99 High Street
Boston, MA 02110

Main: 617-330-2000
Fax: 617-330-2001

massdevelopment.com

ADDENDUM NO. 1 TO

REQUEST FOR PROPOSALS FOR A BETTERMENT ASSESSMENT CONSULTANT FOR THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY MASSACHUSETTS PROGRAM DATED NOVEMBER 12, 2019

Prospective proposers/respondents and all concerned are hereby notified that the following documents are now part of the Request for Proposals and available for review:

1. PACE Massachusetts Municipal Assessment and Assignment Agreement;
2. PACE Massachusetts Capital Provider Assignment Agreement; and
3. Form of PACE Massachusetts Financing Agreement

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Mike Kennealy
Chairman

Lauren A. Liss
President and CEO

Attachments – as stated.

** End of Addendum**

November 18, 2019

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.

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(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 benefited 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 benefited 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:

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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 benefited 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

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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.

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(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 benefited 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.

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(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.

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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.

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(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.]

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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:

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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

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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:

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ATTACHMENT 1

PAYMENT SCHEDULE

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ATTACHMENT 2

PACE MASSACHUSETTS BETTERMENT ASSESSMENT STATEMENT

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ATTACHMENT 3

PACE MASSACHUSETTS MUNICIPAL ASSIGNMENT

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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 _____

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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

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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:

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Attachment A

Property Owner and Description

Owner:

Address of Property:

Amount of PACE Betterment Assessment: $

Description of Property:

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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]

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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:

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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).

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(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 under the Municipal Agreement.

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.

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(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 the Servicer, 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.

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(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

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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.

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(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.

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(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 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.]

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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:

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EXHIBIT A

Description of the Property

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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:

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Attachment A

Property Owner and Description

Owner: _____

Address of Property: _____

_____

Description of Property:

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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]

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EXHIBIT C

Payment Schedule

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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

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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 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.

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"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.

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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.

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(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

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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

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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 insure 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.

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(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.

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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.

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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

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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

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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

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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.]

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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:

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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:

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:

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EXHIBIT A-1

DESCRIPTION OF PROPERTY

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EXHIBIT B

DESCRIPTION OF THE IMPROVEMENTS

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EXHIBIT C

SCHEDULE OF ASSESSMENT INSTALLMENT PAYMENTS

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

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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.

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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.

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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:

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EXHIBIT D-2

DISBURSEMENT SCHEDULE

[To be provided by the Capital Provider]

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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.**

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