

FORM OF PACE MASSACHUSETTS FINANCING AGREEMENT

FINANCING AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Capital Provider Payment Date” means the first day of the month immediately following an Assessment Installment Payment Date.

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

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

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

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

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

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

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

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

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

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

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

“Net Amount Due Capital Provider” means the total Assessment Installment Payment due and payable on each Assessment Installment Payment Date, less the portion of the Annual Administration Fee included in such Assessment Installment Payment, as set forth in **Exhibit C** hereto.

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

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

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

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

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

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

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

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

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

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

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

Section 3. PACE BETTERMENT ASSESSMENT AND LIEN.

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

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

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

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

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

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

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

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

(B) All financial statements of the Owner delivered to the Capital Provider by the Owner are true and correct, have been prepared in accordance with United States generally accepted accounting principles consistently applied, fairly represent the financial condition of the Owner as of the date(s) thereof, and no material adverse change has occurred in the financial condition of the Owner as presented therein, except as otherwise disclosed to the Capital Provider in writing.

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

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

(E) The Owner is not in default under this Agreement or any Legal Requirement with respect to the Property, and to the best knowledge of the Owner, it is complying and will comply 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.] The Owner will not transfer its interests in the Property, prior to the completion of the Improvements, without the prior written consent of the Capital Provider, which consent shall not be unreasonably withheld, delayed or conditioned.

(H) The Owner represents that (i) all property taxes and any other assessments levied on the Property by the Municipality to date have been paid, there are no delinquent property taxes or assessments that have not been paid, and no property taxes or other assessments have been delinquent at any time during the preceding three years or the Owner's period of ownership, whichever is less; (ii) there are no involuntary liens, including, but not limited to, mechanic's or materialmen's liens on the

Property; (iii) no notices of default or other evidence of property-based debt delinquency have been issued or recorded during the preceding three years or the Owner's period of ownership, whichever is less; and (iv) the Owner is current on all mortgage debt on the Property, if any, and no notices of default or foreclosure due to non-payment of property taxes or mortgage loan payments have been issued or recorded within the preceding three years or the Owner's period of ownership, whichever is less.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The Owner will pay the Assessment Installment Payments at the times and in the amounts set forth on **Exhibit C**, and acknowledges that failure to pay any Assessment Installment Payment at the time and in the amounts due may result in loss of title to the Property, as described in Section 11.

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

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

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

(E) The Owner has in place insurance with respect to the Property and the Project and will maintain the same throughout the term of this Agreement, through financially sound and reputable insurers authorized to do business in the Commonwealth, against such casualties and contingencies as shall be in accordance with the general practices of businesses engaged in similar activities as the Owner in similar geographic areas as the Property, and in amounts, containing such terms, with such self-insured retentions, in such forms and for such periods as may be reasonable and prudent, and shall otherwise comply with the provisions, if any, set forth in **Exhibit D**. 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 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 repaired, restored and/or reconstructed (collectively, "repaired"), to the extent necessary, to enable the Project to be functionally and economically utilized as originally intended. If the Capital Provider so determines in the exercise of its commercially reasonable judgment that the Project can be so repaired,

then the Owner may elect to (i) undertake the repair of the Project with the proceeds of any insurance proceeds received, provided that the Owner shall be responsible for any costs of repairing the Project in excess of the amount of insurance proceeds received, and in which event the Capital Provider shall make available to the Owner the Disbursement Amount in accordance with provisions of this Agreement, or (ii) prepay the PACE Betterment Assessment in accordance with the provisions of Section 12. If the Capital Provider decides in its commercially reasonable judgment that the Property and the Project cannot be repaired 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.

(G) The Owner promptly will notify the Capital Provider 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. In such event, 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, to the extent necessary, to enable the Project to be functionally and economically utilized as originally intended. If the Capital Provider so determines in the exercise of its commercially reasonable judgment that the Project can be so replaced and restored, then the Owner may elect to (i) undertake the repair and restoration of the Project with the proceeds of any condemnation awards received, provided that the Owner shall be responsible for any costs of repairing and replacing the Project in excess of the amount of condemnation proceeds received, and in which event the Capital Provider shall make available to the Owner the Disbursement Amount in accordance with provisions of this Agreement, or (ii) prepay the PACE Betterment Assessment in accordance with the provisions of Section 12. 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) The Owner shall not subdivide, or permit a subdivision of the Property, without providing at least 30 days' prior written notice to the Capital Provider, and consenting to an amendment to the PACE Betterment Assessment and the PACE Lien, if necessary, to ensure the continued collection and enforceability of the entire PACE Betterment Assessment.

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

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

(A) Assessment Installment Payments, including Administrative Costs to the extent set forth in **Exhibit A** and interest on the PACE Betterment Assessment as provided in paragraph (C) below, shall be collected on the property tax bills issued by the Municipality pertaining to the Property as provided for in the PACE Act and M.G.L. Ch. 80. The Assessment Installment Payments due in any Tax Year shall be payable in the same manner 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 the Disbursement Amount. The amount of capitalized interest, if any, is set forth in Item 9 of **Exhibit A**.

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

Section 7. DISBURSEMENT.

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

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

Section 8. USE OF PROCEEDS.

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

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

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

Section 11. DEFAULT; FORECLOSURE AND OTHER REMEDIES.

(A) **Defaults.** The following shall constitute a “default” under this Agreement:

(1) The Owner shall fail to make an Assessment Installment Payment within 30 days following the date such Assessment Installment Payment is due;

(2) The Owner shall fail to observe or perform any of its other obligations under to be observed or performed by it under this Agreement (other than as set forth in paragraph (1) above) and such failure shall continue for 30 days after the Owner receives written notice of such failure from the Capital Provider, provided that if such failure cannot be cured within such 30-day period, and so long as the Owner commences and diligently proceeds to cure such default within such 30-day period, the period of time to cure such default shall be extended for an additional 60 days; or

(3) Any financial statement, representation, warranty, or certificate made or furnished by or with respect to the Owner to the Capital Provider in connection with the Project, the PACE Betterment Assessment, or this Agreement, or as inducement to the Capital Provider to enter into this Agreement, or in any separate statement or document to be delivered to the Capital Provider hereunder, shall be materially false, incorrect, or incomplete when made.

(B) **Remedies.**

(1) Payment Default; Foreclosure. The Owner’s failure to make an Assessment Installment Payment as and when due as set forth in subsection (A)(1) above shall constitute a payment default under this Agreement 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 corresponding Capital Provider Payment Date due to a payment default by the Owner, which failure continues for more than 60 days following such Capital Provider Payment Date, the Capital Provider may, in accordance with the PACE Act and consistent with the rights afforded a mortgagee under M.G.L. c. 183, §21, commence to exercise the STATUTORY POWER OF SALE and to sell the Property, either as a whole or in parcels, together with all improvements that may be thereon, by public auction on or near the Property, or, if more than one parcel is subject to the PACE Lien, on or near one of said parcels, after first complying with the provisions of M.G.L. Ch. 244, §14 relating to notices to the Owner and any holders of a mortgage or other lien on the Property (the “Statutory Notices”), and related matters, and all other

applicable Massachusetts law relating to the foreclosure of mortgages by the exercise of a power of sale, and may convey the Property, or any parcels constituting the same, by proper deed or deeds to the purchaser or purchasers absolutely and in fee simple; and such sale shall forever bar the Owner and all persons claiming under it from all right and interest in the Property, whether at law or in equity. In addition to the Statutory Notices required to be given in accordance with the provisions of M.G.L. Ch. 244, §14, the Capital Provider also shall provide not less than 30 days prior to the giving of the first Statutory Notice, notice to MassDevelopment, the Municipality, the Owner and each holder of an interest in the Property junior to the PACE Lien, of the payment default and of Capital Provider's intention to commence its rights to sell the Property pursuant to this Section 11 and the PACE Act. Notwithstanding the foregoing, in the event of a payment default hereunder, the Capital Provider may foreclose the PACE Lien only to the extent of any due and unpaid Assessment Installment Payments, and any penalties, interest and fees related thereto. In the event such portion of the PACE Lien is so foreclosed, the PACE Lien otherwise shall survive the foreclosure to the extent of any unpaid and not yet due Assessment Installment Payments that were not the subject of such foreclosure.

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

(2) Additional Remedies. In addition to the right to sell the Property as described above following the occurrence of a payment default, upon the occurrence of a payment default or any other default under this Agreement, 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

(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.

Section 12. PREPAYMENT OF PACE BETTERMENT ASSESSMENT. Subject to the Additional Prepayment Provisions, if any, set forth in **Exhibit A**, the Owner may prepay the PACE Betterment Assessment by paying the principal amount owing on the PACE Betterment Assessment, and accrued interest, less a credit for interest not yet accrued. The Owner shall notify MassDevelopment, the Servicer, and the Capital Provider in writing of the Owner's determination to prepay the PACE Betterment Assessment at least 15 Business Days prior to the date the Owner intends to prepay the PACE Betterment Assessment. The PACE Betterment Assessment shall be prepaid in full only, except that a partial prepayment may be made pursuant to the provisions of Sections 5(G) and (H). The Capital Provider shall provide written notice to MassDevelopment and the Servicer of the prepayment of the PACE Betterment Assessment.

Section 13. TRANSFER; DISCLOSURE UPON TRANSFER. Subject to the provisions of Section 4(G), the Owner may sell or otherwise transfer its interest in the Property, in accordance with the provisions 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 or the Owner otherwise executes a contract to transfer the Owner's interest in the Property, the Owner shall give the prospective purchaser or transferee 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 or transfer, providing the name and address of the proposed purchaser or transferee, and providing the Capital Provider any information that may be required pursuant to Section 19 with respect to such proposed purchaser or transferee. The unpaid and not yet due balance of the PACE Betterment Assessment shall not be subject to acceleration upon the sale or 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. The Owner shall pay any amounts owing to an Indemnified Party pursuant to the provisions of this Section 14, within 30 days of receipt from such Indemnified Party of a written notice, setting forth the amount due to such Indemnified Party, including in reasonable detail the basis for and calculation of, such amount.

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

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

Section 17. ASSIGNMENT. The Capital Provider, at its option and without obtaining the consent of the Owner, may (i) assign its rights and obligations under this Agreement, and (ii) pledge and assign its right to receive the PACE Betterment Assessment and any other payments due to the Capital Provider hereunder and its rights under the PACE Lien, in whole, but not in part, or participate its interests hereunder, but only to a Permitted Transferee. The instrument of assignment shall include a representation from the assignee that the assignee is a Permitted Transferee. The Capital Provider may enter into participation agreements on terms and conditions acceptable to it, in its sole discretion. In the event that the Capital Provider assigns or transfers its rights and obligations under this Agreement, such assignee shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the Capital Provider hereunder, and the Capital Provider, to the extent of such assignment, shall thereupon be discharged and relieved from its future duties and obligations hereunder. No such transfer or assignment shall affect or limit the rights and obligations of the Owner set forth herein.

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 (including any proposed purchaser or transferee pursuant to Section 13), if any, and of their respective beneficial owners, if any, and other information to allow the Capital Provider to identify the Owner and its successors in interest, and their respective beneficial owners, if any, in accordance with all applicable federal law and regulations, and to determine compliance with such applicable federal law and regulations and the provisions of Section 4(E), including with respect to any proposed successors in interest of the Owner.

Section 20. ENTIRE AGREEMENT; COUNTERPARTS; AMENDMENT.

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

THE DECLARATIONS, ACKNOWLEDGEMENTS AND AGREEMENTS CONTAINED HEREIN SHALL RUN WITH THE LAND DESCRIBED IN EXHIBIT A-1 HERETO AND SHALL BE BINDING ON

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

[SIGNATURE PAGE FOLLOWS.]

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

OWNER:

[NAME]

By: _____

Name:

Title:

CAPITAL PROVIDER:

[NAME]

By: _____

Name:

Title:

EXHIBIT A

FINANCING AND OTHER TERMS

1. Name of Owner:
2. Address of Property: (See also Exhibit A-1):
3. Municipality:
4. Registry: [_____ County Registry of Deeds/_____ Registry District of the Land Court]
5. Servicer: MuniCap, Inc.
6. Effective Date:
7. Administrative Costs:
 - (a) Program Origination Fee payable to MassDevelopment: \$_____.
 - (b) Recording Fees: \$_____.
 - (c) Initial Servicer and Paying Agent Fee: \$_____.
 - (d) MassDevelopment's counsel fees/costs: \$_____.
 - (e) Capital Provider's closing fees and costs: \$_____.
 - (f) [Other]_____.
 - (g) DOER Fee: \$_____.
 - (h) Collection Costs, including the Annual Administration Fee payable to MassDevelopment: \$_____.
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) – (g)], 8 and 9].
11. Interest Rate:
12. Date from which Interest Accrues:
13. Aggregate Amount of PACE Betterment Assessment: \$_____ [Approved Amount less any amounts paid by Project Owner and not financed; equal to aggregate of payments shown on Exhibit C.]
14. Project Commencement Date:
15. Project Completion Date:
16. Notice Addresses:

All notices, requests, consents and other communications shall be in writing and shall be delivered by registered or certified mail, return receipt requested, by recognized courier service providing evidence of receipt, or delivered by hand during a Business Day to the parties as follows:

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

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

If to MassDevelopment:

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

If to the Servicer:

MuniCap, Inc.
8965 Guilford Road, Suite 210
Columbia, MD 21046
Attention: Keenan Rice

EXHIBIT A-1
DESCRIPTION OF PROPERTY

EXHIBIT B
DESCRIPTION OF THE IMPROVEMENTS

EXHIBIT D

DISBURSEMENT CONDITIONS AND REQUIREMENTS

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

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

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

3. Final Disbursement. a. The Capital Provider's obligation to approve the final disbursement of the Disbursement Amount shall be subject to the satisfaction of the following conditions precedent, as determined by the Capital Provider in its sole discretion:
 - i. substantial completion of construction of the Project in accordance with the Plans;
 - ii. if applicable, receipt by the Capital Provider of a final unconditional Certificate of Occupancy ("C.O.") for the Project or a conditional C.O. which conditions are punch-list items only; and
 - iii. receipt by the Capital Provider of final notarized lien waivers from all Contractors (including sub-contractors and materialmen) which have contracts in excess of \$50,000, such lien waivers to be consistent with applicable state law.b. The Capital Provider shall give MassDevelopment written notice following the final disbursement under the Agreement, within 15 days of the Capital Provider's approval of the same, including in such notice the total amount disbursed under the Agreement, and the amount, if any, of the Disbursement Amount remaining following such final disbursement.
4. Making of Disbursements: a. Subject to compliance by the Owner with the terms and conditions set forth in this **Exhibit D** and in the Agreement, the Capital Provider shall approve the disbursement of the Disbursement Amount, either directly to the Contractor or, if the costs were paid by the Owner, to reimburse the Owner, in accordance with the Disbursement Schedule attached hereto as **Exhibit D-2**.
 - b. In no event shall the aggregate amount of all disbursements exceed the Approved Amount.
5. Commencement: The Owner shall commence the Improvements not later than the Project Commencement Date set forth in **Exhibit A** to the Agreement and use all diligent efforts to complete the Project no later than the Project Completion Date set forth in **Exhibit A** to the Agreement, with labor and materials of high quality in accordance with the Approval Letter, the Plans and the Budget.
6. Additional Insurance Requirements. [None.]

EXHIBIT D-1
FORM OF REQUISITION

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

Requisition No.: ____

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

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

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

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

2. The undersigned hereby further certifies:

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

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

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

[NAME OF OWNER]

By: _____
Name:
Title:

EXHIBIT D-2

DISBURSEMENT SCHEDULE

[To be provided by the Capital Provider]

EXHIBIT E

FORM OF DISCLOSURE STATEMENT TO SUBSEQUENT OWNERS

Name of Owner:

Address of Property:

Name of Capital Provider:

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

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

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

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

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

ACTIVE 6211907v19