding a lien on real property. Under PACE Massachusetts, the PACE betterment assessment will run with the property. If a property is sold and the PACE betterment assessment has not fully amortized at the time of sale, the balance of the PACE betterment assessment will remain on the property secured by the lien and the obligation to pay the PACE betterment assessment automatically will transfer to the next property owner.

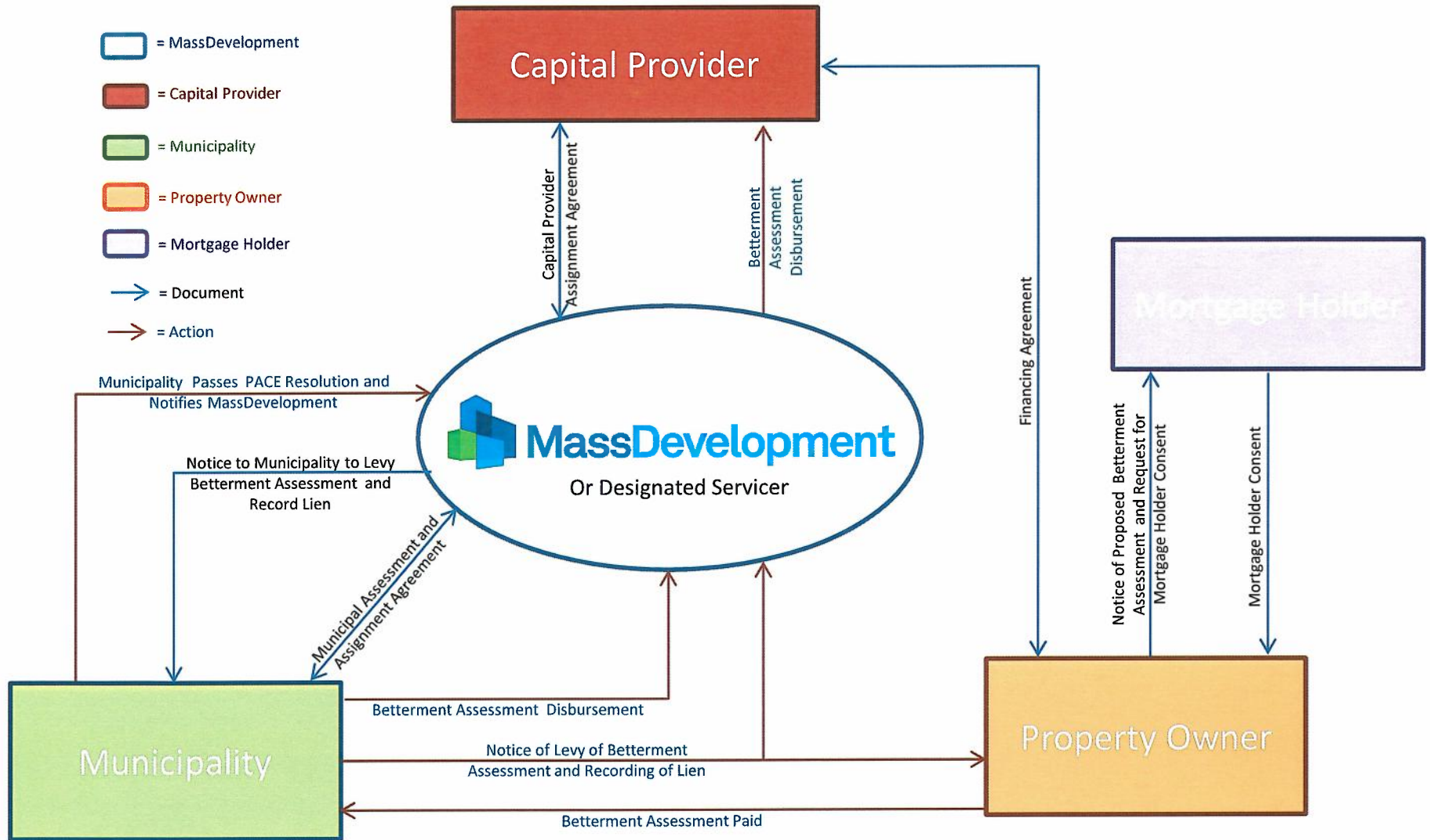
G. Owner Disclosure Statement and Agreement

Each property owner will be required to sign a PACE Massachusetts Owner Disclosure Statement and Agreement ([Appendix H](#)). This document provides for disclosure to, acknowledgement and agreement from each property owner of the risks and characteristics of PACE Massachusetts as set forth in the disclosure statement and agreement.

H. Capital provider Assignment Agreement

Each capital provider will be required to sign a PACE Massachusetts Capital provider Assignment Agreement ([Appendix I](#)). This document allows MassDevelopment to assign the PACE lien to the capital provider as security for the financing subject to the terms of the financing agreement.

Commercial PACE Structure



APPENDIX D: REQUEST FOR MORTGAGE HOLDER CONSENT TO PROPOSED PACE BETTERMENT ASSESSMENT

This notice advises the existing mortgage holder that the property owner wishes to install energy improvements using financing provided through the PACE Massachusetts program and the property owner requests consent from any existing mortgage holder.

**PACE MASSACHUSETTS
REQUEST FOR MORTGAGE HOLDER CONSENT
TO PROPOSED PACE BETTERMENT ASSESSMENT AND LIEN**

Date:

Name of Mortgage Holder:

Property Address:

Property Owner/Borrower:

Municipality:

Loan Number:

Please be advised that the owner/borrower listed above (the "Owner") owns the property located at the address above (the "Property"). This notice and request for consent is being provided to you, as the holder of a mortgage lien on the Property.

NOTICE OF PROPOSED PARTICIPATION IN PACE MASSACHUSETTS

The Owner wishes to participate in the Massachusetts Commercial Property Assessed Clean Energy Program ("PACE Massachusetts" or the "Program"), authorized, pursuant to M.G.L.c. 23M, as amended (the "PACE Act"), and established, in consultation with the Massachusetts Department of Energy Resources ("DOER"), and administered by the Massachusetts Development Finance Agency ("MassDevelopment"). A copy of the PACE Act is attached as **Exhibit A**.

Through PACE Massachusetts, the owners of commercial, industrial, and multifamily properties (five or more units) can obtain financing to renovate their properties to reduce energy consumption, install renewable energy systems, or bring natural gas service to their properties ("commercial energy improvements"). Under PACE Massachusetts, commercial energy improvements are eligible for financing, provided that the commercial energy improvements are permanently affixed to the property (the "benefitted property").

Under the Program, the financing of the commercial energy improvements is repaid through a betterment assessment (a "PACE betterment assessment") levied upon the benefitted property by the municipality in which the benefitted property is located. Municipal betterment assessments have long been used by cities and towns to finance improvements to real property that meet a public policy objective, such as the installation of sidewalks and sewer systems. Betterment assessments, including PACE betterment assessments, are levied on the benefitted property and collected in the same manner as municipal property taxes, including, in the event of a default or delinquency, with respect to any penalties, fees, and lien priorities.

The Owner wishes to undertake commercial energy improvements to the Property and to finance such improvements through PACE Massachusetts. Through providing this notice to you, the Owner is hereby requesting your consent to its participation in PACE Massachusetts, as described below.

QUALIFYING PACE PROJECTS

For a project to qualify for financing under the Program, the following basic criteria must be met:

- The property is located in a municipality that has opted to participate in the Program and has entered into a Municipal Assessment and Assignment Agreement with MassDevelopment (the "Municipal Agreement"), which governs the municipality's participation in the Program. Under the Municipal Agreement, the municipality is required to levy a PACE betterment assessment and impose a PACE betterment assessment lien (a "PACE Lien") on each benefitted property located in the municipality, in an amount determined by MassDevelopment to be needed to repay the PACE financing. The municipality also is required to collect the PACE betterment assessment payments and pay them over to MassDevelopment, for payment to the provider of the financing (the "PACE credit provider").
- The property is a commercial, industrial, or multi-family (five or more units) property.
- The proposed project consists of commercial energy improvements that meet the technical eligibility requirements established by DOER, and DOER has reviewed and approved the project for participation in PACE Massachusetts.
- The proposed commercial energy improvements are permanently affixed to the property.
- All municipal property taxes and any other betterment assessments levied on the property have been paid to date.
- The property owner receives consent from all existing mortgage holders.

CONSIDERATIONS FOR PROVIDING CONSENT

- ***Improvements financed through PACE Massachusetts are expected to reduce building operating costs.*** Under the Program's technical guidelines, a proposed project must have a Savings to Investment Ratio (SIR) greater than one, meaning that the energy cost savings from the commercial energy improvements over the useful life of the improvements exceeds the costs of the improvements (which costs include financing costs and associated fees), as reflected in DOER's approval of the project.
- ***PACE betterment assessments do not accelerate.*** In the event a mortgage holder were to foreclose on the benefitted property, only the amount of the PACE betterment assessment currently due and/or in arrears would be required to be satisfied as a senior lien on the benefitted property. In the event of a sale or transfer of the benefitted property, PACE betterment assessments run with the property and transfer to the new property owner.
- ***Improvements financed through PACE Massachusetts generally improve properties, often reducing maintenance and repair costs.*** In addition, energy measures improve the efficiency, health, and comfort of a building, making it more attractive to tenants and future owners.

WHAT YOU SHOULD KNOW

The Owner is seeking to participate in PACE Massachusetts to obtain financing for the proposed commercial energy improvements to the Property outlined in Exhibit B. If the proposed commercial energy improvements are ultimately approved for financing under the Program, a PACE betterment assessment would be levied on the Property and a PACE Lien recorded against the Property pursuant to the Municipal Agreement. Under the PACE Act, the PACE Lien, subject to the consent of existing mortgage holders, will take precedence over all other liens or encumbrances on the Property, except a lien of the Municipality for real property taxes. The PACE Lien will be assigned by the Municipality to

MassDevelopment, and MassDevelopment expects to further assign the PACE Lien as security for the financing to the PACE credit provider. A PACE Lien can be enforced in the same manner as any private party holding a lien on real property, including foreclosure in a manner consistent with the rights afforded a mortgagee. However, a PACE betterment assessment cannot be accelerated. The expected total amount of the PACE betterment assessment and the proposed payment schedule are set forth in **Exhibit C**.

PURPOSE OF THIS NOTICE

As required by the PACE Act, the Owner is sending this Request for Consent to Proposed PACE Betterment Assessment and Lien to you, as Mortgage Holder, to (i) provide notice of the Owner's proposed participation in PACE Massachusetts, (ii) inform you that if the proposed commercial energy improvements to the Property are ultimately approved for financing under PACE Massachusetts, a PACE betterment assessment will be levied upon the Property and collected in installments on the property tax bill in the same manner as and subject to the same penalties, fees and lien priorities as real property taxes assessed against the Property by the Municipality, (iii) declare the Owner's agreement to pay on a timely basis both the existing obligations secured by the Property (including the Loan) and the proposed PACE betterment assessment, (iv) request your consent, as the holder of a mortgage on the Property, to the Owner's participation in PACE Massachusetts, and to the levying of a PACE betterment assessment and the imposition of a PACE Lien on the Property, pursuant to the Municipal Agreement as described above, and (v) obtain your confirmation that the levying of the PACE betterment assessment and the imposition of the PACE Lien will not trigger a default or an event of default with respect to the Loan, or the exercise of any remedies under the documents and security instruments governing the Loan.

REQUEST FOR EXECUTION AND RETURN OF CONSENT

The Owner hereby confirms its intention to pay on a timely basis all existing obligations secured by liens on the Property, including the Loan, and the proposed PACE betterment assessment. Accordingly, the Owner hereby requests that you execute the attached Mortgage Holder Consent to Proposed PACE Betterment Assessment and Lien and return it to the undersigned at your earliest convenience.

Very truly yours,

PROPERTY OWNER NAME: _____

By: (signature): _____

MAILING ADDRESS: _____

EXHIBIT A
PACE ACT, M.G.L. c.23M

EXHIBIT B

DESCRIPTION OF PROPOSED COMMERCIAL ENGERGY IMPROVEMENTS

(Attach DOER Approval Letter)

EXHIBIT C
PAYMENT SCHEDULE

ACTIVE 6250788v6

APPENDIX E: MORTGAGE HOLDER CONSENT TO PACE BETTERMENT ASSESSMENT

This form acknowledges that the property owner intends to install energy improvements using financing provided through the PACE Massachusetts program and the mortgage holder agrees to the PACE Betterment Assessment. Each existing mortgage holder will be required to provide consent by signing this form.



**PACE MASSACHUSETTS
MORTGAGE HOLDER CONSENT TO PACE BETTERMENT ASSESSMENT AND LIEN**

Date:

Name of Mortgage Holder:

Property Address:

Property Owner/Borrower:

Municipality:

Loan Number:

This Mortgage Holder Consent to PACE Betterment Assessment and Lien (this "Consent") is given by the undersigned entity (the "Mortgage Holder") with respect to the above-referenced loan (the "Loan"), which is secured by a mortgage lien granted to the Mortgage Holder by the above-referenced property owner (the "Owner") on the above-referenced property (the "Property").

RECITALS

A. The Lender is in receipt of a Request for Mortgage Holder Consent to Proposed PACE Betterment Assessment and Lien (the "Notice") from the Owner stating that the Owner proposes to finance the installation on the Property of certain commercial energy improvements that will be permanently fixed to the Property (the "Qualifying Improvements") through participation in the Massachusetts Commercial Property Assessed Clean Energy Program ("PACE Massachusetts"). PACE Massachusetts is administered by the Massachusetts Development Finance Agency ("MassDevelopment").

B. The Mortgage Holder understands that as a result of the Owner's participation in PACE Massachusetts, the PACE betterment assessment described in the Notice will be levied on the Property and a PACE betterment assessment lien (the "PACE Lien") will be placed on the Property by the above-referenced Municipality, and that the PACE betterment assessment will be collected in installments on the property tax bill issued by the Municipality, in the same manner as and subject to the same penalties, fees and lien priorities as real property taxes assessed against the Property by the Municipality. The PACE Lien will be assigned by the Municipality to MassDevelopment, and MassDevelopment expects to further assign the PACE Lien as security for the financing. A PACE Lien can be enforced in the same manner as any private party holding a lien on real property, including a mortgagee.

CONSENT

The undersigned hereby represents that it is authorized to execute this Consent on behalf of the Mortgage Holder. The Mortgage Holder hereby confirms, acknowledges and agrees:

A. The Mortgage Holder is in receipt of the Notice from the Owner stating that the Owner proposes to finance Qualifying Improvements that will be permanently fixed to the Property through participation in PACE Massachusetts.

B. The Lender understands that as a result of the Owner's participation in PACE Massachusetts, (i) the PACE betterment assessment described in the Notice will be levied on the Property by the Municipality, and that the PACE betterment assessment will be collected in installments on the property tax bill issued by the Municipality in the same manner as and subject to the same

penalties, fees and lien priorities as real property taxes assessed against the Property by the Municipality, (ii) a PACE Lien will be placed on the Property by the Municipality, which lien will be assigned by the Municipality to MassDevelopment, and that MassDevelopment expects to further assign the PACE Lien to the provider of the financing (the "PACE Capital Provider"), as security for the financing, and (iii) a PACE betterment assessment can be enforced in the same manner as any private party holding a lien on real property, including a mortgagee.

C. The Mortgage Holder consents to the levying of the PACE betterment assessment and the imposition of the PACE Lien on the Property by the Municipality.

D. The Mortgage Holder agrees that the levying of the PACE betterment assessment and the imposition of the PACE Lien on the Property will not constitute a default or an event of default by the Owner with respect to the Loan, or trigger the exercise of any remedies under the documents and security instruments governing the Loan.

E. The Mortgage Holder hereby acknowledges that the Owner, MassDevelopment, the Municipality and the applicable PACE Capital Provider will rely on the representations and consent of the Mortgage Holder as set forth in this Consent.

[NAME OF MORTGAGE HOLDER]

By: _____

Name:

Title:

Date:

ACTIVE 6250797v4

APPENDIX F: FORM OF FINANCING AGREEMENT

Each capital provider must use the attached form of PACE Massachusetts financing agreement for financings through the PACE Massachusetts program.

FORM OF PACE MASSACHUSETTS FINANCING AGREEMENT
FINANCING AGREEMENT

This Financing Agreement (this "Agreement") is made and entered into on _____, 20__, by _____, a _____ duly organized and validly existing under the laws of _____ [and qualified to do business in The Commonwealth of Massachusetts (the "Commonwealth")], with a principal office at _____, Massachusetts (the "Owner") and _____, a _____, with an address at _____ (the "Capital Provider").

RECITALS

WHEREAS, the Owner wishes to install commercial energy improvements to the property owned by the Owner (the "Project") and located in the municipality identified on **Exhibit A** attached hereto (the "Municipality"), and described on **Exhibit A** attached hereto (the "Property"), which will provide a special benefit to the Property, using financing provided through the Massachusetts Commercial Property Assessed Clean Energy Program ("PACE Massachusetts" or the "Program"), established pursuant to M.G.L. Ch. 23M, as amended (the "PACE Act"); and

WHEREAS, in accordance with the PACE Act and the technical guidelines developed thereunder by the Massachusetts Department of Energy Resources ("DOER"), DOER has approved the commercial energy improvements to the Property proposed by the Owner and described in **Exhibit B** (the "Improvements") and determined that such Improvements constitute qualifying commercial energy improvements as defined in the PACE Act; and

WHEREAS, in accordance with the PACE Act and the financial underwriting guidelines developed thereunder by Massachusetts Development Finance Agency ("MassDevelopment"), as the administrator of PACE Massachusetts, MassDevelopment has determined that the financing of the Improvements complies with MassDevelopment's guidelines to permit the Owner's participation in PACE Massachusetts and the financing of the Improvements through the Program; and

WHEREAS, the Owner wishes to obtain financing for the costs of the Improvements through participation in PACE Massachusetts by entering into this Agreement with the Capital Provider; and

WHEREAS, the Owner has consented to the filing of a betterment assessment and corresponding lien on the Property by the Municipality (the "PACE Betterment Assessment"), and the assignment of the same from the Municipality to MassDevelopment, and from MassDevelopment to the Capital Provider, as security for the financing; and

WHEREAS, the Capital Provider is willing to provide the financing for the costs of the Improvements (the "Financing"), subject to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. INCORPORATION OF RECITALS AND APPENDICES. The recitals stated above are true and correct and, together with the appendices attached hereto, are incorporated herein as a material part of this Agreement.

Section 2. DEFINITIONS. In addition to the terms defined in the Recitals above, as used in this Agreement, the following terms shall have the following meanings.

Administrative Costs means, collectively, (i) MassDevelopment's Program Origination Fee, (ii) the costs of recording of the PACE Lien and any assignments thereof, (iii) the fees of DOER, if any, in connection with its review and approval of the Improvements for financing through the Program, (iv) the fees and costs of MassDevelopment's counsel, (v) Collection Costs, and (iv) any other fees or costs listed in **Exhibit A**, all in the amounts set forth in **Exhibit A**.

Application means the application and related documentation and information filed by the Owner with MassDevelopment for participation in PACE Massachusetts.

Approval Letter means the letter from DOER to the Owner approving the Improvements for financing through the Program and setting forth the Approved Amount and any additional Project requirements.

Approved Amount means the total cost of the Improvements, as approved by DOER and set forth in the Approval Letter, together with all costs relating to the closing of the Financing and capitalized interest, if any, as set forth on **Exhibit A**.

Assessment Installment Payments means the [semi-annual/quarterly] installments of the PACE Betterment Assessment levied by the Municipality and included on the property tax bill for the Property, including interest as set forth in **Exhibit C**.

Budget has the meaning set forth in Section 4(V).

Business Day means any day which is not (i) a Saturday, or (ii) a Sunday, or (iii) another day of the year on which banks in Boston, Massachusetts are required or authorized by law or by executive order to close.

Collection Costs means the annual costs associated with collection of the Assessment Installment Payments, which costs may include paying agent fees and administrative expenses incurred directly and indirectly by the Municipality, MassDevelopment, the Servicer, and their respective agents.

Contract means, collectively, each contract and/or agreement between the Owner and the Contractor.

Contractor means, collectively, all contractors, including subcontractors, engineers, designers, materialmen, vendors and suppliers engaged by the Owner to provide, design, construct, deliver and/or install the Improvements.

Construction Representative has the meaning set forth in **Exhibit D**.

Disbursement Amount means the costs of the acquisition, construction, and installation of the Improvements to be disbursed to the Owner, or directly to a Contractor, as evidenced by a binding written invoice provided by such Contractor to the Owner, a copy of which has been received by the Capital Provider, which in the aggregate shall not exceed the Approved Amount.

Effective Date means the Effective Date set forth in **Exhibit A**.

Environmental Laws means all applicable federal, state and local laws, codes, ordinances, rules, regulations and interpretations now or in the future existing, and all applicable orders of administrative agencies including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act of 1976, the Superfund Amendments and Reauthorization Act of 1986, and Massachusetts General Laws, Chapters 21C and 21E (as each may be amended from time to time), and all other Legal Requirements relating to the environment, health, safety, sanitation, underground storage tanks and the "release or threat of release" of Hazardous Materials.

“Governmental Authority” means any federal, state, local or other governmental or administrative body, instrumentality, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Hazardous Materials” means and includes asbestos, flammable materials, explosives, radioactive or nuclear substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, radon gas, urea formaldehyde, chemicals, gases, solvents, pollutants or contaminants that could be a detriment or pose a danger to the environment or to the health or safety of any person, and any other pollution, contamination or hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any Environmental Laws.

“Lease” means the [Lease Agreement, dated as of _____, between _____, as lessor, and the Owner, as lessee, relating to the Owner’s lease of the Property.]

“Legal Requirements” means all statutes, ordinances, by-laws, codes, rules, rulings, regulations, restrictions, orders, judgments, decrees, writs, judicial or administrative interpretations and injunctions (including, without limitation, all applicable building, health code, zoning, subdivision and other land use statutes, ordinances, by-laws, codes, rules and regulations), whether now or hereafter enacted, promulgated or issued by any Governmental Authority affecting the Owner, the Property, or any of the Improvements, or the ownership, construction, development, maintenance, management, repair, use, occupancy, possession or operation of any of the foregoing.

“Municipal Agreement” means the PACE Massachusetts Municipal Assessment and Assignment Agreement, dated as of _____, 20__, between the Municipality and MassDevelopment.

“PACE Betterment Assessment” means the non-ad valorem assessment levied by the Municipality on the Property in accordance with the Municipal Agreement and pursuant to the PACE Act, as more particularly described in Section 3 hereof.

“PACE Lien” means the PACE Betterment Assessment Statement filed by the Municipality on the Property, as directed by MassDevelopment in accordance with the provisions of the Municipal Agreement.

“Permits” has the meaning set forth in Section 4(W).

“Permitted Transferee” means a “qualified institutional buyer,” as such term is defined in Rule 144A of the Securities and Exchange Commission under the Securities Act of 1933, or an “accredited investor” as that term is defined 17 C.F.R. §230.501(a) (excluding clauses (a)(5) and (a)(6) thereof).

“Plans” has the meaning set forth in Section 4(V).

“Program Administrator” means, collectively, MassDevelopment and its designated agents, including the Servicer.

“Registry” means the Registry of Deeds or Registry District of the Land Court identified in **Exhibit A**.

“Servicer” means the Servicer designated in **Exhibit A**, engaged by MassDevelopment to provide certain Program administration services.

“Submittal Package” means, collectively, the Application, and all filings, documents, certifications, consents, contracts and other information required to be provided to MassDevelopment or DOER in connection with the Application.

“Tax Year” means the period from July 1 through the following June 30 of each year.

Section 3. PACE BETTERMENT ASSESSMENT AND LIEN.

The Owner and the Capital Provider each acknowledge and agree as follows:

(A) Upon execution of this Agreement, the Property shall be subject to a PACE Betterment Assessment levied by the Municipality in the principal amount set forth in Exhibit A. Such PACE Betterment Assessment shall be collected in the same manner as the real property taxes of the Municipality, including, in the event of default or delinquency, with respect to any penalties, fees and lien priorities.

(B) The Owner hereby expressly consents to the levying of the PACE Betterment Assessment and placing of the corresponding PACE Lien on the Property in order to finance the Improvements, and the assignment of such PACE Lien from the Municipality to MassDevelopment, and from MassDevelopment to the Capital Provider, as security for the Financing. The Owner acknowledges that the Capital Provider may further sell or assign the PACE Lien, subject to the provisions of Section 17, and that the Capital Provider and any assignee(s) of the PACE Lien shall have and possess the same powers and rights at law or in equity as the Municipality and its tax collector would have if the PACE Lien had not been assigned with regard to the precedence and priority of the PACE Lien, the accrual of interest thereon, and the fees and expenses of collection; provided, however that the Capital Provider shall have the same rights to enforce the PACE Lien as a mortgagee has to enforce a mortgage under M.G.L. Ch. 183, §21, as set forth in Section 11. The Owner further acknowledges that the PACE Lien will be continued, recorded and released upon repayment in full of the PACE Betterment Assessment in the manner provided for real property tax liens of the Municipality.

(C) Upon execution of this Agreement, MassDevelopment will give notice to the Municipality to levy the PACE Betterment Assessment and MassDevelopment, on behalf of the Municipality, will record the PACE Lien in the Registry at the Owner's expense, in accordance with the Municipal Agreement.

(D) Upon recording of the PACE Lien, the entire balance of the PACE Betterment Assessment (including any penalties, interest and fees related thereto) shall constitute a legal, valid and binding non-ad valorem betterment assessment and a resulting lien upon the Property. The PACE Lien shall take precedence over all other liens or encumbrances on the Property, except a lien for real property taxes of the Municipality, which lien for real property taxes shall have priority over the PACE Lien.

(E) MassDevelopment has not conducted any investigation or otherwise undertaken to confirm or verify any of the information or representations included in or filed with the Application, and MassDevelopment does not make any warranties, guarantees, or representations with respect to the same.

Section 4. OWNER REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGEMENTS. By execution hereof, the Owner represents, warrants, acknowledges, consents and declares as follows as of the date hereof:

(A) The Owner is an entity as described in the first paragraph hereof. The Owner has all necessary power and authority to own its properties, conduct its business and enter into the transactions contemplated hereby. The Owner has the right to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement and any other document executed in connection therewith or with the PACE Betterment Assessment or the PACE Lien, or required hereby or thereby, have been duly authorized, executed and delivered by the Owner and constitute valid and binding obligations of the Owner, each enforceable in accordance with its respective terms.

(B) All financial statements of the Owner delivered to the Capital Provider by the Owner are true and correct, have been prepared in accordance with United States generally accepted accounting principles consistently applied, fairly represent the financial condition of the Owner as of the date(s)

thereof, and no material adverse change has occurred in the financial condition of the Owner as presented therein, except as otherwise disclosed to the Capital Provider in writing.

(C) The Owner represents that the information contained in the Application, including in all documents submitted therewith, is true and correct. The Owner has not incurred any obligation secured by a lien on the Property, other than as set forth in the Application.

(D) There are no actions, suits or proceedings pending, or to the best knowledge of the Owner threatened, against or affecting it or the Property which could materially adversely affect the financial condition of the Owner.

(E) The Owner is not in default under this Agreement or any Legal Requirement with respect to the Property, and to the best knowledge of the Owner, it is complying in all material respects with all applicable Legal Requirements.

(F) No Insolvency Event (as hereinafter defined) has occurred and is continuing with respect to the Owner. The Owner is not aware of any circumstances or conditions with respect to the Owner that would reasonably be expected to have a material adverse effect on any of the Owner, the Project, the Property, the PACE Betterment Assessment or the PACE Lien. For purposes hereunder, "Insolvency Event" shall mean the Owner has (i) consented to the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceeding or of relating to the Owner or relating to all or substantially all of such Owner's property, or (ii) admitted in writing its inability to pay its debts as they become due, filed a petition to take advantage of any applicable insolvency or reorganization statute, made an assignment for the benefit of its creditors, or voluntarily suspended payment of its obligations.

(G) [The Owner, and no other person, is vested with fee simple title of record to the Property, and the Owner has good record and marketable title to the Property. The Property is not subject to any lien or encumbrance, other than as set forth on **Exhibit A-1**.] [The Owner, and no other person, has a valid and enforceable leasehold interest in the entire Property, in accordance with the Lease and has not encumbered or assigned any of its interests and rights under, in, and to the Lease. Neither the Property nor such leasehold interest in the Property is subject to any lien or encumbrance, other than as set forth in Exhibit A-1.]

(H) The Owner represents that (i) all property taxes and any other assessments levied on the Property by the Municipality to date have been paid, there are no delinquent property taxes or assessments that have not been paid, and no property taxes or other assessments have been delinquent at any time during the preceding three years or the Owner's period of ownership, whichever is less; (ii) there are no involuntary liens, including, but not limited to, mechanic's or materialmen's liens on the Property; (iii) no notices of default or other evidence of property-based debt delinquency have been issued or recorded during the preceding three years or the Owner's period of ownership, whichever is less; and (iv) the Owner is current on all mortgage debt on the Property, if any, and no notices of default or foreclosure due to non-payment of property taxes or mortgage loan payments have been issued or recorded within the preceding three years or the Owner's period of ownership, whichever is less.

(I) The Owner has complied and will comply in all material respects with all Environmental Laws regarding the existence, use, discharge, release, containment, transportation, generation, storage, management or disposal of Hazardous Materials at, to or from the Property, including, but not limited to notifying Governmental Authorities, observing restrictions on use, transferring, modifying or obtaining permits, licenses, approvals and registrations, making required notices, certifications and submissions, complying with financial liability requirements, managing Hazardous Materials, and responding to the presence or release of Hazardous Materials connected with operation of its business or the Property; (ii) the Owner will not and will not permit others to use, generate, treat, store, discharge or manage Hazardous Materials on the Property, except in full compliance in all material respects with Environmental Laws; (iii) the Owner will take prompt action in full compliance with Environmental Laws to respond to the

on-site or off-site release of Hazardous Materials connected with its operation of the Property; and (iv) the Owner does not know of any prior non-compliance with Environmental Laws at the Property that has not been fully remedied, and the Owner has not received a notice from any Governmental Authority regarding any of the foregoing that has not been fully complied with or remedied.

(J) The Property is undamaged by waste, vandalism, fire, hurricane, earthquake or earth movement, windstorm, flood, tornado or other casualty materially adversely affecting the value of the Property or the use for which the Property is intended, and the Property is in substantially the same condition it was at the time the Owner filed the Application, except with respect to any activities related to the Project or other improvements to the Property. There is no proceeding pending or, to the knowledge of the Owner, threatened for the total or partial condemnation of the Property.

(K) The Owner freely and willingly consents to the PACE Betterment Assessment and the PACE Lien and waives all rights to subsequently challenge the PACE Betterment Assessment or the PACE Lien on the basis of procedural irregularities, notice or due process claims, insufficient benefits, improper or unfair apportionment or any other basis, and acknowledges that this Agreement provides an alternative and extraordinary payment opportunity and is fundamental consideration given by the Capital Provider in exchange for resolving all questions about the validity, appropriateness, and enforceability of the PACE Betterment Assessment and the PACE Lien and upon execution of this Agreement any question or controversy regarding the PACE Betterment Assessment or the PACE Lien shall forever be conclusively resolved.

(L) The PACE Lien is being assigned concurrently with the execution and delivery of this Agreement from the Municipality to MassDevelopment, and from MassDevelopment to the Capital Provider, as security for the repayment of the Financing.

(M) The PACE Lien will be recorded in the Registry, and that upon such recording, the PACE Lien shall take precedence over all other liens or encumbrances on the Property, except a lien for real property taxes of the Municipality, which lien for real property taxes shall have priority over the PACE Lien.

(N) The Owner will not permit any other PACE lien to be imposed on the Property, without the prior written consent of the Capital Provider.

(O) The PACE Betterment Assessment, the PACE Lien and this Agreement shall run with the Property and shall be binding on the Property and the Owner and all successors in interest notwithstanding any alienation or conveyance of the Property by the Owner or a subsequent owner to a new owner of the Property.

(P) The Owner acknowledges that the Assessment Installment Payments will be collected on the property tax bills administered by the Municipality and that the Assessment Installment Payments will include the Administrative Costs to the extent set forth in **Exhibit A**.

(Q) The Owner may prepay the PACE Betterment Assessment in accordance with the provisions of Section 12.

(R) The Owner has obtained the written consent to the imposition of the PACE Lien on the Property from all mortgage holders or loan servicers, if any, of any loan or indebtedness secured by a mortgage or other lien or encumbrance on the Property. The Owner has provided to MassDevelopment and to the Capital Provider a true and correct copy of any such written consents prior to the execution hereof.

(S) The Owner agrees to adjust any applicable mortgage escrow, or to fund one, if requested by a mortgage holder or loan servicer of any mortgage pertaining to the Property, to include the equivalent of the Assessment Installment Payments.

(T) The Improvements confer direct special benefits to the Property equal to or in excess of any amounts due hereunder, and such amounts due hereunder represent a fair and reasonable apportionment, in all respects, of the costs and charges attributed to the Property in connection with the acquisition, construction and financing of the Improvements.

(U) The term for the repayment of the Financing, as set forth in **Exhibit C**, does not exceed the lesser of (i) the useful life of the longest-lived Improvement or (ii) 20 years.

(V) The plans and specifications submitted by the Owner to the Capital Provider and approved thereby, if any (the "Plans"), in accordance with **Exhibit D**, are and will be a true and accurate reflection of the Project (when completed) and have been approved, or will be approved prior to the first disbursement request, as required by all governmental authorities having jurisdiction over the Project and the Property. The budget for construction of the Project (the "Budget") submitted by the Owner to the Capital Provider in accordance with **Exhibit D** is an accurate current estimate of all costs necessary to undertake the Project in accordance with the Plans and the costs of the Project are not expected to exceed the costs set forth in the Budget. The Owner acknowledges that it is responsible for any costs in excess of the Approved Amount.

(W) The Owner acknowledges that it is solely responsible for obtaining all permits, approvals and licenses necessary to undertake the Project and the construction and installation of the Improvements (collectively, the "Permits"), and for selecting and engaging the Contractor. The Owner shall provide copies of the Permits to the Capital Provider in accordance with **Exhibit D**.

(X) The Owner acknowledges that any inspection of the Improvements required by applicable building codes, the Program or the Capital Provider do not ensure quality of workmanship, and the Owner is solely responsible for ensuring that the Improvements are completed as proposed in the Submittal Package and the proposal, estimate, and/or binding written invoice provided by the Contractor.

(Y) The Owner consents to providing the Capital Provider with access to the Property, at reasonable times during normal business hours and upon reasonable notice, for purposes of inspecting the Improvements.

(Z) The Owner agrees to provide the reports, if any, as required by DOER pursuant to the Approval Letter at the times required therein, and any utility records requested by DOER or the Capital Provider to assist in tracking utility savings resulting from the Improvements.

(AA) The Owner agrees to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, from time to time such supplements hereto and such further instruments, corrective or otherwise, as may reasonably be required to carry out the intention of this Agreement.

(BB) The Owner has not made and will not make to the Capital Provider, in this Agreement or otherwise, any untrue statement of a material fact, nor has it omitted to state a material fact necessary to make any statement made to the Capital Provider not misleading.

(CC) The request by the Owner for a disbursement of the Disbursement Amount shall constitute a certification by the Owner that the representations and warranties contained herein are true and correct as of the date of such request, unless otherwise notified to the Capital Provider by the Owner in writing.

Section 5. OWNER COVENANTS AND AGREEMENTS. By execution hereof, the Owner covenants and agrees as follows:

(A) The Owner will pay the Assessment Installment Payments at the times and in the amounts set forth on **Exhibit C**, and acknowledges that failure to pay any Assessment Installment

Payment at the time and in the amounts due may result in loss of title to the Property, as described in Section 11.

(B) The Owner will make all Assessment Installment Payments, together with any penalties, interest and fees thereon, to the tax collector of the Municipality, in accordance with the property tax bill received from the Municipality.

(C) The Owner will pay in a timely manner, as and when due, (i) all property taxes, charges, liens and any other assessments levied on the Property by the Municipality, (ii) all other liens and charges levied on or against the Property, and (iii) all mortgage debt, if any, secured by the Property.

(D) The Owner will undertake and complete the Project and the Improvements in accordance with the Approval Letter, the Plans, the Budget and the schedule for the Project agreed to by the Capital Provider, and will otherwise comply with the provisions set forth in Exhibit D. The Owner agrees to maintain the Improvements and provide for the timely repair of the Improvements, at the Owner's expense, throughout the term of this Agreement.

(E) The Owner has in place insurance with respect to the Property and the Project and will maintain the same throughout the term of this Agreement, through financially sound and reputable insurers authorized to do business in the Commonwealth, against such casualties and contingencies as shall be in accordance with the general practices of businesses engaged in similar activities as the Owner in similar geographic areas as the Property, and in amounts, containing such terms, with such self-insured retentions, in such forms and for such periods as may be reasonable and prudent. Such policies of insurance shall be issued in form and content reasonably acceptable to the Capital Provider, and shall name the Capital Provider as an additional insured as its interest may appear. Each policy shall provide for not less than 10 days' prior notice to the Capital Provider in the event of cancellation or nonrenewal. The Owner shall, upon request by the Capital Provider, provide the Capital Provider with certificates evidencing the insurance required to be maintained hereunder.

(F) The Owner promptly will notify the Capital Provider if the Project is damaged or destroyed by a casualty or any other cause (each such occurrence, a "casualty"). Upon the occurrence of such casualty, the Owner will apply any insurance proceeds received to the repair, restoration and reconstruction (collectively, the "repair") of the Project, provided that the Owner shall be responsible for any costs of repairing the Project in excess of the amount of insurance proceeds received.

(G) If the Project, or any part thereof, or the Property are taken by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain (a "condemnation"), or are subject to an imminent threat of condemnation, the Owner will not be entitled to any further disbursements of the Disbursement Amount unless, in the Capital Provider's commercially reasonable judgment, the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized as originally intended. If the Capital Provider so decides that the Project can be so replaced and restored, then the Owner shall undertake the repair of the Project with the proceeds of any condemnation awards received in the same manner as described in the prior paragraph regarding a casualty. If the Capital Provider decides in its commercially reasonable judgment that the Property and the Project cannot be replaced and restored in a manner which will enable the Project to be functionally and economically utilized as originally intended, then any undisbursed portion of the Disbursement Amount will be applied by the Capital Provider, on behalf of the Owner, to the prepayment of the PACE Betterment Assessment.

(H) Upon the Owner becoming aware of the violation of any Environmental Law with respect to all or any portion of the Property, or the presence or any release or any threat of release of any Hazardous Materials on, under or from all or any portion of the Property, whether or not caused by the Owner, the Owner shall promptly notify the Capital Provider of the same and take all actions necessary or required by applicable Environmental Laws to cure, remediate, or eliminate any such violation.

(I) Upon request of the Capital Provider, the Owner will take any actions and execute any further documents as the Capital Provider reasonably deems necessary or appropriate to carry out the purposes of this Agreement.

Section 6. COLLECTION OF PACE BETTERMENT ASSESSMENT ON PROPERTY TAX BILL; CAPITALIZED INTEREST.

(A) Assessment Installment Payments, including Administrative Costs to the extent set forth in **Exhibit A** and interest on the PACE Betterment Assessment as provided in paragraph (C) below, shall be collected on the property tax bills issued by the Municipality pertaining to the Property as provided for in the PACE Act and M.G.L. Ch. 80. The Assessment Installment Payments due in any Tax Year shall be payable in the same manner and at the same times as the ad valorem taxes on the Property are payable and shall become delinquent at the same times and shall be subject to the same interest, fees and penalties as delinquent ad valorem taxes. By execution hereof, the Owner acknowledges that the failure to pay the PACE Betterment Assessment or any Assessment Installment Payment as and when due may result in the loss of title to the Property, as set forth in Section 11 below.

(B) Following recording of the PACE Lien in the Registry, Assessment Installment Payments, as set forth in **Exhibit C**, shall be collected on the property tax bill issued by the Municipality with respect to the Property, on the Assessment Installment Payment Dates set forth in **Exhibit C**.

(C) Interest shall accrue on the unpaid PACE Betterment Assessment commencing on the date set forth in Item 12 of **Exhibit A**, at a simple interest rate per annum equal to the rate set forth in Item 11 of **Exhibit A**. If applicable, initial Assessment Installment Payments may consist solely of capitalized interest representing interest accruing on the PACE Betterment Assessment as set forth in Item 9 of **Exhibit A** and shall be payable from proceeds of the Disbursement Amount. The amount of capitalized interest, if any, is set forth in Item 9 of **Exhibit A**.

(D) Failure to pay the Assessment Installment Payments as and when due will result in interest, fees and penalties being assessed against the Property, in the same manner as in an event of default or delinquency in the payment real property taxes of the Municipality.

Section 7. DISBURSEMENT.

(A) [If sole disbursement is to be at Project completion: Subject to the terms and conditions set forth herein and in **Exhibit D**, upon (i) execution and delivery of this Agreement, (ii) completion of the Improvements, (iii) submission by the Owner to the Capital Provider of a completed Requisition in the Form of **Exhibit D-1**, and (iv) inspection and approval of the completed Improvements by the Capital Provider, the Capital Provider shall cause disbursement of the Disbursement Amount either directly to the Contractor, or to the Owner to reimburse the Owner, if the Owner has provided to the Capital Provider satisfactory evidence that the Owner has paid the Disbursement Amount to the Contractor directly.] [If disbursements are to be made in installments: Subject to the terms and conditions set forth herein and in **Exhibit D**, upon (i) execution and delivery of this Agreement, and (ii) submission by the Owner to the Capital Provider of a completed Requisition in the Form of **Exhibit D-1** and compliance with the applicable provisions of **Exhibit D**, the Capital Provider shall cause to be disbursed the Disbursement Amount at the times and in the amounts set forth on **Exhibit D-2**, either directly to the Contractor, or to the Owner to reimburse the Owner, if the Owner has provided to the Capital Provider satisfactory evidence that the Owner has paid the Disbursement Amount to the Contractor directly.]

(B) By execution hereof, to the extent set forth in the applicable Requisition, the Owner directs disbursement of the Disbursement Amount directly to the Contractor in the amounts set forth in each completed Requisition submitted by the Owner to the Capital Provider.

Section 8. USE OF PROCEEDS.

Funds advanced by the Capital Provider hereunder shall be used for the sole purpose of paying the costs and expenses of undertaking, acquiring, constructing and installing the Improvements. Such costs and expenses may include, in addition to the costs of the Improvements, Administrative Costs to the extent set forth in **Exhibit A**, costs associated with energy audits, if applicable, including reimbursement to the Owner for energy audits related to the Improvements and approved by DOER, and capitalized interest, if applicable. Such costs and expenses are described in **Exhibit A**. In no event shall the aggregate of all such costs, including the costs and expenses of acquiring, constructing and installing the Improvements, exceed the Approved Amount as set forth in the Approval Letter, without the prior written consent of DOER, which consent shall be in the form of an amendment to the Approval Letter. If required due to a change in the Approved Amount or, if at completion of the Improvements, a portion of the Disbursement Amount remains unspent, the PACE Betterment Assessment and the PACE Lien will be adjusted upward or downward, as applicable, in the same manner set forth in Section 11(D), and upon recording of the revised PACE Betterment Assessment Statement, as set forth in said section, the Capital Provider shall provide a copy of the same to the Owner.

Section 9. REBATES AND CREDITS. The Owner bears sole responsibility for identifying, applying for and obtaining any rebates, refunds, credits or allowances pertaining to the Improvements which may be available from manufacturers, federal, state or local authorities or any other source.

Section 10. WORK AT THE PROPERTY. The parties hereto acknowledge that site preparation or other work at the Property may be necessary prior to installation of the Improvements, and the Owner bears the responsibility for ensuring that the cost of such preparation and/or other work has been included in the Submittal Package, and approved by DOER within the Approved Amount, if such cost is to be financed as part of the Improvements. The Owner agrees and acknowledges that the Capital Provider shall have no obligation to fund costs associated with preparation of the site or other work at the Property, including repair work for any structure, building or facility to which the Improvements shall be affixed, which were not included in the Submittal Package and the Approved Amount. Costs associated with such preparation or repair work not included in the Approved Amount will be the sole responsibility of the Owner and shall not be payable from the Disbursement Amount.

Section 11. DEFAULT; FORECLOSURE AND OTHER REMEDIES. Failure to make an Assessment Installment Payment as and when due shall constitute a default under this Agreement (a "payment default") and shall subject the Property to the enforcement mechanisms available to the Capital Provider under the PACE Act, which may result in loss of title to the Property, as described below. The Capital Provider reserves the right to enforce any payment default by the Owner or any successor owner of the Property in any manner authorized by law including foreclosure. The Owner shall pay all reasonable costs incurred by the Capital Provider for such enforcement, including reasonable attorney's fees and costs, provided that the Capital Provider will not be entitled to seek to accelerate the unpaid and not yet due balance of the PACE Betterment Assessment upon any such payment default.

(A) Foreclosure Sales. If the Capital Provider fails to receive the applicable Net Amount Due Capital Provider on the respective Capital Provider Payment Date due to a payment default, which failure continues for more than 60 days following such Capital Provider Payment Date, the Capital Provider may, in accordance with the PACE Act and consistent with the rights afforded a mortgagee under M.G.L. c. 183, §21, commence to exercise the STATUTORY POWER OF SALE and to sell the Property, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the Property, or, if more than one parcel is subject to the PACE Lien, on or near one of said parcels, after first complying with the provisions of M.G.L. Ch. 244, §14 relating to notices to the Owner and any holders of a mortgage or other lien on the Property (the "Statutory Notices"), and related matters, and all other applicable Massachusetts law relating to the foreclosure of mortgages by the exercise of a power of sale, and may convey the Property, or any parcels constituting the same, by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the Owner and all persons claiming under it from all right and interest in the Property, whether at law or in equity. In addition to the Statutory Notices required to be given in accordance with the provisions of M.G.L. Ch. 244, §14,

the Capital Provider also shall provide not less than 30 days prior to the giving of the first Statutory Notice, notice to MassDevelopment, the Municipality, the Owner and each holder of an interest in the Property junior to the PACE Lien, of the payment default and of Capital Provider's intention to commence its rights to sell the Property pursuant to this Section 11 and the PACE Act. Notwithstanding the foregoing, in the event of a payment default hereunder, the Capital Provider may foreclose the PACE Lien only to the extent of any due and unpaid Assessment Installment Payments, and any penalties, interest and fees related thereto. In the event such portion of the PACE Lien is so foreclosed, the PACE Lien otherwise shall survive the foreclosure to the extent of any unpaid and not yet due Assessment Installment Payments that were not the subject of such foreclosure.

(B) Foreclosure Expenses, Surplus. If foreclosure, bankruptcy or other legal proceedings involve the Capital Provider's interest under this Agreement, whether the proceedings are begun by the Capital Provider or others and whether the proceedings are suspended or terminated or the Property redeemed, the Capital Provider will be entitled to collect and the Owner agrees to reimburse the Capital Provider for all reasonable costs, including reasonable attorneys' fees and costs, incurred by the Capital Provider in the foreclosure, bankruptcy or other legal proceeding. If surplus proceeds are realized from a foreclosure sale, the Capital Provider will not be liable for interest on the proceeds pending distribution, and all reasonable costs, including reasonable attorneys' fees and costs, incurred by it in proceedings to determine the person or persons entitled to the surplus will be paid from the surplus proceeds.

(C) Forbearance not a Waiver. The liability of the Owner hereunder will not be reduced, the priority of the PACE Lien will not be affected, and the rights of the Capital Provider with respect to the PACE Betterment Assessment and the PACE Lien will not be impaired by any of the following events, regardless of whether the Capital Provider receives additional consideration: (i) the sale of all or part of the Property, (ii) a forbearance by the Capital Provider, (iii) an extension of the time for payment or performance of the Owner's obligations hereunder, or (iv) an indulgence given by the Capital Provider to the Owner or to any other person having an interest in the Property or liability for the Owner's obligations hereunder. The Owner waives notice of any extension, forbearance or indulgence and agrees that no waiver, express or implied, by the Capital Provider of a payment default by the Owner under this Agreement will constitute a waiver of a future payment default.

(D) Default Prior to Project Completion. If a payment default occurs hereunder as described above prior to the completion of the Project, the Capital Provider may undertake the completion of the Project and apply any remaining balance of the Disbursement Amount to the costs of such completion. Any amount necessary to so complete the Project in excess of the remaining balance of the Disbursement Amount, with the approval of DOER, may be added to the amount of the PACE Betterment Assessment. In such event and in accordance with the Municipal Agreement, MassDevelopment shall provide to the Municipality for execution a revised PACE Betterment Assessment Statement, including a revised Payment Schedule prepared by the Capital Provider and approved by MassDevelopment, and the new amount of the PACE Betterment Assessment and PACE Lien. The Municipality will adjust the PACE Betterment Assessment in the assessing and taxing records of the Municipality to permit the adjusted PACE Betterment Assessment to be included on the property tax bill for the applicable benefitted property as soon as practicable. MassDevelopment shall send the revised PACE Betterment Assessment Statement executed by the Municipality to the Capital Provider, upon receipt of the same from the Municipality, and the Capital Provider shall record such revised PACE Betterment Statement with the Registry. Alternatively, this Agreement, and the rights and obligations of the Owner hereunder to complete the Project, including the right to disbursement of the remaining balance of the Disbursement Amount subject to the conditions of this Agreement, may be transferred to a new owner of the Property taking title following a sale and foreclosure by the Capital Provider pursuant to paragraph (A) of this Section 11.

(E) Additional Remedies. In addition to the right to sell the Property as described above, the Capital Provider shall have all other rights and remedies available to it under applicable law, including the PACE Act, and including an action of contract or any other appropriate action, suit or proceeding.

Section 12. PREPAYMENT OF PACE BETTERMENT ASSESSMENT. Subject to the Additional Prepayment Provisions, if any, set forth in **Exhibit A**, the Owner may prepay the PACE Betterment Assessment by paying the principal amount owing on the PACE Betterment Assessment, and accrued interest, less a credit for interest not yet accrued. The Owner shall notify MassDevelopment, the Servicer, and the Capital Provider in writing of the Owner's determination to prepay the PACE Betterment Assessment at least 15 Business Days prior to the date the Owner intends to prepay the PACE Betterment Assessment. The Capital Provider shall provide written notice to MassDevelopment and the Servicer of the prepayment in full of the PACE Betterment Assessment.

Section 13. DISCLOSURE UPON TRANSFER. During the term of this Agreement, the Owner agrees that at or before the time a purchaser executes a contract for the sale and purchase of the Property, the Owner shall give the prospective purchaser a written disclosure statement in the form of **Exhibit E** attached hereto, which shall be set forth in the contract or in a separate writing, together with a copy of this Agreement (together with any amendments or supplements hereto), as executed by the Owner and the Capital Provider. The Owner shall notify MassDevelopment, the Servicer, and the Capital Provider in writing not less than 30 days prior to any such proposed sale of the Property, providing the name and address of the proposed purchaser, and providing the Capital Provider any information that may be required pursuant to Section 19. The unpaid and not yet due balance of the PACE Betterment Assessment shall not be subject to acceleration upon the transfer of the Property to a subsequent owner, subject to the provisions of Section 19. The PACE Betterment Assessment and the PACE Lien run with the Property and are binding on the Property and the Owner and all successors in interest, notwithstanding any alienation or conveyance of the Property by the Owner or a subsequent owner to a new owner of the Property.

Section 14. INDEMNIFICATION. The Owner shall indemnify and hold harmless the Capital Provider, including its directors, members, officers, agents and employees, and their respective successors and assigns (each, an "Indemnified Party") from, and, if requested, shall defend them against, any and all claims, damages, losses, liabilities, costs or expenses, incurred by an Indemnified Party on account of or in connection with this Agreement, including any untrue statement or alleged untrue statement of any material fact contained or incorporated by reference in this Agreement or in any materials furnished by or on behalf of the Owner in connection with the Financing, or the omission or alleged omission to state therein a material fact necessary to make such statements, in light of the circumstances under which they are or were made, not misleading, or in connection with or arising out of (i) the manufacture, supply or installation of the Improvements, or any condition of the Property, or the use, occupancy or management thereof; (ii) any accident, injury or damage to any person occurring in or about the Property or the Improvements; (iii) any breach by the Owner of its obligations under this Agreement, or any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees, including any violation of any Legal Requirements; (iv) the Owner's failure to comply with Environmental Laws; and (v) a release or threat of release of Hazardous Materials at or from the Property. This indemnification shall survive the termination of this Agreement. The foregoing indemnity shall include, without limitation, the costs and expenses of defending or preparing to defend against any claim of liability, including reasonable fees of attorneys, consultants, and experts and related costs, provided that the Owner shall have no liability to indemnify any Indemnified Party for such Indemnified Party's own gross negligence or willful misconduct.

Section 15. SEVERABILITY. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 16. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the Commonwealth. Unless otherwise required by law, venue for any action or proceeding to construe or enforce the provisions of this Agreement or any matters associated therewith shall lie in the federal and state courts located in the City of Boston, Suffolk County, Massachusetts.

Section 17. ASSIGNMENT. The Capital Provider, at its option and without obtaining the consent of the Owner, may (i) assign its rights and obligations under this Agreement, and (ii) pledge and assign its right to receive the PACE Betterment Assessment and any other payments due to the Capital Provider hereunder and its rights under the PACE Lien, in whole, but not in part, or participate its interests hereunder, but only to a Permitted Transferee. The instrument of assignment shall include a representation from the assignee that the assignee is a Permitted Transferee.

Section 18. TERM. The term of this Agreement shall be until the PACE Betterment Assessment, including all accrued interest thereon, has been paid in full.

Section 19. CUSTOMER IDENTIFICATION PROGRAM. To help the government fight the funding of terrorism and money laundering activities, federal law requires financial institutions to obtain, verify and record information that identifies each person who opens an account. Accordingly, the Capital Provider may require the Owner to provide the name and address of the Owner and of its successors in interest, if any, and of their respective beneficial owners, if any, and other information that will allow the Capital Provider to identify the Owner and its successors in interest, and their respective beneficial owners, if any, in accordance with and to determine compliance with all applicable federal law and regulations.

Section 20. ENTIRE AGREEMENT; COUNTERPARTS; AMENDMENT.

This Agreement is the entire agreement between the parties. Any other agreement related to the financing of the Improvements, and any amendment to this Agreement, must be signed in writing by both parties. If there is more than one "Owner," the obligations hereunder of all Owners shall be joint and several. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

THE DECLARATIONS, ACKNOWLEDGEMENTS AND AGREEMENTS CONTAINED HEREIN SHALL RUN WITH THE LAND DESCRIBED IN EXHIBIT A-1 HERETO AND SHALL BE BINDING ON THE OWNER AND ON ALL PERSONS (INCLUDING CORPORATIONS, ASSOCIATIONS, TRUSTS, AND OTHER LEGAL ENTITIES) TAKING TITLE TO ALL OR ANY PART OF THE LAND, AND ITS SUCCESSORS IN INTEREST. BY TAKING SUCH TITLE, SUCH PERSONS SHALL BE DEEMED TO HAVE CONSENTED AND AGREED TO THE PROVISIONS OF THIS AGREEMENT TO THE SAME EXTENT AS IF THEY HAD EXECUTED IT AND BY TAKING SUCH TITLE, SUCH PERSONS SHALL BE ESTOPPED FROM CONTESTING, IN COURT OR OTHERWISE, THE VALIDITY, LEGALITY AND ENFORCEABILITY OF THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Owner and the Capital Provider have entered into this Agreement as of the last day signed below.

OWNER:

[NAME]

By: _____
Name:
Title:

CAPITAL PROVIDER:

[NAME]

By: _____
Name:
Title:

EXHIBIT A
FINANCING AND OTHER TERMS

1. Name of Owner:
2. Address of Property: (See also Exhibit A-1):
3. Municipality:
4. Registry: [_____ County Registry of Deeds/_____ Registry District of the Land Court]
5. Servicer: Zions Bancorporation, National Association
6. Effective Date:
7. Administrative Costs:
 - (a) Program Origination Fee payable to MassDevelopment: \$_____.
 - (b) Recording Fees: \$_____.
 - (c) Initial Servicer Fee: \$_____.
 - (d) MassDevelopment's counsel fees/costs: \$_____.
 - (e) DOER Fee: \$_____.
 - (f) Collection Costs, including the Annual Administration Fee payable to MassDevelopment: \$_____.
 - (g) Capital Provider's closing fees and costs: \$_____.
 - (h) _____.
8. Disbursement Amount (Costs of the Improvements): \$_____.
9. Capitalized Interest: [None/From the Effective Date to and including _____, 20__ : \$_____.]
10. Approved Amount: [Total of 7[(a) – (h)], 8 and 9].
11. Interest Rate:
12. Date from which Interest Accrues:
13. Aggregate Amount of PACE Betterment Assessment: \$_____.
14. Project Commencement Date:
15. Project Completion Date:
16. Notice Addresses:

If to the Owner: [At its address set forth in the first paragraph of this Agreement.]

If to the Capital Provider: [At its address set forth in the first paragraph of this Agreement.]

If to MassDevelopment:

MassDevelopment
99 High Street
Boston, MA 02110
Attention: Executive Vice President for Finance Programs

With a copy sent to the same address addressed to:
Attention: General Counsel

If to the Servicer:

Zions Bancorporation, National Association
401 Liberty Avenue, Suite 1729
Pittsburgh, PA 15222
Attention: Eric Mitzel, Vice President

EXHIBIT A-1
DESCRIPTION OF PROPERTY

EXHIBIT B
DESCRIPTION OF THE IMPROVEMENTS

EXHIBIT C

SCHEDULE OF ASSESSMENT INSTALLMENT PAYMENTS

* Represents amount due to the Capital Provider, less Collection Costs due to the Program Administrator.

EXHIBIT D

DISBURSEMENT CONDITIONS AND REQUIREMENTS

(Note: Additional conditions may be included by the Capital Provider prior to execution of the Agreement, with the approval of MassDevelopment)

The following provisions shall apply to disbursements of the Disbursement Amount, subject to the Capital Provider's right to waive from time to time any of the following (other than the requirements of Sections 3(b) and 4(b)):

1. Initial Disbursement: Prior to the Capital Provider approving the first disbursement of the Disbursement Amount following the closing of the Financing, the Owner shall have submitted to the Capital Provider for its approval, not less than 30 days prior to the date fixed for the first disbursement, in accordance with **Exhibit D-2** attached hereto:
 - a. the Plans and the Budget;
 - b. all major Contracts, as determined by the Capital Provider in its sole discretion, including major subcontracts; and
 - c. all Permits.
2. All Disbursements: As a condition precedent for the Capital Provider approving a disbursement of the Disbursement Amount:
 - a. the Owner shall be in compliance with all terms and conditions of the Agreement and no default as described in Section 11 of the Agreement shall have occurred and be continuing;
 - b. no order or notice shall have been given by any Governmental Authority stopping construction or stating that the Project is in violation of any Legal Requirement, unless such order or notice has been rescinded and a copy of such rescission has been delivered to the Capital Provider;
 - c. the Owner shall have submitted to the Capital Provider a completed Requisition in the form of **Exhibit D-1** attached hereto. Each Requisition shall be accompanied by all documentation reasonably deemed necessary by the Capital Provider to substantiate the requested payments;
 - d. at the Capital Provider's election, the Capital Provider, or a construction representative engaged by and inspecting on behalf of the Capital Provider at the cost and expense of the Owner (the "Construction Representative"), shall have performed a site inspection to ensure that the Project and the Improvements are consistent with the Plans and the Budget;
 - e. if requested by the Capital Provider, each Requisition shall be accompanied by notarized lien waivers from those Contractors (including sub-contractors and materialmen) whose invoices are included in such requisition and which have contracts in excess of \$50,000, such lien waivers to be consistent with applicable state law;
 - f. the insurance coverages required to be maintained by the Owner pursuant to Section 5(E) of the Agreement shall be in full force and effect, including any builder-risks' insurance coverages; and
 - g. each of the representations and warranties contained in the Agreement is true and correct in all material respects as if made on and as of the date hereof.

3. Final Disbursement. a. The Capital Provider's obligation to approve the final disbursement of the Disbursement Amount shall be subject to the satisfaction of the following conditions precedent, as determined by the Capital Provider in its sole discretion:
 - i. substantial completion of construction of the Project in accordance with the Plans;
 - ii. if applicable, receipt by the Capital Provider of a final unconditional Certificate of Occupancy ("C.O.") for the Project or a conditional C.O. which conditions are punch-list items only; and
 - iii. receipt by the Capital Provider of final notarized lien waivers from all Contractors (including sub-contractors and materialmen) which have contracts in excess of \$50,000, such lien waivers to be consistent with applicable state law.

b. The Capital Provider shall give MassDevelopment written notice following the final disbursement under the Agreement, within 15 days of the Capital Provider's approval of the same, including in such notice the total amount disbursed under the Agreement, and the amount, if any, of the Disbursement Amount remaining following such final disbursement.
4. Making of Disbursements: a. Subject to compliance by the Owner with the terms and conditions set forth in this **Exhibit D** and in the Agreement, the Capital Provider shall approve the disbursement of the Disbursement Amount, either directly to the Contractor or, if the costs were paid by the Owner, to reimburse the Owner, in accordance with the Disbursement Schedule attached hereto as **Exhibit D-2**.

b. In no event shall the aggregate amount of all disbursements exceed the Approved Amount.
5. Commencement: The Owner shall commence the Improvements not later than the Project Commencement Date set forth in **Exhibit A** to the Agreement and use all diligent efforts to complete the Project no later than the Project Completion Date set forth in **Exhibit A** to the Agreement, with labor and materials of high quality in accordance with the Approval Letter, the Plans and the Budget.

EXHIBIT D-1

FORM OF REQUISITION

TO: [Name of Capital Provider] (the "Capital Provider")

Requisition No.: ____

Terms used in this Requisition and not otherwise defined shall have the same meanings assigned to them in PACE Massachusetts Financing Agreement, dated as of _____, 20__ (the "Agreement"), between the Capital Provider and _____ (the "Owner").

The Capital Provider is hereby requested to disburse a portion of the Disbursement Amount in the amount of \$_____ to the Contractor(s) listed below, and as set forth in the invoices attached.

Contractor	Invoice No.	\$	Amount
------------	-------------	----	--------

1. The undersigned hereby certifies on behalf of the Owner in connection with the payment(s) requested by this Requisition that the obligations set forth in this Requisition were incurred in connection with the Improvements, are included in the Approved Amount, and have not been the basis for a prior Requisition that has been paid.

2. The undersigned hereby further certifies:

a. there are no liens or other encumbrances on the Property (other than the PACE Lien and liens that were on the Property at the time of execution of the Agreement and set forth in Exhibit A-1 to the Agreement), and, to be the best of the undersigned's knowledge, there are no notices of contract or other notices of intention to file liens on the Property that have not been released, subordinated or waived;

b. as of the date hereof, the undersigned knows of no event that will or could negatively affect completion of the Improvements, or the Owner's ability to make the Assessment Installment Payments as and when due, as required under the Agreement; and

c. each of the representations and warranties contained in the Agreement is true and correct in all material respects as if made on and as of the date hereof.

[NAME OF OWNER]

By: _____
Name:
Title:

EXHIBIT D-2

DISBURSEMENT SCHEDULE

[To be provided by the Capital Provider]

EXHIBIT E

FORM OF DISCLOSURE STATEMENT TO SUBSEQUENT OWNERS

Name of Owner:

Address of Property:

Name of Capital Provider:

The above-referenced Owner (the "Seller") of the above-referenced Property (the "Property") has installed qualifying commercial energy improvements (the "Improvements") at the Property, which Improvements were financed through the Seller's participation in the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts"). In connection with such financing, the Seller has entered into a PACE Massachusetts Financing Agreement, dated _____, 20__ (as amended and supplemented to date, the "PACE Financing Agreement"), between the Seller and the above-referenced Capital Provider (the "Capital Provider"), a true, correct and complete copy of which is attached hereto. Terms used in this Disclosure Statement and not otherwise defined herein have the same meanings assigned to them in the PACE Financing Agreement.

A description of the Improvements is included in Exhibit B to the PACE Financing Agreement.

Under the PACE Financing Agreement, the financing of the Improvements (the "Financing") is repaid through a PACE Betterment Assessment levied on the Property by the [City/Town of _____, Massachusetts] (the "Municipality"). The Seller is obligated to repay the PACE Betterment Assessment in the same manner and at the same time as property taxes assessed by the Municipality on the Property are paid. **The amount of the PACE Betterment Assessment is set forth in Exhibit A to the PACE Financing Agreement, and the schedule of payment of the PACE Betterment Assessment is set forth in Exhibit C to the Financing Agreement.**

As provided in pursuant to M.G.L. Ch. 23M, as amended (the "PACE Act"), the PACE Betterment Assessment and the interest, fees and any penalties thereon constitute a legal, valid and binding non-ad valorem betterment assessment and a resulting lien upon the Property (the "PACE Lien"), equal in rank and priority with the lien of all municipal taxes and other assessments, and senior in priority to all other liens, titles and claims, until paid in full, notwithstanding the provisions of M.G.L. Ch. 80, Section 12, and continue notwithstanding any alienation or conveyance of the Property. The PACE Betterment Assessment and the PACE Lien run with the Property and are binding on the Property and the Owner and all successors in interest notwithstanding any alienation or conveyance of the Property by the Owner or a subsequent owner to a new owner of the Property. **Accordingly, upon a sale of the Property by the Seller, the PACE Betterment Assessment and PACE Lien will continue on the Property and you, as the new owner of the Property, will be obligated to repay the PACE Betterment Assessment in accordance with the provisions of the PACE Financing Agreement and the PACE Lien, and will be bound by the provisions of the PACE Financing Agreement.**

The PACE Betterment Assessment is collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and lien priorities as provided by the PACE Act. **Failure to make a payment of the PACE Betterment Assessment as and when due will subject the Property to the enforcement mechanisms available to the Capital Provider under the PACE Act and the PACE Financing Agreement, which may result in loss of title to the Property. Under the PACE Financing Agreement, the Capital Provider reserves the right to enforce any payment delinquency or default by the Owner or any successor owner of the Property in any manner authorized by law including foreclosure.**

APPENDIX G: MUNICIPAL ASSESSMENT AND ASSIGNMENT AGREEMENT

This agreement describes the role and requirements that a Municipality and MassDevelopment will be subject to under the PACE Massachusetts program.



**PACE MASSACHUSETTS
MUNICIPAL ASSESSMENT AND ASSIGNMENT AGREEMENT**

This Municipal Assessment and Assignment Agreement (this "Agreement") is made and entered into as of the ___ day of _____, 20___, by and between the [CITY/TOWN OF _____] (the "Municipality"), a political subdivision of The Commonwealth of Massachusetts (the "Commonwealth"), and MASSACHUSETTS DEVELOPMENT FINANCE AGENCY ("MassDevelopment"), a body politic and corporate and a public instrumentality of the Commonwealth.

RECITALS

WHEREAS, pursuant to M.G.L. Ch. 23M (as amended from time to time, the "PACE Act"), the Commonwealth has established a commercial sustainable energy program known as the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts") to provide a financing mechanism to private owners of qualifying commercial and industrial properties for certain qualifying commercial energy improvements ("Improvements"); and

WHEREAS, pursuant to the PACE Act, PACE Massachusetts is administered by MassDevelopment, in consultation with the Massachusetts Department of Energy Resources ("DOER"); and

WHEREAS, under PACE Massachusetts, the owner of the qualifying commercial or industrial property benefitting from the improvements (the "benefitted property") is required to repay the financing through the payment of a betterment assessment levied on such benefitted property by the municipality in which the benefitted property is located; and

WHEREAS, in order for an owner of qualifying commercial or industrial property (an "Owner") to participate in PACE Massachusetts, the PACE Act requires that the municipality in which the benefitted property is located must elect to participate in PACE Massachusetts; and

WHEREAS, the Municipality, pursuant to a [vote/resolution], adopted on _____, __, 20__ has elected to participate in PACE Massachusetts as a "participating municipality" as provided in the PACE Act, to permit the Owners of qualifying commercial and industrial properties located in the Municipality to access financing for Improvements through PACE Massachusetts; and

WHEREAS, the Municipality and MassDevelopment desire to set forth their respective obligations with respect to the levying of betterment assessments and the imposition of betterment assessment liens upon benefitted properties within the Municipality to secure the financing of Improvements to such benefitted properties;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the PACE Act, the Municipality and MassDevelopment hereby agree as follows:

Section 1. Definitions.

In addition to the terms set forth in the Recitals to this Agreement, the following terms shall have the following meanings as used in this Agreement:

(a) "Bonds" means bonds, notes or other obligations issued or incurred by MassDevelopment in connection with providing funding for Improvements to benefitted properties within the Municipality.

(b) "Business Day" means any day which is not (i) a Saturday, or (ii) a Sunday, or (iii) another day of the year on which banks located in Boston, Massachusetts are required or authorized by law or by executive order to close.

(c) "Chapter 80" means M.G.L. Ch. 80, as amended from time to time.

(d) "Closing Date" means the date on which a Financing Agreement is to be effective, and all conditions to the execution and delivery of the Financing Agreement by an Owner and the applicable Capital Provider have been met.

(e) "Financing Agreement" means a PACE Massachusetts Financing Agreement between the Owner of benefitted property within the Municipality and a Capital Provider.

(f) "Capital Provider" means the provider of PACE financing for Improvements to benefitted property within the Municipality that has entered into a Financing Agreement with the Owner of such benefitted property.

(g) "PACE Betterment Assessment" means a betterment assessment levied by the Municipality on benefitted property located in the Municipality to secure the obligations of an Owner under a Financing Agreement, in accordance with the PACE Act and Chapter 80.

(h) "PACE Lien" means a lien on benefitted property imposed by the Municipality in connection with levying a PACE Betterment Assessment on such benefitted property, in accordance with the provisions of the PACE Act and Chapter 80.

(i) "Payment Schedule" has the meaning assigned to such term in Section 2(b)(i).

(j) "Registry" means the Registry of Deeds or Registry District of the Land Court identified in **Exhibit B**.

(k) "Servicer" has the meaning assigned to such term in Section 3(g)(2).

(l) "Term" has the meaning assigned to such term in Section 5.

Section 2. Obligations of MassDevelopment. MassDevelopment shall:

(a) Provide a Notice of Benefitted Property, in the form of **Exhibit A** attached hereto (the "Preliminary Notice"), to the Municipality when a project proposed by an Owner who has filed an application with MassDevelopment for participation in PACE Massachusetts has been approved by DOER and MassDevelopment has determined that the project complies with the financial underwriting guidelines for PACE Massachusetts established by MassDevelopment. The Preliminary Notice shall be signed by MassDevelopment and acknowledged by the applicable Owner. The Preliminary Notice shall include:

1. an estimate of the aggregate amount of the PACE Betterment Assessment to be levied on the benefitted property; and
2. appropriate documentation to identify the benefitted property for purposes of levying the PACE Betterment Assessment and recording the corresponding PACE Lien.

(b) Provide a Notice of PACE Betterment Assessment and Lien, in the form of **Exhibit B** attached hereto (the "Final Notice"), to the Municipality not later than seven Business Days prior to the applicable Closing Date, indicating the amount of the PACE Betterment Assessment to be levied on each benefitted property and of the corresponding PACE Lien to be placed upon such benefitted property. The total amount of the PACE Betterment Assessment shall include the total cost of the Improvements

financed, including interest on such financing, and any fees and costs to be financed through such PACE Betterment Assessment. The Final Notice shall be signed by MassDevelopment and consented to by the applicable Owner. The Final Notice shall include:

1. a copy of the payment schedule (the "Payment Schedule") that is to be a part of the Financing Agreement, which shall indicate the portion of the PACE Betterment Assessment to be included on each property tax bill issued by the Municipality with respect to such benefitted property, including the required PACE Betterment Assessment payment date. It is expected that the Payment Schedule will indicate that the PACE Betterment Assessment shall be payable in equal [semi-annual/quarterly installment payments on May 1 and November 1/February 1, May 1, August 1 and November 1] of each calendar year so that they are due at the same time as the installments of the Municipality's real property taxes. If the Municipality changes, or is required by law to change, its practices concerning the billing of real property taxes as to the number of installments and their due dates, MassDevelopment will endeavor to change the Payment Schedule, to the extent possible, to correspond with the Municipality's practices;
2. a completed Form of PACE Massachusetts Betterment Assessment Statement, in the form of **Exhibit C** attached hereto;
3. confirmation that all holders of mortgage liens on the benefitted property have consented to the PACE financing and to the Municipality placing a PACE Lien upon the benefitted property to secure the respective Owner's obligations with respect to such financing, which PACE Lien shall be senior to the liens of such mortgage holders;
4. a completed PACE Massachusetts Municipal Assignment with respect to the benefitted property, in the form of **Exhibit D** attached hereto and
5. the date on which the PACE Betterment Assessment is to be levied and the PACE Lien recorded, which shall not be less than seven Business Days from receipt of the Final Notice from MassDevelopment.

(c) MassDevelopment or its designee shall promptly provide notice to the Municipality following MassDevelopment's receipt of notice under a Financing Agreement of an Owner's prepayment of its PACE Betterment Assessment.

(d) MassDevelopment or its designee shall promptly provide notice to the Municipality following MassDevelopment's receipt of notice under a Financing Agreement of an Owner's sale or transfer of the Property and the name of the subsequent Owner, as provided to MassDevelopment.

Section 3. Obligations of the Municipality.

(a) Acknowledgement of PACE Betterment Assessment. Upon receipt of a Preliminary Notice, in the form of a completed **Exhibit A**, from MassDevelopment, the Municipality shall acknowledge receipt, where indicated, and return a copy of the same to MassDevelopment within 10 Business Days following receipt.

(b) Levy of PACE Betterment Assessment. Upon receipt of a Final Notice, in the form of a completed **Exhibit B**, from MassDevelopment, the Assessing Board of the Municipality, on the date set forth in the Final Notice, shall levy the PACE Betterment Assessment on the benefitted property, in accordance with the provisions of Chapter 80 to the extent applicable and consistent with the PACE Act, and shall place on and record, or cause to be recorded as set forth in paragraph (c) below, in the Registry a PACE Lien on the benefitted property, in the form of the PACE Massachusetts Betterment Assessment Statement attached to the Final Notice, in accordance with Chapter 80 and the PACE Act. The PACE Massachusetts Betterment Assessment Statement will have three attachments: (i) the legal description of

the benefited property, (ii) the Payment Schedule, and (iii) a copy of the Financing Agreement. As provided in the PACE Act, the PACE Betterment Assessment levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the benefitted property until they are paid, notwithstanding the provisions of Chapter 80, Section 12, and shall continue notwithstanding any alienation or conveyance of the benefitted property. The PACE Lien shall be collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and lien priorities as provided in the PACE Act. The costs of recording the PACE Lien shall be paid by MassDevelopment, through its program origination fee paid by the applicable Owner.

(c) Notification of Recording; Designation of MassDevelopment. Upon recording of the PACE Lien in the Registry, the Assessing Board of the Municipality shall notify or cause to be notified the applicable Owner, providing a copy of the recorded PACE Lien. The Municipality hereby designates MassDevelopment as its designee to record, on behalf of the Municipality, the PACE Lien in the Registry, and upon recording, to notify the Owner in writing of such recording and provide a copy of the recorded PACE Lien to the Owner. MassDevelopment shall be responsible for recording the PACE Lien in the Registry, at the expense of the applicable Owner.

(d) Continuation, Recording and Release of PACE Lien. As provided in the Act, each PACE Lien shall be continued, recorded and released in the manner provided for property tax liens. Subject to the consent of existing mortgage holders, each PACE Lien shall take precedence over all other liens or encumbrances, except a lien for taxes of the Municipality on real property.

(e) Assignment of PACE Lien. The Municipality shall assign, in the form of **Exhibit D** as attached to the Final Notice, to MassDevelopment each PACE Lien recorded by or on behalf of the Municipality's tax collector, as provided in this Agreement. MassDevelopment shall be responsible for recording such assignment in the Registry, at the expense of the applicable Owner.

The Municipality acknowledges and agrees that MassDevelopment may sell or assign, for consideration, any and all PACE Liens so assigned to MassDevelopment by the Municipality. MassDevelopment also may assign its rights under this Agreement and any PACE Liens to a trustee for any Bonds that MassDevelopment may issue from time to time. The assignee of a PACE Lien shall have and possess the same powers and rights at law or in equity as MassDevelopment and the Municipality and its tax collector would have had if the PACE Lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest, and the fees and expenses of collection. The assignee shall have the same rights to enforce such PACE Lien as any private party holding a lien on real property, including, but not limited to, foreclosure in a manner consistent with the rights afforded a mortgagee under the provisions of M.G.L. Ch. 183, §21, and an action of contract or any other appropriate action, suit or proceeding, as provided in the PACE Act.

(f) Amendment of the PACE Betterment Assessment and Lien; Prepayment.

Pursuant to a Financing Agreement, the final amount of a PACE Betterment Assessment may be adjusted after the levy of the PACE Betterment Assessment and recording of the PACE Lien. In the event that the final PACE Betterment Assessment amount needs to be adjusted at the completion of the Improvements, or at any other time, MassDevelopment will notify the Municipality of such change, and provide the Municipality with an amended PACE Massachusetts Betterment Assessment Statement, including an updated Payment Schedule and new amount of the PACE Betterment Assessment and PACE Lien. The Municipality shall adjust the PACE Betterment Assessment in the assessing and taxing records of the Municipality to permit the adjusted PACE Betterment Assessment to be included on the property tax bill for the applicable benefitted property as soon as practicable. The Municipality will execute the amended PACE Massachusetts Betterment Assessment Statement and return the same to MassDevelopment. MassDevelopment or, if the applicable PACE Lien has been assigned by MassDevelopment, the applicable assignee will be responsible for the recording of the amended PACE Massachusetts Betterment Assessment Statement in the Registry.

(g) Billing and Collection; Payment to MassDevelopment.

1. The Municipality shall bill the PACE Betterment Assessments in the same manner and at the same time as it bills its real property taxes. The PACE Betterment Assessment payments shall be a separate clearly defined line item on the property tax bill for the benefitted property and shall be due on the dates set forth in the Payment Schedule. The amount of the PACE Betterment Assessment will be recorded on the Municipality's tax rolls in the same manner as any other betterment assessment, such that the public will have access to its existence and payment status. The penalties and interest on delinquent PACE Betterment Assessments shall be charged in the same manner and rate as the Municipality charges for delinquent real property taxes.
2. The Municipality shall pay or cause to be paid all amounts collected with respect to the PACE Betterment Assessments to MassDevelopment or its designee, as identified in Exhibit B (the "Servicer"), as soon as practicable but no later than 30 days after receipt by the Municipality of the collected amounts.

(h) Collection of Delinquent Payments.

1. In the event that any Owner fails to make a PACE Betterment Assessment payment at the applicable time and in the applicable amount set forth on the Payment Schedule and included in the property tax bill for the benefitted property, the Municipality shall, no later than 30 days following the due date of any such payment, send a notice of demand to the Owner setting forth the amounts due, in the same form as the Municipality provides for delinquent real property taxes. The Municipality shall provide or cause to be provided, at the same time the notice of demand is sent to the Owner, a copy of the notice to MassDevelopment and the Servicer. After providing such notice to MassDevelopment and the Servicer, the Municipality shall have no obligation to take any further actions to enforce the PACE Lien or to collect the delinquent PACE Betterment Assessment payments, other than continuing to include the PACE Betterment Assessment on the property tax bill for the applicable benefitted property, including any penalties, interest and fees in the same manner applicable to delinquent real property taxes, and including the delinquent PACE Betterment Assessment payments in any additional demand notices sent to the Owner with respect to delinquent real property tax payments, if any, unless the Municipality enters into a separate agreement with MassDevelopment described in the following paragraph 2.

2. If MassDevelopment makes a written request to the Municipality for its assistance in the collection of delinquent PACE Betterment Assessments and related charges, other than the providing of a notice of demand as set forth in paragraph (h)(1), the Municipality, in its sole discretion, and MassDevelopment may enter into a separate agreement for those services, which agreement shall provide for compensation to be paid to the Municipality for its collection services. The agreement may provide for the Municipality to pursue the collection of any delinquent PACE Betterment Assessment payments with the same diligence it employs in the collection of the Municipality's real property taxes, and to take such actions as are required to preserve the PACE Lien. The agreement may also provide that MassDevelopment shall have the right to take over the enforcement of any delinquent PACE Betterment Assessment payments upon written notice to the Municipality, and thereupon the Municipality will have no further responsibility to collect such amounts.

3. The Municipality will provide not less than 30 days' prior written notice to MassDevelopment and the Servicer, of any sale or assignment of its real property taxes, or any institution of a foreclosure, tax taking or other proceeding against any benefitted property for delinquent real property taxes or other betterment assessments. Similarly, MassDevelopment shall provide or cause to be provided not less than 30 days' prior written notice to the Municipality of the institution of a foreclosure or other proceeding, of which MassDevelopment has knowledge, against any benefitted property for delinquent PACE Betterment Assessment payments.

(i) Allocation of Insufficient Payments.

The Municipality and MassDevelopment each acknowledge and agree that if an Owner fails to pay in full on any payment due date the full amount of the real property taxes, betterment assessments (including PACE Betterment Assessment payments), and any other charges due to the Municipality and included on the property tax bill for a benefitted property, any amounts received by the Municipality in payment of such taxes, assessments and charges, including any amounts received in payment of penalties or interest for prior delinquent payments, shall be applied first, to pay such real property taxes, betterment assessments (other than the PACE Betterment Assessment payments), and other charges (collectively, "Municipal Charges"), including penalties, interest and fees included in such property tax bill for any prior delinquent Municipal Charges, and second, to pay the PACE Betterment Assessment payments due, including any penalties, interest and fees included in such property tax bill for any prior delinquent PACE Betterment Assessment payments. Any subsequent payments received by the Municipality with respect to such Municipal Charges and PACE Betterment Assessment payments shall be applied in the same order as set forth in the prior sentence. Nothing in this paragraph is intended to affect the lien priority established with respect to PACE Liens under the PACE Act.

(j) Records; Audits.

MassDevelopment and its agents, at MassDevelopment's own expense, shall have the right to audit the records maintained by the Municipality or its designee relating to the PACE Betterment Assessment payments upon reasonable notice and during the Municipality's normal business hours. The Municipality also will permit any assignee of MassDevelopment of a PACE Lien, at such assignee's own expense, to audit the records maintained by the Municipality or its designee relating to the PACE Betterment Assessment payments upon reasonable prior written notice to the Municipality and during the Municipality's normal business hours. MassDevelopment and the Municipality agree to provide each other with such reasonable information as they may request and as is available with respect to the PACE Betterment Assessment and payments; MassDevelopment and the Municipality agree to provide such information in a computer format satisfactory to the other.

(k) Promotion of Program; Assistance for PACE Financing; Payment to Municipality.

1. The Municipality shall use good faith efforts to assist MassDevelopment in local marketing efforts and outreach to the local business community to encourage participation in PACE Massachusetts, such as including PACE Massachusetts program information on the Municipality's website, distributing an informational letter from the Municipality to local businesses regarding the program, any such information to be prepared by MassDevelopment and provided to the Municipality, and joining with MassDevelopment in conducting business roundtable events held in the Municipality.

2. The Municipality shall use good faith efforts to assist in gathering and providing information to MassDevelopment for use in the offer, sale and issuance of Bonds or to otherwise assist in the obtaining of financing for Improvements to benefitted properties within the Municipality.

Section 4. No Liability.

Notwithstanding any other provision of law to the contrary, officers and officials of the Municipality, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or any assignee or to any other person for claims, of whatever kind or nature, under or related to PACE Massachusetts, including, without limitation, claims for or related to uncollected PACE Betterment Assessments. Other than fulfillment of the obligations specified in this Agreement, the Municipality has no liability to any Owner or Capital Provider.

Section 5. Term.

The term of this Agreement shall commence upon the date first written above and shall continue in full force and effect until the later of (i) the Municipality elects to terminate this Agreement as provided below, and (ii) all of the PACE Betterment Assessments levied by the Municipality in accordance with this Agreement have been paid in full or are deemed no longer outstanding (the "Term"). The Municipality may elect to terminate its participation in PACE Massachusetts at any time on 60 days' prior written notice to MassDevelopment, provided that the provisions of this Agreement shall continue with regard to PACE Betterment Assessments assessed prior to such termination until those PACE Betterment Assessments have been paid in full or are no longer outstanding.

Section 6. Default.

Each party shall give the other party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within such 30-day period, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such default. The parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance; provided however, in no event shall either party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 5 of this Agreement.

Section 7. Miscellaneous Provisions.

(a) Assignment or Transfer. Except as provided in Section 3(e) hereof, a party may not assign or transfer its rights or obligations under this Agreement to another municipality, political subdivision or agency or department of the Commonwealth or to a private party or entity, without the prior written consent of the other party and, if required, the prior approval of any trustee for or holders of any Bonds outstanding. If approval of the assignment by any such trustee or holders of any such Bonds is required, such approval shall be obtained in accordance with the indenture or other documents entered into by MassDevelopment in connection with the issuance of the applicable Bonds.

(b) Designation of Servicer. Notwithstanding the provisions of Section 7(a), MassDevelopment may designate an entity to serve as the Servicer for purposes of Sections 3(g) and (h), or any other provision hereof, upon written notice to the Municipality. Such notice may be included in a Final Notice sent pursuant to Section 2(b), or at a later date.

(c) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed, to be an original, and all of which together shall constitute but one and the same instrument.

(e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the Municipality:
CITY/TOWN NAME
STREET ADDRESS
CITY, STATE, ZIP CODE
Attention:

If to MassDevelopment:
Massachusetts Development Finance Agency
99 High Street
Boston, MA 02110
Attention: Executive Vice President for Finance Programs
With a copy sent to the same address addressed to:
Attention: General Counsel

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by MassDevelopment and the Municipality.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City of Boston, Suffolk County, Massachusetts.

(h) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(i) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Municipality and MassDevelopment have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)

ATTEST:

[MUNICIPALITY]

By: _____

Name:

Title:

**MASSACHUSETTS DEVELOPMENT FINANCE
AGENCY**

By: _____

Name:

Title:

**EXHIBIT A
FORM OF NOTICE OF BENEFITTED PROPERTY**

In accordance with that certain PACE Massachusetts Municipal Assessment and Assignment Agreement, dated as of _____, 20__ (the "Agreement"), between the [CITY/TOWN OF _____], MASSACHUSETTS (the "Municipality") and MASSACHUSETTS DEVELOPMENT FINANCE AGENCY ("MassDevelopment"), MassDevelopment hereby notifies the Municipality as follows (terms used in this notice and not otherwise defined herein have the same meanings assigned to such terms in the Agreement):

1. The owner (the "Owner") identified below of the property located in the Municipality at the address set forth below (the "Benefitted Property") has filed an application with MassDevelopment for participation in PACE Massachusetts.

2. The project proposed by the Owner (the "Project") has been approved by the Massachusetts Department of Energy Resources.

3. MassDevelopment has found that the Project complies with the financial underwriting guidelines for PACE Massachusetts.

4. The estimated amount of the PACE Betterment Assessment to be levied on the Benefitted Property at the time of execution and delivery of the Financing Agreement (the "Closing") is set forth below.

5. A copy of the current property tax bill issued by the Municipality with respect to the Benefitted Property is attached to this notice.

6. Not less than seven Business Days' prior to the Closing, MassDevelopment will provide the Municipality with the final amount of the PACE Betterment Assessment to be levied on the Benefitted Property and the corresponding PACE Lien to be placed upon the Benefitted Property, in the form of a completed PACE Massachusetts Betterment Assessment Statement, together with the other information and documentation required pursuant to Section 2 of the Agreement.

MASSACHUSETTS DEVELOPMENT FINANCE
AGENCY

Date:

By: _____
Duly Authorized

Owner:

Address of Benefitted Property:

Estimated Amount of PACE Betterment Assessment: \$

ACKNOWLEDGED:

[OWNER]

By: _____
Name:
Title:

[MUNICIPALITY]

By: _____
Duly Authorized

**EXHIBIT B
FORM OF NOTICE OF PACE BETTERMENT ASSESSMENT AND LIEN**

In accordance with that certain PACE Massachusetts Municipal Assessment and Assignment Agreement, dated as of _____, 20__ (the "Agreement"), between the [CITY/TOWN OF _____], MASSACHUSETTS (the "Municipality") and MASSACHUSETTS DEVELOPMENT FINANCE AGENCY ("MassDevelopment"), MassDevelopment hereby notifies the Municipality as follows (terms used in this notice and not otherwise defined herein have the same meanings assigned to such terms in the Agreement):

1. MassDevelopment has previously provided you with a Notice of Benefitted Property with respect to the property located in the Municipality at the address set forth below (the "Benefitted Property").

2. The owner of the Benefitted Property (the "Owner") has entered into the Financing Agreement that is an exhibit to the PACE Massachusetts Betterment Assessment Statement attached hereto.

3. All holders of mortgage liens, if any, on the Benefitted Property have consented to a PACE Betterment Assessment being levied upon the Benefitted Property and a PACE Lien being placed on the Benefitted Property to secure the Owner's obligations under the Financing Agreement.

4. The amount of the PACE Betterment Assessment to be levied on the Benefitted Property and the corresponding PACE Lien to be placed upon the Benefitted Property is set forth below.

5. Attached as **Attachment 1** is the Payment Schedule for the PACE Betterment Assessment to be levied by the Municipality on the Benefitted Property no later than the Levy Date set forth below and collected by the Municipality in accordance with the terms of the Agreement.

6. Attached as **Attachment 2** is the PACE Massachusetts Betterment Assessment Statement, together with all attachments, to be executed by the Collector Treasurer of the Municipality and returned to MassDevelopment at least two Business Days prior to the Recording Date set forth below for recording by MassDevelopment, on behalf of the Municipality's tax collector, in the Registry identified below.

7. Attached as **Attachment 3** is the PACE Massachusetts Municipal Assignment to be executed by the Municipality and returned to MassDevelopment at least two Business Days prior to the Recording Date set forth below for recording by MassDevelopment in the Registry identified below.

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

Date:

By: _____
Duly Authorized

Owner:

Address of Benefitted Property:

Amount of PACE Betterment Assessment: \$

Levy Date: _____, 20__.

Recording Date: _____, 20__.

Registry:

CONSENTED TO:
[OWNER]

By: _____
Name:
Title:

**ATTACHMENT 1
PAYMENT SCHEDULE**

**ATTACHMENT 2
PACE MASSACHUSETTS BETTERMENT ASSESSMENT STATEMENT**

**ATTACHMENT 3
PACE MASSACHUSETTS MUNICIPAL ASSIGNMENT**

EXHIBIT C
FORM OF PACE MASSACHUSETTS BETTERMENT ASSESSMENT STATEMENT

COMMONWEALTH OF MASSACHUSETTS
[CITY/TOWN] OF _____
Office of _____

PACE MASSACHUSETTS BETTERMENT ASSESSMENT STATEMENT

THIS IS TO CERTIFY, in accordance with M.G.L. Ch. .23M, as amended (the "PACE Act"), and M.G.L. Ch. 80, as amended, that by [vote/resolution] of the [Board of Selectmen/Town Council/City Council] of the [City/Town] of _____, Massachusetts], dated _____, 20__, the [City/Town] of _____, Massachusetts (the "Municipality") has elected to participate in the Massachusetts Commercial Clean Energy Program ("PACE Massachusetts"), and has entered into a PACE Massachusetts Municipal Assessment and Assignment Agreement, dated _____, 20__ (the "Agreement"), with Massachusetts Development Finance Agency ("MassDevelopment") pursuant to said [vote/resolution], under which the Municipality has agreed that the [Assessing Board] of the Municipality will levy PACE betterment assessments for the costs of qualifying commercial energy improvements on those qualifying commercial and industrial properties located within the Municipality identified to the Municipality by MassDevelopment, and in the amounts determined by MassDevelopment, and that in accordance with such Agreement, MassDevelopment has notified the [Assessing Board] that a PACE betterment assessment in the amount set forth on **Attachment A** is to be levied on the property located in the Municipality and identified on **Attachment A** (the "Property"), and the [Assessing Board] has levied a PACE betterment assessment in such amount on the Property, which now constitutes a lien on the Property. Such PACE betterment assessment is to be paid in accordance with the Payment Schedule attached as **Attachment B** and the Financing Agreement attached as **Attachment C**. The PACE betterment assessment will be collected in the same manner as real property taxes of the Municipality, including in the event of default or delinquency, with respect to any penalties, fees and lien priorities. In accordance with the PACE Act, the PACE betterment assessment lien evidenced hereby shall take precedence over all other liens or encumbrances on the Property, except a lien of the Municipality for real property taxes. In accordance with the PACE Act, the PACE betterment assessment and lien run with the Property until such assessment is paid, and shall continue notwithstanding any alienation or conveyance of the Property.

IN WITNESS WHEREOF, the undersigned _____ of the [City/Town] of _____, duly authorized, has signed this notice this ___ day of _____, 20__.

OF THE [CITY/TOWN] OF _____

ATTACHMENT A
Property Owner and Description

Owner:

Address of Property:

Amount of PACE Betterment Assessment: \$ _____

Description of Property:

ATTACHMENT B
PAYMENT SCHEDULE

ATTACHMENT C
FINANCING AGREEMENT

**EXHIBIT D
FORM OF PACE MASSACHUSETTS MUNICIPAL ASSIGNMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that the [City/Town of _____], Massachusetts (the "Assignor"), acting herein by _____, its _____, pursuant to that certain PACE Massachusetts Municipal Assessment and Assignment Agreement, dated as of _____, 20__ (the "Agreement"), between the Assignor and Massachusetts Development Finance Agency (the "Assignee"), in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to the Assignor by the Assignee, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, quit-claims, sells, conveys, assigns, transfers and sets over unto the Assignee, without warranty, guaranty or representation and without recourse (except as specifically set forth in the Agreement), all of its right, title and interest in and to that certain betterment assessment lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, recorded/filed in the [_____]Registry of Deeds at Book ____ Page ____/____Registry District of the Land Court as Document No. _____ on Certificate of Title No. _____] on property owned on the date hereof in whole or in part by the entity identified on and as described on **Attachment A** attached hereto and made a part hereof (the "Lien"), to have and to hold the same unto the Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to M.G.L. Ch. 23M §3(h).

By execution of this Assignment, the Assignor assigns to the Assignee, and the Assignee assumes, as of the date hereof, all of the rights at law or in equity, obligations, powers and duties as the Assignor and its tax collector would have with respect to the Lien, if the Lien had not been assigned with regard to precedence and priority of such lien, the accrual of interest, charges, fees and expenses of collection.

This Assignment by the Assignor is absolute and irrevocable and the Assignor shall retain no interest, reversionary or otherwise, in the Lien.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ of _____, 20__.

Assignor:

CITY/TOWN OF _____,
MASSACHUSETTS

By: _____
Name:
Title:

Attachment A

Property Owner and Description

Owner:

Address of Property:

Amount of PACE Betterment Assessment: \$

Description of Property:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On _____, 20____, before me, the undersigned notary public, personally appeared _____, the _____ of the City/Town of _____, Massachusetts (the "Principal") and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose as the _____ of the City/Town of _____, Massachusetts. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

- A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or
- On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or
- Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or
- _____ The following evidence of identification: _____

Notary Public

Printed Name: _____

My Commission Expires: _____

[Seal]

APPENDIX H: OWNER DISCLOSURE STATEMENT AND AGREEMENT

**PACE MASSACHUSETTS
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

Date:

Owner:

Property Address:

Municipality:

Capital Provider:

Date of Application:

This Owner Disclosure Statement and Agreement (this "Disclosure Statement") is being provided to you, as owner (the "Owner") of the above-referenced property (the "Property") in connection with your filing of an Application for PACE Massachusetts, dated the date set forth above (the "Application"), with Massachusetts Development Finance Agency ("MassDevelopment"), as the administrator of the Massachusetts Commercial Property Assessed Clean Energy Program ("PACE Massachusetts" or the "Program"), established pursuant to M.G.L. Chapter 23M, as amended (the "PACE Act"). As indicated in the Application, you propose to finance the acquisition, installation and construction of certain commercial energy improvements to the Property (the "Improvements") through PACE Massachusetts.

MassDevelopment, in consultation with the Massachusetts Department of Energy Resources ("DOER") has established PACE Massachusetts in accordance with the PACE Act, and developed program guidelines (the "Guidelines") governing the terms and conditions under which financing for commercial PACE projects ("PACE financing") may be made available through the Program. By executing a copy of this Disclosure Statement, where indicated below, you acknowledge that you have received a copy of the Guidelines. Terms used in this Disclosure Statement and not otherwise defined herein have the same meanings assigned to them in the Guidelines.

DOER has approved your proposed project under the Guidelines, and following such approval MassDevelopment has determined that the proposed project complies with the financial underwriting guidelines included in the Guidelines.

Accordingly, in consideration of your participation in PACE Massachusetts and in accordance with Sections 3(d) and (e) of the PACE Act, MassDevelopment notifies you of the following:

1. PACE Betterment Assessment. As a result of the Owner's participation in PACE Massachusetts, a PACE Betterment Assessment will be levied on the Property by the above-referenced Municipality (the "Municipality"). The PACE Betterment Assessment will be collected by the Municipality in installments on the property tax bill issued by the Municipality, in the same manner as and subject to the same penalties, fees and lien priorities as real property taxes assessed against the Property by the Municipality.
2. PACE Lien. In connection with levying the PACE Betterment Assessment, the Municipality will place a PACE Lien upon the Property. The PACE Lien will be assigned by the Municipality to MassDevelopment, and MassDevelopment will further assign it to the above-referenced PACE Capital Provider (the "Capital Provider"), as security for the PACE financing. A PACE Lien can be enforced in the same manner as any private party holding a lien on real property, including a holder of a mortgage on the Property, as further described below in paragraph 9.

3. Consent to PACE Betterment Assessment. The Owner has freely and willingly consented to the levying of the PACE Betterment Assessment and the imposition of the PACE Lien upon the Property. The Owner acknowledges and agrees that the benefit to the Property of the Improvements is at least equal to the amount of the PACE Betterment Assessment. Upon recording of the PACE Lien, the entire balance of the PACE Betterment Assessment (including interest thereon) will constitute a legal, valid and binding non-ad valorem betterment assessment and a resulting lien upon the Property, which, subject to the consent of each existing mortgage holder as described below in paragraph 4, will be senior in priority to all other liens on the Property, except a lien for real property taxes, until paid in full. Under the Financing Agreement to be entered into by the Capital Provider and the Owner (the "Financing Agreement"), the Owner waives all rights to subsequently challenge the PACE Betterment Assessment on the basis of procedural irregularities, notice or due process claims, insufficient benefits, improper or unfair apportionment or any other basis.
4. Mortgage Holder Consent. Each existing holder of a mortgage on the Property must consent to the levying of the PACE Betterment Assessment and the imposition of the PACE Lien. The Owner hereby represents to MassDevelopment that the Owner has notified all such mortgage holders of the Owner's intention to participate in the Program and has requested the consent of each such mortgage holder to the levying of the PACE Betterment Assessment and the imposition of the PACE Lien.
5. Amount of PACE Betterment Assessment. The aggregate amount of the PACE Betterment Assessment, as set forth in **Exhibit A**, includes the costs of the Improvements financed, plus any fees and costs, as described in paragraphs 6 and 7, to be financed, plus interest on such financing. Attached to **Exhibit A** is a copy of the estimated payment schedule (the "Payment Schedule"), the final version of which will be included in the PACE Betterment Assessment and will be part of the Financing Agreement. The Payment Schedule sets forth the portion of the PACE Betterment Assessment (an "Assessment Installment Payment") to be included on the corresponding property tax bill issued by the Municipality with respect to the Property on each Assessment Installment Payment Date shown in **Exhibit A**.
6. Program Origination Fee and Other Initial Fees.
 - a. At the time of closing, MassDevelopment will charge a program origination fee, in the amount set forth on **Exhibit A**, to cover MassDevelopment's costs of implementing the PACE financing. This fee has been added to the amount of the PACE Betterment Assessment, if so indicated in **Exhibit A**.
 - b. The Owner also will be required to pay the costs of recording the PACE Lien and assignments, the initial costs of MassDevelopment's Servicer and Paying Agent, and the fees and costs of MassDevelopment's legal counsel, in the amounts set forth on **Exhibit A**. These fees and costs have been added to the amount of the PACE Betterment Assessment, if so indicated in **Exhibit A**.
 - c. If applicable, set forth on **Exhibit A** are the fees and costs for DOER's review of the Application and the proposed Improvements for participation in the Program. If applicable to your Application, this fee has been added to the amount of the PACE Betterment Assessment, if so indicated in **Exhibit A**.
 - d. The fees and costs of the Capital Provider incurred in connection with the PACE financing, based solely on the information provided by the Capital Provider to MassDevelopment, are set forth in **Exhibit A**. These amounts have been added to the amount of the PACE Betterment Assessment, if so indicated in **Exhibit A**.

Please note that the amount of the PACE Betterment Assessment set forth in Exhibit A does not include your counsel's fees or the fees of any other consultants that you may directly engage to assist you in the PACE Financing.

7. Annual Administration Fee. Each year, MassDevelopment will charge an annual administrative fee, in the amount set forth on Exhibit A. This fee has been added to the amount of the PACE Betterment Assessment.
8. Interest Rate. You will be charged interest on the total financed amount. Your interest rate will be set at the time your Financing Agreement is finalized. ***Interest rates may change from the date hereof to the date the Financing Agreement is finalized.*** An estimate of the interest rate is included on Exhibit A and reflected in the Payment Schedule attached as Exhibit A-1.
9. Foreclosure. If any installment of the PACE Betterment Assessment is not paid as and when due, the Property shall be subject to all enforcement mechanisms available to the Capital Provider under the PACE Act, which may result in the Owner's loss of title to the Property. The Capital Provider has the right to enforce any payment delinquency or default by the Owner or any successor owner of the Property in any manner authorized by law, including foreclosure. The Owner will be required to pay all reasonable costs incurred by the Capital Provider for such enforcement, including reasonable attorney's fees and costs; provided, however, the Capital Provider will not be entitled to accelerate the unpaid and not yet due balance of the PACE Betterment Assessment upon any such default.
10. Prepayment. The Owner may pre-pay the PACE Betterment Assessment in whole, but not in part, at any time, upon 15 Business Days' prior written notice to the Capital Provider and MassDevelopment.
11. No Endorsement, Warranty or Liability. Neither MassDevelopment nor DOER endorse any manufacturer, contractor, product, or system, or in any way warranty any equipment, or the installation or efficiency or production capability of any such equipment. MassDevelopment and DOER make no representations and have no responsibility regarding the Improvements and their installation/construction, including the quality, safety, cost savings, efficiency or production capability of the Improvements; or any compliance of the Improvements with any applicable laws, regulations, codes, standards or requirements. Further, neither MassDevelopment nor DOER shall be in any way liable for any incidental or consequential damages resulting from the Improvements or their construction/installation.
12. Indemnification. Except to the extent solely caused by the gross negligence or willful misconduct of MassDevelopment or DOER or their respective directors, officers, employees, and agents, the Owner will indemnify MassDevelopment and DOER and their respective directors, officers, employees, and agents against (a) any and all claims by any person related to the participation of MassDevelopment and DOER in the transactions contemplated in this Disclosure Statement and in PACE Massachusetts, including, without limitation, claims arising out of (i) any condition of the Property or the Improvements or the construction, installation use, occupancy or management thereof; (ii) any accident, injury or damage to any person occurring in or about or as a result of the Improvements or the Property; (iii) any breach by the Owner of its obligations under the Financing Agreement; or (iv) any act or omission of the Owner, or any of its agents, contractors, servants, employees or licensees; and (b) all losses, costs, counsel fees, expenses or liabilities reasonably incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding is brought against MassDevelopment or DOER by reason of any such claim, the Owner will defend the same at its expense upon written notice from MassDevelopment or DOER, as applicable, and MassDevelopment and DOER, as the case may be, will (except in any case in which their interests are adverse to that of the Owner) cooperate with the Owner, at the expense of the Owner, in connection therewith. This indemnification shall survive the termination of the Financing Agreement, the PACE Betterment Assessment and the PACE Lien.

13. CUSTOMER IDENTIFICATION PROGRAM. To help the government fight the funding of terrorism and money laundering activities, federal law requires financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, the Capital Provider may require the Owner to provide the name and address of the Owner, and of its beneficial owners, if any, and other information that will allow the Capital Provider to identify the Owner, and its beneficial owners, if any, in accordance with federal law and regulations.

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned, on behalf of the Owner, hereby (a) represents that it has received, read and understands the risks and characteristics of PACE Massachusetts described in this Disclosure Statement, including the terms set forth in **Exhibit A** attached hereto, and (b) in consideration of the Owner's participation in PACE Massachusetts, the sufficiency of which is hereby acknowledged, (i) acknowledges and agrees with each of the statements set forth above in this Disclosure Statement, (ii) confirms that the information in the Application is true and correct as of the date hereof, and (iii) represents that it is authorized to execute this Disclosure Statement on behalf of the Owner.

[NAME OF OWNER]

By: _____
Name:
Title:

Date:

**PACE MASSACHUSETTS
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

EXHIBIT A

Summary of Financing

1. Total Amount of PACE Betterment Assessment (Total Amount Financed): \$_____.*
2. Term: _____ Years.
3. Interest Rate: ____% per annum.*
4. Assessment Installment Payment Schedule: See Exhibit A-1 attached.
5. Assessment Installment Payment Dates: [February 1, May 1, August 1 and November 1] of each year.
6. First Assessment Installment Payment Date: _____.
7. Date Interest Begins to Accrue: _____.
8. Program Origination Fee: \$_____, which amount [has/has not] been included in the Total Amount of the PACE Betterment Assessment set forth in Item 1.
9. Additional closing costs:
 - a. Recording Fees: \$_____.
 - b. Initial Servicer and Paying Agent Fee: \$_____.
 - c. MassDevelopment's counsel fees and costs: \$_____.These fees and costs [have/have not] been included in the Total Amount of the PACE Betterment Assessment set forth in Item 1.
10. DOER Fee: \$_____, which amount [has/has not] been included in the Total Amount of the PACE Betterment Assessment set forth in Item 1.
11. Capital Provider's estimated fees and costs†: _____, which amount [has/has not] been included in the Total Amount of the PACE Betterment Assessment set forth in Item 1.
12. Annual Administration Fee: \$_____.

* Includes interest at an estimated rate. The actual rate of interest will be established under the Financing Agreement, at the time the Financing Agreement is finalized, and may be higher or lower than the estimated rate included herein.

† These amounts have been provided to MassDevelopment by the Capital Provider, and may be subject to change.

**PACE MASSACHUSETTS
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

**EXHIBIT A-1
Estimated Schedule of Assessment Installment Payments***

Assessment Installment Payment Date	Principal Component	Interest Component	Annual Administration Fee	Total Assessment Installment Payment Due
	\$	\$	\$	\$
Total PACE Betterment Assessment				\$

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* Includes interest at an estimated rate. The actual rate of interest will be established under the Financing Agreement, at the time the Financing Agreement is finalized, and may be higher or lower than the estimated rate included herein.

APPENDIX I: CAPITAL PROVIDER ASSIGNMENT AGREEMENT

This agreement allows MassDevelopment to assign the PACE lien to the capital provider as security for the financing.



**PACE MASSACHUSETTS
CAPITAL PROVIDER ASSIGNMENT AGREEMENT**

This **CAPITAL PROVIDER ASSIGNMENT AGREEMENT** (this "Agreement") is made and entered into as of the ___ day of _____, 20___, by and between the **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY** ("MassDevelopment"), a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts (the "Commonwealth"), and _____, a [national banking association/chartered bank/corporation], duly organized and validly existing under [federal/name of state] law [and duly authorized to do business in the Commonwealth], with an office at _____ (the "Capital Provider"). Terms used in this Agreement and not otherwise defined herein shall have the same meanings assigned to them in the Financing Agreement (as hereinafter defined).

RECITALS

WHEREAS, pursuant to M.G.L. Ch. 23M, as amended (the "PACE Act"), the Commonwealth has authorized the establishment of a commercial sustainable, energy program known as the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts") to provide a financing mechanism to private owners of qualifying commercial and industrial properties for certain qualifying commercial energy improvements ("Improvements"); and

WHEREAS, pursuant to the PACE Act, PACE Massachusetts has been established, in consultation with the Massachusetts Department of Energy Resources ("DOER"), and is administered by MassDevelopment; and

WHEREAS, under PACE Massachusetts, the owner of the qualifying commercial or industrial property benefitting from the Improvements (the "benefitted property") is required to repay the financing of the costs of the Improvements (the "Financing") through the payment of a betterment assessment levied on such benefitted property by the municipality in which the benefitted property is located; and

WHEREAS, _____, a _____ organized and existing under the laws of _____, with a principal office at _____, Massachusetts (the "Owner") wishes to install Improvements at the property owned by the Owner and described in Exhibit A (the "Property"), which Property is located in the Municipality (as hereinafter defined), and to that end has entered into the Financing Agreement (as hereinafter defined); and

WHEREAS, the Owner has consented to the Municipality levying a betterment assessment on the Property (the "PACE Betterment Assessment") and placing a lien on the Property (the "PACE Lien"), pursuant to the PACE Act and the Municipal Agreement (as hereinafter defined), and the assignment of the PACE Lien by the Municipality to MassDevelopment and from MassDevelopment to the Capital Provider, as security for the Financing; and

WHEREAS, the Municipality, concurrently with the execution and delivery hereof, has caused MassDevelopment to record the Betterment Assessment Statement (as hereinafter defined), and has assigned the PACE Lien to MassDevelopment pursuant to the Municipal Assignment (as hereinafter defined); and

WHEREAS, the Capital Provider is willing to provide the Financing, subject to the terms of the Financing Agreement and this Agreement; and

WHEREAS, MassDevelopment is willing to assign the PACE Lien to the Capital Provider as security for the Financing, subject to the terms of this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the PACE Act, MassDevelopment and the Capital Provider hereby agree as follows:

1. Definitions.

In addition to the terms set forth in the Recitals to this Agreement, the following terms shall have the following meanings as used in this Agreement:

- (a) "Act" means, collectively, Chapter 23G and the Pace Act.
- (b) "Assessment Installment Payment Date" means each [May 1 and November 1/February 1, May 1, August 1 and November 1] set forth in **Exhibit C** hereto.
- (c) "Assessment Installment Payments" means the [semi-annual/quarterly] installments of the PACE Betterment Assessment levied by the Municipality and included on the property tax bill for the Property, as set forth on Exhibit C to the Financing Agreement and in **Exhibit C** hereto.
- (d) "Assignment of PACE Lien" means the assignment of the PACE Lien by MassDevelopment to the Capital Provider, in the form set forth in **Exhibit B**.
- (e) "Betterment Assessment Statement" means the PACE Massachusetts Betterment Assessment Statement, dated as of the date hereof, executed by the Municipality and recorded in the Registry, evidencing the PACE Betterment Assessment and the PACE Lien.
- (f) "Business Day" means any day which is not (i) a Saturday, or (ii) a Sunday, or (iii) another day of the year on which banks located in Boston, Massachusetts are required or authorized by law or by executive order to close.
- (g) "Capital Provider Payment Date" means each [June 1 and December 1/March 1, June 1, September 1 and December 1] set forth in **Exhibit C** hereto.
- (h) "Chapter 23G" means M.G.L. Ch. 23G, as the same may be amended from time to time.
- (i) "Electronic Means" means a facsimile transmission, email transmission or other similar electronic means of communication providing evidence of transmission, including a telephone communication confirmed by any other method set forth in this definition.
- (j) "Financing Agreement" means the PACE Massachusetts Financing Agreement, dated the date hereof, between the Owner and the Capital Provider.
- (k) "Municipal Agreement" means the PACE Massachusetts Municipal Assessment and Assignment Agreement, dated as of _____, 20__, between the Municipality and MassDevelopment.
- (l) "Municipal Assignment" means the PACE Massachusetts Municipal Assignment, dated the date hereof, from the Municipality to MassDevelopment, recorded with the Registry concurrently with the recording of the Betterment Assessment Statement.
- (m) "Municipality" means the [City/Town] of _____, Massachusetts.
- (n) "Net Amount Due Capital Provider" means the [semi-annual/quarterly] installments of the PACE Betterment Assessment payable to the Capital Provider on each Capital Provider Payment Date, as set forth on Exhibit C to the Financing Agreement and in **Exhibit C** hereto.
- (o) "Payment Schedule" has the meaning assigned to such term in Section 4(b)(i).
- (p) "Permitted Transferee" means a "qualified institutional buyer," as such term is defined in Rule 144A of the Securities and Exchange Commission under the Securities Act of 1933, or an

“accredited investor” as that term is defined 17 C.F.R. §230.501(a) (excluding clauses (a)(5) and (a)(6) thereof).

- (q) “Registry” means the _____ [Registry of Deeds/District of the Land Court].
- (r) “Servicer” means the Servicer identified in Section 12(e).

2. Financing of Improvements. The Capital Provider hereby agrees to undertake the financing of the Improvements on the terms and conditions set forth in the Financing Agreement. The Capital Provider covenants that it will not disburse, or approve the disbursement of, the Disbursement Amount to the Owner, any Contractor or any other person or entity to pay the costs of the Project and the Improvements, except in accordance with the terms and conditions of the Financing Agreement. The Capital Provider shall provide to MassDevelopment, within 15 days following the Capital Provider's approval of the same, notice of the final disbursement of the Disbursement Amount, including in such notice the total amount disbursed under the Financing Agreement and the amount, if any, of the Disbursement Amount remaining after such final disbursement.

3. Assignment of PACE Lien.

(a) MassDevelopment hereby agrees to assign to the Capital Provider the PACE Lien as security for the Financing, and shall execute and deliver to the Capital Provider the Assignment of PACE Lien concurrently with the execution and delivery of this Agreement. Upon such assignment, the Capital Provider shall have and possess the same powers and rights at law or in equity as MassDevelopment and the Municipality and its tax collector would have had if the PACE Lien had not been assigned, with regard to the precedence and priority of such lien, the accrual of interest, and the fees and expenses of collection. In accordance with the PACE Act, the Capital Provider shall have the same rights to enforce such PACE Lien as any private party holding a lien on real property, including, but not limited to, foreclosure in a manner consistent with the rights afforded a mortgagee under the provisions of M.G.L. Ch. 183, § 21, and an action of contract, or any other appropriate action, suit or proceeding.

(b) MassDevelopment shall record or cause to be recorded the Assignment of PACE Lien in the Registry concurrently with the recording of the Betterment Assessment Statement. Upon recording of the Assignment of PACE Lien, MassDevelopment shall provide or cause to be provided a copy of the recorded Assignment of PACE Lien to the Capital Provider and the Owner, together with recorded copies of the Betterment Assessment Statement and the Municipal Assignment. The Capital Provider may assign its rights under the PACE Lien and this Agreement in connection with the assignment of its rights under the Financing Agreement, subject to the provisions of Section 11(b).

(c) As provided in the PACE Act, each PACE Lien shall be continued, recorded and released by the Capital Provider in the manner provided for property tax liens of the Municipality, and shall take precedence over all other liens or encumbrances except a lien for real property taxes of the Municipality on the Property.

4. Payment of PACE Betterment Assessment.

(a) The Capital Provider acknowledges that it has received a copy of the Municipal Agreement and represents that it accepts the procedures, obligations, responsibilities and limitations of liability of the Municipality and MassDevelopment relating to the assessing, billing, collecting and enforcing of the PACE Betterment Assessment and the PACE Lien contained therein.

(b) The Capital Provider acknowledges and agrees that:

- i. attached hereto as **Exhibit C** is a true and correct copy of the payment schedule for the Financing (the “Payment Schedule”), and that the Payment Schedule is the same as the payment schedule included as Exhibit C to the Financing Agreement;

ii. MassDevelopment, directly or through its paying agent, will pay over or cause to be paid over to the Capital Provider the applicable Net Amount Due Capital Provider on each Capital Provider Payment Date, as set forth in **Exhibit C**, but only from amounts received from the Municipality as payment of the PACE Betterment Assessment; and

iii. notwithstanding any provision of this Agreement, the Municipal Agreement, the Financing Agreement, or the Payment Schedule to the contrary, receipt by the Capital Provider of the Net Amount Due Capital Provider not later than the corresponding Capital Provider Payment Date shall constitute timely payment of the Assessment Installment Payments due under the Financing Agreement.

(c) The Capital Provider shall provide prompt written notice to MassDevelopment and the Servicer of the prepayment by the Owner of the PACE Betterment Assessment.

(d) The Capital Provider, at its own expense, shall have the right to audit the records maintained by the Municipality relating to the PACE Betterment Assessment upon reasonable prior written notice to the Municipality and during the Municipality's normal business hours.

5. Delinquent Payments.

(a) The Servicer shall give written notice to the Capital Provider by Electronic Means if any Assessment Installment Payment has not been received by the Servicer within 35 days following the applicable Assessment Installment Payment Date.

(b) The Capital Provider acknowledges and agrees that pursuant to the Municipal Agreement and the PACE Act, the Municipality has no obligation to take actions to collect delinquent PACE Betterment Assessment payments or to enforce the PACE Lien, other than providing a notice of demand to the Owner within 30 days following an Assessment Installment Payment Date and continuing to include the PACE Betterment Assessment on the property tax bill for the Property, including any penalties and fees in the same manner applicable to delinquent real property taxes of the Municipality, as set forth in the Municipal Agreement.

(c) The Capital Provider acknowledges and agrees that, in accordance with the Municipal Agreement, if the Owner fails to pay in full on any payment date the full amount then due of real property taxes, betterment assessments (including the PACE Betterment Assessment), and any other charges due to the Municipality and included on the property tax bill for the Property, any amounts received by the Municipality in payment of such taxes, assessments and charges, including any amounts received in payment of penalties or interest for prior delinquent payments, shall be applied first, to pay such real property taxes, betterment assessments (other than the PACE Betterment Assessment), and other charges (collectively, "Municipal Charges"), including penalties and interest included in such property tax bill for any prior delinquent Municipal Charges, and second, to pay the PACE Betterment Assessment, including any penalties and interest included in such property tax bill for any prior delinquent PACE Betterment Assessment payments. The Capital Provider further acknowledges and agrees that, in accordance with the Municipal Agreement, any subsequent payments received by the Municipality with respect to such Municipal Charges and the PACE Betterment Assessment shall be applied in the same order as set forth in the prior sentence, provided that nothing in this paragraph (c) is intended to affect the lien priority established with respect to PACE Liens under the PACE Act.

(d) MassDevelopment, directly or through the Servicer, promptly shall provide or cause to be provided to the Capital Provider a copy of any notice received from the Municipality with respect to the sale or assignment of the Municipality's real property taxes or any institution of a foreclosure, tax taking or other proceeding against the Property for delinquent real property taxes or other applicable betterment assessments.

(e) Notwithstanding any provision of the Financing Agreement to the contrary, the Capital Provider shall not commence to exercise any rights to enforce the PACE Lien for failure to receive the scheduled Net Amount Due Capital Provider (a “payment default”) on the respective Capital Provider Payment Date, earlier than 60 days following such Capital Provider Payment Date. If the Capital Provider elects to exercise its rights to sell the Property due to such payment default under Section 11 of the Financing Agreement and the PACE Act, not less than 30 days prior to the Capital Provider commencing to exercise its remedies under the Financing Agreement by giving the notices required to be given to the Owner and any holders of a mortgage or other lien on the Property in accordance with the provisions of M.G.L. Ch. 244, §14 (the “Statutory Notices”), the Capital Provider shall provide to MassDevelopment, the Municipality, the Owner and each holder of an interest in the Property junior to the PACE Lien, notice of the payment default and of the Capital Provider’s intention to sell the Property pursuant to the PACE Act and M.G.L. Ch. 183, §21.

6. Amendment of the PACE Betterment Assessment.

If the final amount of the Financing needs to be adjusted at the completion of the Improvements, whether due to an increase or decrease in the Approved Amount, in accordance with the provisions of the Financing Agreement, or any other time after the levying of the PACE Betterment Assessment and recording of the PACE Lien, the Capital Provider shall notify MassDevelopment and provide MassDevelopment for its review and confirmation an updated Payment Schedule, and, subject to the approval of DOER, MassDevelopment will promptly notify the Municipality of such change, and provide the Municipality with an amended Betterment Assessment Statement, including the updated Payment Schedule, as confirmed by MassDevelopment, and the new amount of the PACE Betterment Assessment. The Municipality shall adjust the PACE Betterment Assessment in the assessing and taxing records of the Municipality to permit the adjusted PACE Betterment Assessment to be included on the property tax bill for the Property as soon as practicable. MassDevelopment shall deliver or cause to be delivered the amended Betterment Assessment Statement executed by the Municipality to the Capital Provider, following receipt of the same from the Municipality. The Capital Provider shall be responsible for recording or causing to be recorded, at its sole cost and expense, the amended Betterment Assessment Statement in the Registry and for providing a copy of the same to the Owner.

7. MassDevelopment’s Representations and Warranties.

MassDevelopment hereby represents and warrants to, and agrees with the Capital Provider as follows:

(a) MassDevelopment is a body politic and corporate and a public instrumentality of the Commonwealth, established under Chapter 23G, with the power under and pursuant to the Act, to execute and deliver this Agreement, the Municipal Agreement and the Assignment of PACE Lien, and to perform its obligations hereunder and thereunder.

(b) MassDevelopment has taken all necessary action and has complied with all provisions of the Constitution of the Commonwealth and the Act, required to make this Agreement, the Municipal Agreement and the Assignment of PACE Lien, the valid obligations they purport to be; and when executed and delivered by the parties hereto and thereto, this Agreement, the Municipal Agreement and the Assignment of PACE Lien, will constitute legal, valid and binding agreements of MassDevelopment, will be enforceable against MassDevelopment in accordance with their respective terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied and, to the actual knowledge and belief of MassDevelopment, will not violate or conflict with or constitute a breach of or default under the Act or any material agreement to which MassDevelopment is a party.

8. Capital Provider's Representations and Warranties.

The Capital Provider hereby represents and warrants to, and agrees with MassDevelopment as follows:

(a) The Capital Provider is an entity as described in the first paragraph hereof, with the full power, and all licenses necessary, to own its properties to carry on its business as now being conducted, and has full power to enter into this Agreement and the Financing Agreement, and to carry out the terms and conditions contained herein and therein; and the execution of this Agreement and the Financing Agreement on its behalf and its participation in the transactions specified herein and therein is in its ordinary course of business and within the scope of its existing corporate authority.

(b) There is no action, suit or proceeding pending against the Capital Provider before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by the Capital Provider of this Agreement or the Financing Agreement.

(c) No approval of, or consent from, any governmental authority is required for the execution, delivery or performance by the Capital Provider of this Agreement or the Financing Agreement.

(d) The execution, delivery and performance by the Capital Provider of this Agreement and the Financing Agreement and the performance by the Capital Provider hereunder and thereunder, and the transactions contemplated hereby and thereby, (i) do not contravene any provisions of law applicable to the Capital Provider, (ii) do not conflict with its charter or bylaws, and (iii) do not violate or conflict with, and will not constitute a breach of or a default or require any consent under any material agreement to which the Capital Provider is a party, or by which the Capital Provider may be bound, or to which the Capital Provider or its property may be subject.

(e) Each of this Agreement and the Financing Agreement constitute the legal, valid and binding obligation of the Capital Provider, enforceable against the Capital Provider in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied.

(f) The Capital Provider has independently and without reliance upon MassDevelopment or DOER or any agent or employee of MassDevelopment or DOER, or any representation or warranty, express or implied, of MassDevelopment or DOER or any agent or employee of MassDevelopment or DOER (i) conducted its own credit evaluation of the Owner, (ii) determined that the Owner owns or has valid leasehold rights to, as applicable, the Property, (iii) conducted its own investigation to determine that the Improvements meet the requirements of the PACE Act and the guidelines established for PACE Massachusetts by DOER, and (iv) reviewed such information as it deemed adequate, necessary and appropriate and made its own analysis of the PACE Act, this Agreement, the Municipal Agreement, the Financing Agreement, and the Assignment of PACE Lien to evaluate the merits and risks of undertaking the Financing.

(g) The Capital Provider acknowledges that neither MassDevelopment nor DOER takes any responsibility for any information, financial or otherwise, regarding the Owner, the Property, or the Improvements furnished to the Capital Provider by or on behalf of MassDevelopment or DOER, including, but not limited to, the information contained in the application and related documents submitted to MassDevelopment by the Owner for participation in PACE Massachusetts.

(h) The Capital Provider is experienced in making investments in commercial energy improvements of the type that qualify for financing under PACE Massachusetts, including the Improvements, it is financially able to undertake the risks involved in undertaking the Financing, and it, or

its authorized representatives acting on its behalf, have sufficient knowledge and experience in business and financial matters necessary to evaluate the merits and risks of undertaking the Financing.

9. Default.

Each party shall give the other party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such default. The parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance.

10. Indemnification.

The Capital Provider agrees that it will protect, defend, indemnify and hold harmless MassDevelopment and DOER and their respective directors, officers, agents and employees (each an "Indemnified Party") from and against all claims, damages, losses, liabilities, costs or expenses, incurred by an Indemnified Party arising out of or in connection with the actions of an Indemnified Party under this Agreement. This indemnification shall survive the termination of this Agreement. The foregoing indemnity shall include, without limitation, the costs and expenses of defending or preparing to defend against any claim of liability, including reasonable fees of attorneys, consultants, and experts and related costs, provided that the Capital Provider shall have no liability to indemnify any Indemnified Party for such Indemnified Party's own gross negligence or willful misconduct.

11. Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be and remain in full force and effect until the PACE Betterment Assessment has been paid in full or deemed no longer outstanding.

12. Miscellaneous Provisions.

(a) Taxes and Charges. The Capital Provider shall pay any and all taxes and assessments, including sales or use taxes, if any, that may be imposed by any federal, state or local government authority on any remittances made by MassDevelopment, directly or through the Servicer, to the Capital Provider pursuant to this Agreement.

(b) Assignment. The Capital Provider may assign its rights and obligations under this Agreement and the Financing Agreement, in whole but not in part, only to a Permitted Transferee. The instrument of assignment shall include a representation from the assignee that the assignee is a Permitted Transferee. The Capital Provider shall give notice to MassDevelopment and to the Servicer of any such assignment and the name and contact information of the assignee not fewer than 30 days prior to the date that the next Assessment Installment Payment is due following the date of such assignment. Subject to the foregoing, this Agreement shall inure to the benefit of, and is binding upon, the successors and permitted assigns of the parties hereto.

(c) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed, to be an original, and all of which together shall constitute but one and the same instrument.

(e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to MassDevelopment:
MassDevelopment
99 High Street
Boston, MA 02110
Attention: Executive Vice President for Finance Programs

With a copy sent to the same address addressed to:
Attention: General Counsel

If to the Servicer:

Municap, Inc.
8965 Guilford Road, Suite 210
Columbia, MD 21046 Attn: Keenan Rice
Email: Keenan.Rice@municap.com

If to the Capital Provider:

NAME
STREET ADDRESS
CITY, STATE, ZIP CODE
Attention:

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by MassDevelopment and the Capital Provider.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City of Boston, Suffolk County, Massachusetts.

(h) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(i) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

(j) Not for the Benefit of Other Parties. This Agreement is not intended for the benefit of, and shall not be construed to create rights in, parties other than MassDevelopment, DOER, the Capital Provider, and the Municipality.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, MassDevelopment and the Capital Provider have each caused this Agreement to be executed and delivered as of the date indicated above:

**MASSACHUSETTS DEVELOPMENT FINANCE
AGENCY**

By: _____
Name:
Title:

[CAPITAL PROVIDER]

By: _____
Name:
Title:

EXHIBIT A

Description of the Property

EXHIBIT B

Form of Assignment of PACE Lien

KNOW ALL PERSONS BY THESE PRESENTS, that the Massachusetts Development Finance Agency (the "Assignor"), acting herein by _____, its _____, pursuant to that certain PACE Massachusetts Capital Provider Assignment Agreement, dated as of _____, 20__ (the "Agreement"), between the Assignor and _____ (the "Assignee"), in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to the Assignor by the Assignee, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains, sells, assigns, transfers and sets over unto the Assignee, without warranty, guaranty or representation and without recourse (except as specifically set forth in the Agreement), all of its right, title and interest in and to that certain betterment assessment lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, recorded/filed in the [_____] Registry of Deeds at Book ____ Page ____ / _____ Registry District of the Land Court as Document No. _____ on Certificate of Title No. _____] on property owned on the date hereof in whole or in part by the entity identified on and as described on Attachment A attached hereto and made a part hereof (the "Lien"), as such Lien was assigned by the [City/Town] of _____, Massachusetts to Assignor, pursuant to the PACE Massachusetts Municipal Assignment, dated as of [_____] / the date hereof] recorded/filed in the [_____] Registry of Deeds at Book ____ Page ____ / _____ Registry District of the Land Court as Document No. _____ on Certificate of Title No. _____] to have and to hold the same unto the Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to M.G.L. Ch. 23M §3(h).

By execution of this Assignment, the Assignor assigns to the Assignee, and the Assignee assumes, as of the date hereof, all of the rights at law or in equity, obligations, powers and duties as the Assignor would have with respect to the Lien, if the Lien had not been assigned with regard to precedence and priority of such lien, the accrual of interest, charges, fees and expenses of collection.

This Assignment by the Assignor is absolute and irrevocable and the Assignor shall retain no interest, reversionary or otherwise, in the Lien.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ of _____, 20__.

Assignor:

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY

By: _____
Name:
Title:

Attachment A

Property Owner and Description

Owner: _____

Address of Property: _____

Description of Property:

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On _____, 20____, before me, the undersigned notary public, personally appeared _____, the _____ of Massachusetts Development Finance Agency (the "Principal") and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose as the _____ of Massachusetts Development Finance Agency. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

- A current document issued by a federal or state government agency bearing the photographic image of the Principal's face and signature; or
- On the oath or affirmation of a credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the Principal; or
- Identification of the Principal based on the notary public's personal knowledge of the identity of the Principal; or
- _____The following evidence of identification: _____

 Notary Public
 Printed Name: _____
 My Commission Expires: _____

[Seal]

EXHIBIT C
Payment Schedule

ACTIVE 6249871v12

APPENDIX J: SAMPLE MODEL PACE RESOLUTION FOR MUNICIPAL OPT-IN

This is a sample model of PACE resolution for use by municipalities to enable PACE Massachusetts.

Vote/Resolution Authorizing the City/Town of _____ to Participate in the Massachusetts Commercial Property Assessed Clean Energy Program (PACE Massachusetts)

WHEREAS, pursuant to M.G.L. c. 23M, as amended (the "PACE Act"), the Commonwealth has established a commercial sustainable energy program known as the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts") to provide a financing mechanism ("PACE financing") to private owners of commercial and industrial properties for certain qualifying commercial energy improvements ("improvements"); and

WHEREAS, pursuant to the PACE Act, PACE Massachusetts is administered by the Massachusetts Development Finance Agency ("MassDevelopment"), in consultation with the Massachusetts Department of Energy Resources; and

WHEREAS, under PACE Massachusetts, the owner of the commercial or industrial property benefitting from the improvements (the "benefitted property") is required to repay the PACE financing through the payment of a betterment assessment (a "PACE betterment assessment") placed on such benefitted property by the municipality in which the benefitted property is located; and

WHEREAS, in order for an owner of commercial or industrial property to participate in PACE Massachusetts, Section 2 of the PACE Act requires that the municipality in which such property is located must elect to participate in PACE Massachusetts; and

WHEREAS, the City/Town of _____ (the "Municipality") has determined that it is in the best interest of the Municipality to participate in PACE Massachusetts as a "participating municipality," as provided in the PACE Act, to permit the owners of commercial and industrial properties located in the Municipality to access PACE financing for qualifying commercial energy improvements through PACE Massachusetts;

WHEREAS, NOW THEREFORE, BE IT [VOTED/RESOLVED], as follows:

The [City Council of the City of _____ [with the approval of the Mayor]] [the Board of Selectmen/Town Council of the Town of _____] hereby approves the Municipality participating in PACE Massachusetts pursuant to the PACE Act, and authorizes the [Mayor/Town Manager] to enter into a PACE Massachusetts Municipal Assessment and Assignment Agreement (the "Agreement") with MassDevelopment, pursuant to which the Municipality will agree to (i) levy PACE betterment assessments and impose PACE betterment assessment liens on benefitted properties located in the Municipality, in the amounts determined by MassDevelopment to be sufficient to repay the PACE financing, (ii) assign the PACE betterment assessment liens to MassDevelopment, which MassDevelopment may in turn assign to the providers of the PACE financing (each a "capital provider"), as collateral for such PACE financing, (iii) include on the property tax bills for the benefitted properties the installment payments necessary to repay the PACE betterment assessments, in the amounts and at the times as determined by MassDevelopment, (iv) collect and pay over to MassDevelopment or its designee, the PACE betterment assessment installment payments, as and when collected, and (v) enforce, to the extent required by the Agreement, the PACE betterment assessments and liens; the Agreement to be substantially in the form presented to this meeting, with such changes, modifications and insertions as the [Mayor/Town Manager] may approve as being in the best interest of the Municipality. The Collector Treasurer of the City/Town or such other City/Town agency as may be designated in the Agreement is authorized to levy such PACE betterment assessments and impose the PACE betterment assessment liens on behalf of the City/Town without further authorization by this legislative body.

Notwithstanding any other provision of law to the contrary, officers and officials of the Municipality, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or to any other person for claims, of whatever kind or nature, under or related to PACE Massachusetts, including, without limitation, claims for or related to uncollected PACE betterment assessments. Other than fulfillment of the obligations specified in the Agreement, the Municipality has no liability to the owner of the benefitted property or to any capital provider related to the Municipality's participation in PACE Massachusetts.

ACTIVE 6211540v7


APPENDIX K: PROJECT DEVELOPER CERTIFICATION FORM

This is the form that Project Developers are required to prepare for each PACE Massachusetts project.

PACE Massachusetts Project Developer Affidavit

I certify that this application and its attachments were prepared and/or overseen and verified by me in accordance to all relevant PACE Massachusetts program requirements. Additionally, I certify that the following application components are accurate and complete in accordance with PACE Massachusetts program requirements.

Please check all that apply:

For Renewable Energy Improvements		For Gas Line Extensions	Other Requirements	
<input type="checkbox"/> Renewable Project Savings Calculations	<input type="checkbox"/> Savings Calculations	<input type="checkbox"/> Natural Gas Line Extension Costs	<input type="checkbox"/> Measurement and Verification	<input type="checkbox"/> SIR Calculation Workbook
For Energy Conservation Reduction Improvements ICP Protocol Used:				
Commercial <i>(Check One)</i>	<input type="checkbox"/> Large <input type="checkbox"/> Standard <input type="checkbox"/> Targeted			
Multifamily <i>(Check One)</i>	<input type="checkbox"/> Large <input type="checkbox"/> Standard <input type="checkbox"/> Targeted			
<input type="checkbox"/> Energy Use Baseline				
<input type="checkbox"/> Savings Calculations				

Please indicate which Project Developer certification(s) you possess. Please check all that apply:

- ICP Project Developer (PD) Credential
- Professional Engineer (PE) License
- Association of Energy Engineers (AEE) Certified Energy Manager® (CEM®) Certification
- NABCEP PV Design Specialist Certification
- Five years (minimum) of demonstrated experience calculating energy savings

Name:	License Number:
Company:	Title:
Address:	Phone:
City/Town/Zip:	Email:

Signature: _____

Date: _____

APPENDIX L: DEFINITIONS FOR PACE MASSACHUSETTS



Applicant: Collective term including the property owner, preparer, and/or the project developer responsible for the PACE application.

Alternative Energy Portfolio Standard (APS): Portfolio standard, set forth in 225 CMR 16, which provides requirements and incentives for alternative electricity and renewable thermal technologies. Qualified resources generate Alternative Energy Credits (AECs) for each megawatt hour or MMBTU equivalent of energy produced.

Energy Improvements: Collective term for eligible measures in PACE Massachusetts. Eligible measures include energy consumption reduction improvements, renewable energy improvements and gas line extensions

Clean Peak Energy Portfolio Standard (CPS): Portfolio standard set forth in 225 CMR 21.00 which provides requirements and incentives for clean energy technologies that can supply electricity or reduce demand during seasonal peak demand periods. Qualified resources generate Clean Peak Energy Certificates (CPECs) for each megawatt hour of energy and are adjusted for applicable Clean Peak Energy Certificate multipliers.

Commercial or industrial property: Any real property other than a residential dwelling containing fewer than five dwelling units.

Energy Consumption Reduction Improvements: Energy efficiency or conservation equipment installation.

Gas Line Extensions: Projects including extensions of gas service onto the customer's property, and the addition of new meters.

Investor Confidence Project Protocol (ICP): Ready-made set of energy efficiency technical standards consisting of accepted industry standards and best practices set forth at the ICP website. The ICP serves as a standardized roadmap for how projects should be engineered robustly and to ensure that saving projections are reliable.

Owner: Owner of qualifying commercial or industrial property who desires to install energy improvements and who provides free and willing consent to the betterment assessment against the qualifying commercial or industrial property.

PACE Massachusetts: Commercial Property Assessed Clean Energy program, as set forth in G.L. c. 25M.

PACE project: With respect to a parcel of qualifying commercial or industrial property, (1) design, procurement, construction, installation and implementation of commercial energy improvements; (2) related energy audits; (3) renewable energy system feasibility studies; and (4) measurement and verification reports of the installation and effectiveness of such energy improvements. Also known as Commercial Pace project as defined within M.G.L. c 23M section 1.

Project Developer (PD): Individual responsible for preparing a PACE application package, baseline, and savings calculations, pursuant to Section 4 of this appendix.

Renewable Energy Improvements: Equipment added to a commercial or industrial property to generate electricity or thermal energy by using renewable technologies that meet requirements for the RPS or renewable thermal generating units that meet the requirements for APS. Energy storage may be considered a Renewable Energy Improvement if paired with renewable generating equipment.

Renewable Energy Portfolio Standard (RPS): Portfolio standard, set forth in DOER regulations at 225 CMR 14 and 225 CMR 15, which provides requirements and incentives for renewable electricity generation technologies. Qualified resources generate Renewable Energy Credits (RECs) for each MWH produced.

Savings to Investment Ratio (SIR): The ratio of energy cost savings of the Energy Improvements over the useful life of the improvements to the costs of the improvements, including any financing costs and associated fees. The calculation is used to determine whether a PACE Project's savings are equal to or greater than the investment.

Solar Massachusetts Renewable Target Program (SMART): An incentive program, set forth in DOER regulations at 225 CMR 20, for solar photovoltaics.

Stand-Alone Energy Storage Systems: Energy storage that is not co-located with a renewable energy system, which is designed to dispatch coincident with annual peak electric grid load or is anticipated to be used for at least fifty-two (52) full cycles per year. Stand-Alone Energy Storage Systems must have at least a 65% round trip efficiency in normal operation.