



# Town of Brookline Massachusetts

## SELECT BOARD'S CLIMATE ACTION COMMITTEE

Nancy Heller, Co-Chair  
Werner Lohe, Co-Chair

Town Hall, 3<sup>rd</sup> Floor  
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(617) 730-2130 Fax (617) 730-2442

## SELECT BOARD'S CLIMATE ACTION COMMITTEE AGENDA

June 1, 2020 6-7:30 pm

To be held via Webex Events, hosted by Kara Brewton ([kbrewton@brooklinema.gov](mailto:kbrewton@brooklinema.gov))  
Link information will be updated on Town calendar

*Times are approximate; items may be taken out of order.  
Werner Lohe will be chairing this meeting.*

6:00 PM Town Administrator Mel Kleckner will join for an update regarding the Collins Center Study related to Sustainability within the Town's organization as well as broad budget impacts anticipated due to COVID-19.

6:15 PM Approve [April Meeting Minutes](#)

6:20 PM Update on PACE program & recommended next steps (Werner Lohe & Alan Leviton) – relevant materials enclosed in .pdf version of the online agenda

6:40 PM Working Team & Staff Updates

*Brookline Green Electricity* - including staff decision to wait until late Fall for the next "sweep" of new electricity customers into the Town's aggregation program (Kara Brewton, Diane Sokal)

*Transportation* (John Harris, Kara Brewton) – including widened sidewalks and other shared street concepts related to COVID-19

*Solar Panel Power Purchase Agreement* - timeline update and summary of negotiations to date for school properties (Kara Brewton)

7:20 PM Other Committee Member & Working Team Updates, as time allows.

7:25 PM Other business, if any.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by [contacting the Town's ADA Compliance Officer](#). Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the [Town's ADA Compliance Officer](#). If you have any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).

# **MASSACHUSETTS COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM GUIDELINES**

**DRAFT: August 1, 2017**



**Version 1.0 (Pre-release version for stakeholders)**

MassDevelopment Finance Agency  
99 High Street  
Boston, MA 02110

And

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

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## ABOUT MASSDEVELOPMENT FINANCE AGENCY (MassDevelopment)

As the Commonwealth's economic development and finance authority, MassDevelopment is committed to achieving three goals: stimulating business, driving economic growth, and helping communities thrive across Massachusetts. At MassDevelopment, we offer financing and real estate solutions to support companies and nonprofits, increase housing, eliminate blight, and drive economic growth across Massachusetts. We help businesses, developers, housing, manufacturers, municipalities, and nonprofits at every stage of development.



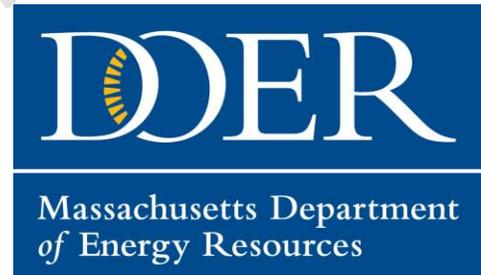
MASSDEVELOPMENT

MassDevelopment is a Massachusetts quasi-public state agency governed by an eleven member Board of Directors appointed by the Governor. For more information on MassDevelopment, visit our website [www.massdevelopment.com](http://www.massdevelopment.com)

## ABOUT THE MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES (DOER)

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

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



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

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## INTRODUCTION

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

In August, 2016, Governor Baker signed into law An Act to Promote Energy Diversity, which authorized the creation of a PACE program in Massachusetts. The statute, M.G.L. c23M, allows for the establishment of a commercial Property Assessed Clean Energy program (PACE Massachusetts) to be administered by the Massachusetts Development Finance Agency (MassDevelopment) in consultation with the Massachusetts Department of Energy Resources (DOER).

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

PACE financing is different from traditional financing because it is repaid through a voluntary betterment assessment added to the owner's property tax bill. The betterment assessment cannot be accelerated and the repayment obligation transfers to the next owner if the property is sold. Financing is secured by a lien placed on the property that is assigned to the selected lender by MassDevelopment.

PACE Massachusetts guidelines were developed in accordance with the PACE Act and contain program requirements that participants must adhere to in order to access financing and contain the terms and conditions that proposed projects must comply with to receive approval.

## TECHNICAL GUIDELINES OVERVIEW

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

- Projects that reduce energy consumption
- Installation of renewable energy systems
- Existing natural gas line extensions are also eligible under PACE, provided that gas will displace utilization of fuel oil, electricity or other conventional energy sources (but not displacing renewables)

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

- Design, procurement, construction, installation and implementation of commercial energy improvements
- Related energy audits
- Renewable energy system feasibility studies
- Measurement and verification reports of the installation and effectiveness of such energy improvements

PACE projects must meet the savings to investment ratio (SIR) test to qualify for PACE Massachusetts financing. This means that the energy cost savings from the commercial energy improvements over the useful life of the improvements exceeds the costs of the improvements, including any financing costs and associated fees.

PACE Massachusetts will help building owners reduce the impact that energy has on buildings and operations through cost-effective energy efficiency and development of clean energy resources. An effort has been made to align PACE Massachusetts financing with Massachusetts' nation leading energy efficiency and renewable energy programs. It is important that building owners consider both energy use reduction and renewable energy when planning projects for PACE financing<sup>1</sup>.

Upon receipt of a PACE project application in the form of [Appendix A: Project Application](#), the Massachusetts Department of Energy Resources (DOER) will review the application and approve PACE projects that meet program technical requirements.

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

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

## FINANCIAL GUIDELINES OVERVIEW

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

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

There are several key components of the PACE Massachusetts financing guidelines that should be understood by applicants:

- Written consent is required from mortgage holder(s)
- Repayment of financing will be made via the municipal property tax collection process for remittance to MassDevelopment designated servicer for disbursement to lenders
- Annual PACE betterment assessment is senior to and has priority over all private liens on the property (if applicable) but is junior in priority to a municipal tax lien
- Each municipality must authorize its participation in PACE Massachusetts (one time only).

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

## APPLICATION PROCESS

### Required Documents

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

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

Each municipality must elect to participate in PACE Massachusetts. This is only done one time by the municipality through the adoption of local ordinance (see Appendix C and J).

### Application Steps

Below are the steps that a PACE Massachusetts applicant follows once a project is ready for review. The first step helps an applicant determine if they are eligible before investing time and resources to compile the data for necessary for technical submission approval. Applicants should take special note of the steps that need special attention throughout the development and financing of a PACE project. These processes take time to complete and information provided is intended to act as a guide for participants and to help expedite financing. We acknowledge that all projects are different and applicants will likely go through steps in a different succession. We encourage participants to contact and start early discussions with MassDevelopment if considering PACE Massachusetts financing.

#### 1. Project Application

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

#### 2. Technical Review

If a project application has been positively reviewed and accepted, MassDevelopment and DOER will inform the applicant and invite them to submit the remaining required data for technical review (see Appendix B, page 24) and to pursue selecting a lender for the financing.

#### 3. Mortgage Holder Consent

If there is an existing mortgage on the property, the consent of each mortgage holder will be required. Mortgage holder(s) will be asked to consent to a PACE Massachusetts financing through

a standard Notice of Proposed Betterment Assessment and Request for Mortgage Holder Consent form (see Appendix D). Each mortgage holder will be required to execute and return a Mortgage Holder Consent to PACE Betterment Assessment in the form of Appendix E. MassDevelopment can work with the property owner to notify mortgage holder(s) of the consent requirement and, if possible, assist in obtaining it.

#### **4. Financing Agreement between Property Owner and Lender**

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

#### **5. Betterment Assessment and Repayment**

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

MassDevelopment will work with each municipality to understand its existing or preferred procedure for billing and collection of the PACE Massachusetts betterment assessments to ensure the procedure employed by PACE Massachusetts requires no unnecessary effort by the municipality for local property owners to participate. The form of Municipal Assessment and Assignment agreement is included as Appendix D.

#### **6. Security**

Each PACE Massachusetts financing will be secured by a non-accelerating PACE betterment assessment levied on the property and a corresponding lien placed on the property by the applicable municipality. As noted above, a prerequisite for the placement of the lien and for participation in PACE Massachusetts is the prior written consent of all existing mortgage holders to the placement of such lien. The lien will be assigned by the municipality to MassDevelopment, and by MassDevelopment to the applicable lender. The lien will take precedence over all other

liens or encumbrances on the property, except a lien for municipal property taxes. This means that the PACE Massachusetts betterment assessment lien will be senior to and have priority over all private liens on the property (if any), and be junior in priority only to a municipal tax lien. The PACE Massachusetts betterment assessment lien can be enforced in the same manner as any private party holding a lien on real property, including by foreclosure. Under PACE Massachusetts, the PACE betterment assessment will run with the property. If a property is sold and the PACE betterment assessment has not fully amortized at the time, the balance of the PACE betterment assessment will remain on the property secured by the lien and the obligation to pay the PACE betterment assessment automatically will transfer to the next property owner.

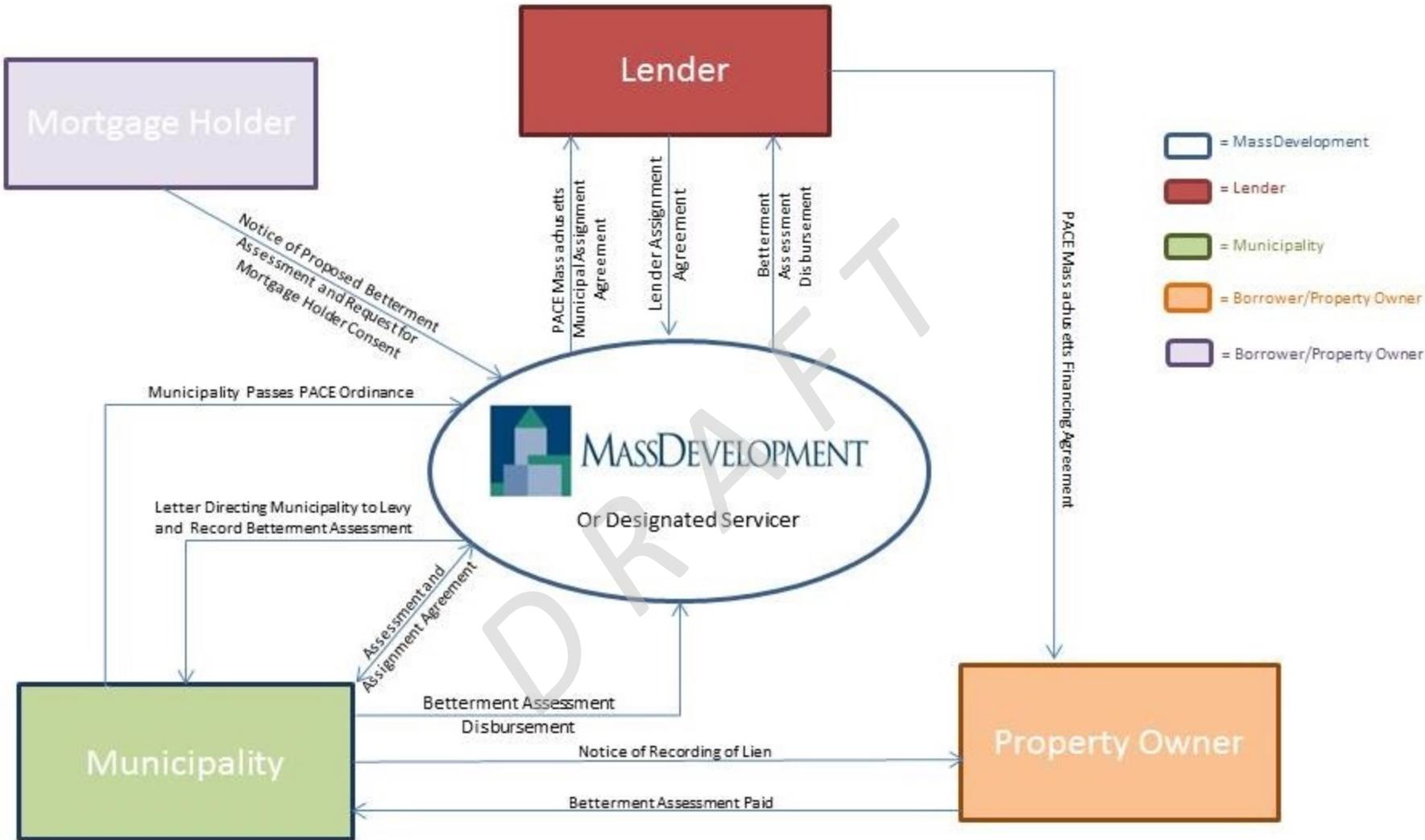
#### **7. Owner Disclosure Statement and Agreement**

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

#### **8. Lender Assignment Agreement**

Each lender will be required to sign a PACE Massachusetts Lender Assignment Agreement (Appendix I). This document allows MassDevelopment to assign the PACE lien to the lender as security for the financing subject to the terms of the financing agreement.

# PACE STRUCTURE



## APPENDIX A: PROJECT APPLICATION

This is the application that needs to be completed for each proposed project to confirm eligibility in PACE Massachusetts.

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

Property Owner's Name   
Primary Contact  Title   
Address  City  State  Zip Code   
Telephone  Email

Primary Contact Relationship to Property:

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

Property Owner  
Type

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

Date Property Ownership  
BeganList Property Owner(s) Legal Name(s) / Legally Authorized Representative *(as they appear on property title; attach additional pages if necessary)***PREPARER'S INFORMATION** *(If different from Property Owner)*

Preparer's Name   
Preparer's Company  Title   
Address  City  State  Zip Code   
Telephone  Email

**PROJECT SITE LOCATION**

Address  City  State  Zip Code   
County  Assessor Parcel ID Number

**PROPERTY INFORMATION**

Year building was built  Total gross building square footage   
Conditioned Building Size  Building footprint, number of stories   
Total roof area and description:  Sloped  Flat  Other (describe)

Building use (List uses and Percentage)

Percentage of building currently occupied:

Occupants:

 Owner-occupied Tenants/Leased

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

Hours of operation:

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

**PROJECT INFORMATION**

Proposed improvements include (check all that apply)

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

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

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

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

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

Are two full years of data available for all spaces and all systems for this building? (Please attach)

**TECHNICAL INFORMATION**

Name of Project Developer (if known):

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

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

**TOTAL ESTIMATED PROJECT FINANCING SOURCES**

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

Total Estimated Gross Project Costs		\$	
Less:			
Energy efficiency incentives		\$	
Renewable energy incentives		\$	
Equity		\$	
Other: _____		\$	
<b>Total Estimated Net Project Costs</b>		<b>\$</b>	

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

**PROPERTY OWNER FINANCIAL INFORMATION**

**REQUESTED FINANCING AMOUNT**

**FINANCIAL INFORMATION** *(Enter existing mortgage information)*

First Mortgage Holder :

Outstanding mortgage balance:  Repayment terms:

Monthly payment:  Remaining term of mortgage:

Second Mortgage Holder:

Outstanding mortgage balance:  Repayment items:

Monthly payment:  Remaining term of mortgage

***(Attach additional mortgage lenders information if necessary.)***

Are all mortgage payments current?  Yes  No

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

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

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

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

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

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

Is the property in a bankruptcy proceeding?  Yes  No

Is the property owner in a bankruptcy proceeding?  Yes  No

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

Do you currently pay taxes on the property?  Yes  No

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

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

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

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

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

What is the current net operating income from the property? \$

What is the total existing debt service on the property? \$

What is the estimated PACE assessment? \$

Show estimated PACE assessment calculation:

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

What is the debt service coverage for the property (as of last fiscal year)? \$

***Please provide financial statements for the past three years.***

***Note: A lender may request additional financial information in considering an application for financing.***

**IMPORTANT NOTICE**

The owner agrees to pay the Department of Energy Resources a Project Review Fee and MassDevelopment a fee upon closing based upon a predetermined fee schedule.

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

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

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

**SIGNATURE(S)**

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

This application will be reviewed when the above requested information and the payment of the application fee of \$250.00 has been received by MassDevelopment.

If you are not already working with us, we encourage you to call 800-445-8030 before submitting materials.

Please submit application and/or questions to MassDevelopment at : [pace@massdevelopment.com](mailto:pace@massdevelopment.com)

MassDevelopment  
99 High Street, 11th Floor  
Boston, MA 02110  
Attn: PACE Program Manager  
Tel: 800-445-8030

## **APPENDIX B: TECHNICAL GUIDELINES**

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

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## Project Eligibility

Under PACE Massachusetts, commercial energy improvements that are renovations or retrofits to a commercial or industrial property or multifamily building with five or more units are eligible for financing, provided these commercial energy improvements are permanently fixed to the property. This means the projects must be undertaken only on existing buildings; ground up new construction projects (i.e. projects being built on an undeveloped parcel of land) are not eligible. However, the energy improvements of comprehensive renovation projects on existing buildings that trigger new construction code are eligible under PACE. For example, if a building owner is considering a gut renovation of an existing building and also constructing a new building on a single parcel, the energy improvements of the renovation would be eligible under PACE, however the new building would not be eligible.

Commercial energy improvements that are eligible under PACE Massachusetts include<sup>2</sup>:

- *Projects that reduce energy consumption*: energy efficiency projects from lighting upgrades, new HVAC equipment, building envelope, and combined heat and power (CHP). Energy storage systems are also eligible.
- *Installation of renewable energy systems*: installation of solar panels, wind systems, anaerobic digestion, heat pumps and any other technologies eligible under Massachusetts Renewable Energy Portfolio Standard (RPS) Class I<sup>3</sup> or Alternative Energy Portfolio Standard (APS)<sup>4</sup> programs.
- *Extending existing gas lines* are also eligible under PACE, provided that gas will displace utilization of fuel oil, electricity or other conventional energy sources (this does not include displacing renewable energy systems). Extensions of existing gas mains, gas service on the customer's property, and the meter are eligible for financing.

### Eligible projects:

- Energy reduction
- Renewables
- Gas line extensions

The specific items in a commercial PACE project that are eligible for financing are<sup>5</sup>:

- Design, procurement, construction, installation and implementation of commercial energy improvements (this includes engineering and consulting services to prepare a PACE application)
- Related energy audits
- Renewable energy system feasibility studies
- Measurement and verification reports of the installation and effectiveness of such energy improvements

*Best Practice: if an owner is considering PACE financing, a project developer should be made aware of the PACE application requirements early, so all requirements can be completed at the same time.*

To qualify for PACE Massachusetts financing, PACE projects must meet the savings to investment ratio (SIR) test. This means that the energy

<sup>2</sup> G. L. c. 23M, § 1 <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23M/Section1>

<sup>3</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/qualified-generation-units.html>

<sup>4</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/qualified-generation-units.html>

<sup>5</sup> G. L. c. 23M, § 1 <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23M/Section1>

cost savings from the commercial energy improvements over the useful life of the improvements exceeds the costs of the improvements, including any financing costs and associated fees.

### Alignment with Existing Programs in Massachusetts

PACE is designed to work with existing programs in Massachusetts, like the energy efficiency offerings under Mass Save<sup>6</sup> or through Municipal Light Plants<sup>7</sup> (MLPs), the renewables incentives through RPS & APS<sup>8</sup>, and rebates through the Massachusetts Clean Energy Center<sup>9</sup> (MassCEC). Owners engaging with these programs may be already collecting information needed for a PACE Massachusetts application. Any upfront rebates and incentives that the property owner qualifies for or receives will reduce the amount of the project to be financed under PACE Massachusetts.

### Alignment with Investor Confidence Project Protocols

In addition to aligning with existing programs in Massachusetts, DOER aligned project submission requirements with the protocols of the Investor Confidence Project (ICP)<sup>10</sup>. ICP developed protocols of standard best practices to document energy efficiency projects and are used in PACE programs and other energy programs across the US, Canada, and Europe. The PACE Massachusetts program guidelines describe how and where ICP protocols should be followed. The goal of aligning with ICP protocols is to use familiar project requirements in line with best practices and to streamline the process for building owners, project developers, project reviewers, and capital providers.

In the case of a conflict between the ICP protocols and the PACE Massachusetts program guidelines, the PACE Massachusetts program guidelines shall take precedence.

### Project Technical Review

The role of the Department of Energy Resources (DOER) is to review and approve the project technical applications<sup>11</sup>. Project reviews will be conducted in line with the ICP Quality Assurance (QA) Specification<sup>12</sup> section related to “Savings Calculations/Investment Package”. DOER may also engage with a 3<sup>rd</sup> party qualified reviewer to aid in project review.

### Project Developer Requirement

PACE Massachusetts requires that the technical application package, baseline and savings calculations be prepared by a qualified energy project developer (PD). The PD prepares the building energy baseline, energy savings projections, and calculates the SIR for the project. The PD may also be involved in identifying the commercial energy improvements as well. The PD must have at least one of the following qualifications:

- ICP Project Developer Credential<sup>13</sup>

*The **Project Developer** is the professional who calculates the savings associated with a PACE project and prepares the SIR calculation.*

<sup>6</sup> <http://www.masssave.com/business>

<sup>7</sup> For example, <http://www.mmwegoprogram.org> or

[http://www.energynewengland.com/ECHO\\_COM\\_EnergyEfficiency.aspx](http://www.energynewengland.com/ECHO_COM_EnergyEfficiency.aspx)

<sup>8</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-aps-sqa/>

<sup>9</sup> <http://www.masscec.com/>

<sup>10</sup> <http://www.eepformance.org/>

<sup>11</sup> G. L. c. 25A, § 6 (13) <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter25A/Section6>

<sup>12</sup> <http://www.eepformance.org/quality-assurance-specification.html>

<sup>13</sup> <http://www.eepformance.org/how-does-pd-credentialing-work.html>

- Professional Engineer (PE) license<sup>14</sup>
- Association of Energy Engineers (AEE) Certified Energy Manager® (CEM®) Certification<sup>15</sup>
- AEE Certified Energy Auditor™ (CEA®)<sup>16</sup>
- ASHRAE Building Energy Assessment Professional (BEAP) Certification<sup>17</sup>
- Five years (minimum) of demonstrated experience calculating energy savings (for projects that use standard or targeted protocols only)

**Please note:** Neither DOER or MassDevelopment will recommend a project developer or assist a building owner in selecting a project developer.

### Technical Submission Requirements

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

- PACE Massachusetts application
- Building energy use baseline in line with ICP protocols
- Savings calculations backup documentation (for energy reduction, renewable and gas line extension projects, see specifics in these guidelines)
- Supporting documentation for the commercial energy improvements as specified in the PACE Massachusetts technical guidelines. This also includes:
  - Evidence of consideration of both energy use reduction and renewable energy opportunities
  - Evidence of engagement with energy efficiency programs offered under Mass Save® or through Municipal Light Plants (MLPs)
  - An explanation of if project benefits will be passed down to tenants (if applicable)
- SIR workbook spreadsheet showing that the projected energy cost savings is greater than the cost of the project (the savings to investment ratio (SIR) is greater than 1)
  - Includes estimate PACE financing costs (including principal, interest, fees) and associated fees, including application fees (estimates can be provided by MassDevelopment)
- Signed and stamped certification from project developer

### Notes on PACE Project Eligibility and Application Rejection

PACE applications that do not follow the PACE Massachusetts technical guidelines may be rejected for some of the following reasons:

- Lack of energy consumption reduction improvements (e.g. energy efficiency or conservation)
- No consideration of both energy use reduction and renewable energy opportunities
  - Energy consumption reduction improvements are required for renewables projects
  - Renewables consideration not required for gas line extension projects
- Lack of engagement with energy efficiency programs offered under Mass Save® or through Municipal Light Plants (MLPs)
- Unreasonable cost estimates (e.g. cost estimates not from bids, qualified contractors, construction cost estimators, etc.)

<sup>14</sup> <http://www.mass.gov/ocabr/licensee/dpl-boards/en/>

<sup>15</sup> <http://www.aeecenter.org/i4a/pages/index.cfm?pageid=3351>

<sup>16</sup> <http://www.aeecenter.org/i4a/pages/index.cfm?pageid=4552>

<sup>17</sup> <https://www.ashrae.org/education--certification/certification/beap-building-energy-assessment-professional-certification>

- Project does not have an SIR greater than one (1)
- Energy storage systems that are not anticipated to perform dispatch coincident with peak electric grid load, or are anticipated to be used for fewer than fifty (50) full cycles per year may not be eligible under PACE Massachusetts.
- Commercial energy improvements must be owned by the benefitted property owner. Financing of power purchase agreements (PPA) and equipment leases are not eligible under PACE Massachusetts.
- Gas line extension commercial energy improvements that displace renewable or alternative energy systems are not allowed under PACE Massachusetts.

### Technical Application steps

Please follow all of the following steps in preparing a technical application for PACE projects submitted to the PACE Massachusetts program. If there are any general or specific questions about the technical application process, please contact DOER or MassDevelopment.

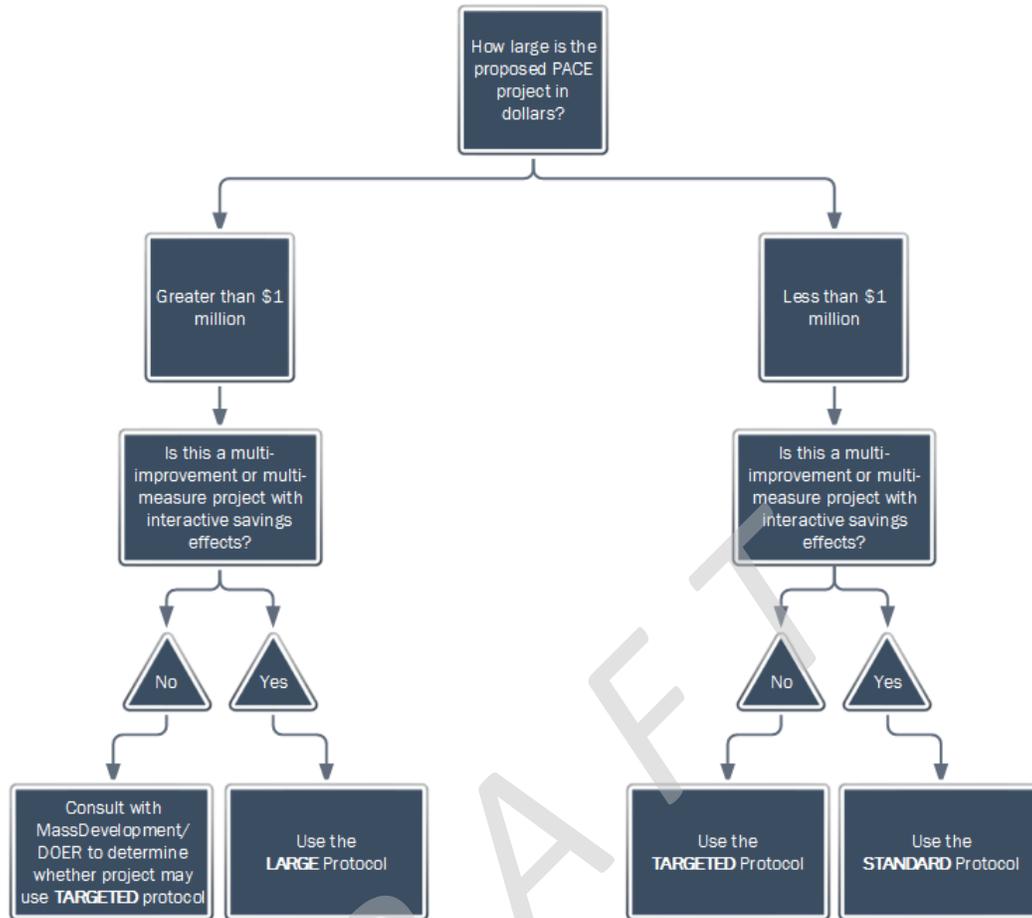
#### 1. Determine ICP protocol

Commercial PACE project applications shall be prepared according to one of six ICP protocols. The protocol to use varies as function of project size, building type and the nature of commercial energy improvements.

##### Step 1: Commercial or Multifamily?

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

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



1. A PACE application with commercial energy improvements over \$1M will use the **large** protocol. However, any project can elect to use the **large** protocol if the PD determines that is an appropriate choice.
  - a. In cases where the commercial energy improvement(s) will not have interactive effects on other building systems, but have value of over \$1,000,000, the project may remain **targeted**, following consultation with and confirmation by DOER. For instance, a PACE project may consist of a combined heat and power (CHP) system and nothing else, and the targeted approach may be appropriate. However, many commercial energy improvements have interactive effects; an example is upgraded windows could mean a building needs a smaller heating system to get the same results.
2. PACE applications under \$1M will use either the **standard** or **targeted** protocols.
  - a. A project may use the **targeted** protocols project if the proposed commercial energy improvement consists of a single energy reduction measure or smaller set of related energy reduction measures that have limited or no interactive effects with other building systems.

- b. If the project is not targeted in nature, the PACE application will follow the **standard** protocols (unless the PD determines that the large protocol is a preferable choice).

Building Type	Project Type	Criteria	ICP Protocol
<b>Commercial</b> <sup>18</sup>	Large	>\$1,000,000 in project costs	Large Commercial v1.2a <sup>19</sup>
	Standard	<\$1,000,000 in project costs; interactive	Standard Commercial v1.1a <sup>20</sup>
	Targeted	<\$1,000,000 in project costs; limited or no interactive effects	Targeted Commercial v2.0 <sup>21</sup>
<b>Multifamily</b> <sup>22</sup> <b>(residential structure with 5 or more units)</b>	Large	>\$1,000,000 in project costs	Large Multifamily v1.0a <sup>23</sup>
	Standard	<\$1,000,000 in project costs; interactive	Standard Multifamily v1.1a <sup>24</sup>
	Targeted	<\$1,000,000 in project costs; limited or no interactive effects	Targeted Multifamily v2.0 <sup>25</sup>

A companion to the ICP protocols is the ICP Project Development Specification<sup>26</sup> which can answer questions about the details of the specific ICP protocols.

**2. Building Energy Use Baseline - All projects**

All projects shall include baseline calculations performed in accordance with ICP Part 2.0 “Baselining – Core Requirements”, Part 3.0 “Baselining – Rate Analysis, Demand, Load Profile, Interval Data” of the appropriate protocol.

However, a renovation PACE project that is considered new construction by code shall use the Mass Save® New Construction Baseline<sup>27</sup> as a reference for energy consumption reduction commercial energy improvements.

**3. Savings Calculations**

All projects must present savings calculations as part of the PACE Massachusetts application, and these savings calculations will be calculated by different methodologies based on the project type. Please see relevant guidelines section below for information on these saving calculation methodologies.

*There are different ways to calculate savings for different projects, please see the appropriate section for details.*

<sup>18</sup> <http://www.eepformance.org/commercial-protocols.html>

<sup>19</sup> <http://www.eepformance.org/large-commercial.html>

<sup>20</sup> <http://www.eepformance.org/standard-commercial.html>

<sup>21</sup> <http://www.eepformance.org/targeted-commercial.html>

<sup>22</sup> <http://www.eepformance.org/multifamily-protocols.html>

<sup>23</sup> <http://www.eepformance.org/large-multifamily.html>

<sup>24</sup> <http://www.eepformance.org/standard-multifamily.html>

<sup>25</sup> <http://www.eepformance.org/targeted-multifamily.html>

<sup>26</sup> <http://www.eepformance.org/project-development-specification.html>

<sup>27</sup> [https://www.masssave.com/-/media/Files/PDFs/Business/MassSave\\_EnergyCodeBaseline\\_01312017.pdf](https://www.masssave.com/-/media/Files/PDFs/Business/MassSave_EnergyCodeBaseline_01312017.pdf)



PACE Massachusetts requires that PACE projects consider both energy use reduction and renewable energy commercial energy improvements when proposing PACE projects:

- For energy reduction improvement projects, renewable or alternative energy improvements must also be considered. Consideration does not require implementation, but rather PACE Massachusetts requires proof that there was consideration of both energy reduction and renewable energy commercial energy improvements.
- For renewable or alternative energy improvement projects, implementation of energy reduction improvements is required.
- For gas line extension improvement projects energy reduction improvements must be considered, and renewable or alternative energy improvements should be considered as a best practice (however, it is not a program requirement).

### ***3a - Savings calculations for Energy Consumption Reduction Projects***

All projects applying for PACE financing are required to consider energy reduction measures (i.e. energy efficiency or energy conservation). For most electric and gas customers there are energy efficiency programs offered under Mass Save<sup>®28</sup> or through MLPs<sup>29</sup>. If the PACE project does not include any commercial energy improvements that reduce energy consumption the project developer must clearly state as part of submitted project documentation the reason improvements that reduce energy consumption are not being included. Lack of energy consumption reduction improvements may be a basis for rejection of a PACE application.

For a methodology to calculate savings from energy consumption reduction commercial energy improvements, use ICP Part 4.0 “Savings Calculation” of the selected protocol.

#### **Useful life**

The useful life of commercial energy improvements that reduce energy consumption (e.g. energy efficiency measures (EEMs)) should conform to the useful life stated in the current Massachusetts Technical Reference Manual for Estimating Savings from Energy Efficiency Measures<sup>30</sup> (TRM). The project developer must clearly state the reason for any measure lives that deviate from TRM guidelines as part of the supporting documentation to the PACE application. Useful life calculation should also be substantiated by relevant warranty information.

#### **Supporting Documentation**

All energy consumption reduction projects should include studies or other supporting documentation that shows how savings calculations were determined. For projects participating in programs under Mass Save<sup>®</sup> that prepare technical assistance (TA) studies, these TA studies should be included as supporting documentation.

All PACE applications must provide evidence of engagement with energy efficiency programs offered under Mass Save<sup>®</sup> or through MLPs. If there is no engagement or participation, the supporting documentation must state the reason.

<sup>28</sup> <http://www.masssave.com/business>

<sup>29</sup> For example, <http://www.mmwecgoprogram.org> or <http://www.ene.org/energy-efficiency/>

<sup>30</sup> <http://ma-eeac.org/wordpress/wp-content/uploads/2016-2018-Plan-1.pdf>

### Using Existing Energy Audit, Mass Save®, or MLP Documentation

The following types of building documentation may be used as part of a PACE application provided that it was completed in the previous two years (24 months) from the date of application submission:

- ASHRAE Level II energy audit
- ASHRAE Level III energy audit
- Building energy use baseline
- Technical assistance study prepared under a Mass Save® or MLP program
- Other commercial energy improvement of project documentation prepared under a Mass Save® or MLP program

Please contact MassDevelopment/DOER to existing share the documentation and it will be considered by DOER on a case-by-case basis and evaluated in accordance with current PACE program guidelines.

### 3b - Savings calculations for Renewable and Alternative Energy Systems

PACE project applications must consider renewable<sup>31</sup> or alternative energy systems<sup>32</sup> (gas line extension projects are the only exception to this consideration). If the project does not include any renewable or alternative energy systems as commercial energy improvements, the project developer must clearly state as part of submitted project documentation the reason improvements from renewable or alternative energy systems are not being included. Lack of consideration of commercial energy improvements from renewable or alternative energy systems may be a basis for rejection of a PACE application.

For renewable or alternative energy improvement PACE projects, implementation of energy reduction improvements is required.

The following technologies are eligible commercial energy improvements eligible for financing under PACE Massachusetts:

- Massachusetts Renewable Energy Portfolio Standard (RPS) Class I eligible technologies<sup>33</sup>
- Massachusetts Alternative Energy Portfolio Standard (APS)<sup>34</sup> eligible technologies
- Energy storage technologies

**Please note:** Renewable or alternative energy systems commercial energy improvements must be owned by the benefitted property owner. Financing of power purchase agreements (PPA) and equipment leases are not eligible under PACE Massachusetts.

Always refer to the latest APS and RPS Class I Regulations posted on the MA DOER web site<sup>35</sup>. As of early 2017, the following technologies are eligible for financing under PACE:

<sup>31</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-and-aps-program-summaries.html>

<sup>32</sup> Ibid.

<sup>33</sup> <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr14.pdf>

<sup>34</sup> <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr16.pdf>

<sup>35</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-and-aps-statutes-and-regulations.html>

RPS Class I	APS <sup>36</sup>	Other
Solar photovoltaic	Combined Heat and Power (CHP)	Energy Storage
Solar thermal electric	Flywheel storage	
Wind energy	Fuel Cells	
Small hydropower	Renewable thermal (Air Source	
Landfill methane and anaerobic digester gas	Heat Pumps (HP), Ground Source	
Marine or hydrokinetic energy	HP, solar thermal, biomass	
Geothermal energy	thermal, etc.)	
Eligible biomass fuel		

**Renewable and Alternative Energy Savings Calculation Requirements**

**Path 1** - Most renewable or alternative commercial energy improvements will seek rebates<sup>37</sup>, renewable energy credits<sup>38</sup> (RECs) or alternative energy certificates<sup>39</sup> (AECs). For projects that can provide satisfactory mechanical qualification, conditional approval, or pre-qualification for a MassCEC rebate, SREC II qualification<sup>40</sup>, APS qualification<sup>41</sup>, or RPS Class I qualification<sup>42</sup>, no further feasibility study will be required for renewable or alternative energy commercial energy improvements. Documents created and used to support the qualification in those programs must be included as supporting documentation to the PACE application.

**Path 2** – If an approved renewable or alternative energy improvement does not meet the savings calculation requirements criteria of Path 1 (e.g. fuel cells, storage, and wind power), or the PACE project does not intend to apply for RECs, AECs or rebates, the PD will need to provide the following information as part of the PACE Massachusetts application:

- 1) Description of the proposed renewable, alternative energy, or storage system
- 2) Identification and evaluation of site/building suitability
- 3) Identification of metering specifications (locations, # of meters, etc.)
- 4) Information and identification of the electricity and/or fuel rate structure
- 5) Assessment of the expected system performance and any maintenance requirements to maintain operations
- 6) Comparison of the expected system performance against the energy consumption of the commercial or industrial property
- 7) Identification of performance guarantees and calculation of useful life of renewable or alternative energy system

<sup>36</sup> Waste energy systems may also be eligible, please see APS regulations (ibid.) for more details on eligibility.

<sup>37</sup> <http://www.masscec.com/get-clean-energy/business>

<sup>38</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-and-aps-program-summaries.html>

<sup>39</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-aps-sqa/aps-statement-of-qualification-applications.html>

<sup>40</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out-2/>

<sup>41</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-aps-sqa/aps-statement-of-qualification-applications.html>

<sup>42</sup> <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/rps-aps-sqa/>



- 8) Operational information for storage projects:
  - a. Application must contain information about the proposed dispatch strategy for storage systems. In particular, information about how the storage will be dispatched during electric grid peak load times must be provided.
  - b. Application must contain proposal of how many full cycles the energy storage system will be used for annually.
  - c. Energy storage systems that are not anticipated to perform dispatch coincident with peak electric grid load, or are anticipated to be used for fewer than fifty (50) full cycles per year may not be eligible under PACE Massachusetts.
- 9) Assessment of total project capital expenditures (CAPX)
- 10) Analysis of building energy savings, including assumed electricity/fuel rate escalations

### Useful life

Useful life of renewable or alternative energy improvements are determined by the least useful life of a system's components. For example, a solar photovoltaic (PV) array commercial energy improvement with standard inverters would only be able to claim the useful life of the inverters life expectancy (e.g. 10 years) and not the panels (e.g. 20 years). Warranties for equipment may be purchased to increase the useful life of those components (e.g. a 20 year warranty on the inverters), and therefore the useful life of the overall commercial energy improvement. Please note that warranties for commercial energy improvement and components are eligible for financing under PACE Massachusetts. All relevant warranty information or cut sheets for all components of the renewable or alternative energy improvements must be submitted as part of supporting documentation to the PACE Massachusetts application.

### Supporting Documentation

For all commercial energy improvements with savings calculations created following Path 1: documents created and used to support the qualification in those programs must be included as supporting documentation to the application.

For projects following Path 2, the project developer must include studies or other supporting documentation that shows how savings calculations were determined. See the SIR workbook for more detailed requirements.

### Note on Resiliency and Microgrids

PACE Massachusetts will consider all equipment that is required for a PACE project to be eligible for financing, provided the overall project meets the SIR test. An example may be a project which requires black start switch gear; that switch gear will be allowed to be financed.

### 3c - Natural Gas Line Extensions

Construction of the extension of an existing natural gas distribution company line to a qualifying commercial or industrial property is eligible for financing under PACE Massachusetts provided the property must be obtaining natural gas service in order to displace the utilization of fuel oil, electricity or other conventional energy source. Displacement of renewable or alternative energy systems is not allowed under PACE Massachusetts.

Costs for natural gas line extensions will be calculated as part of the SIR. Energy use displacements should be calculated in the same manner as energy consumption reduction improvements outlined in PACE Massachusetts guideline section 3a. See SIR workbook tool for more information.

Consideration of commercial energy improvements that reduce energy consumption must be made for PACE projects that include gas line extensions. If the PACE project does not include consideration of any commercial energy improvements that reduce energy consumption (i.e. energy efficiency or energy conservation) the project developer must clearly state as part of submitted project documentation the reason commercial energy improvements that reduce energy consumption were not considered.

Consideration of renewable and alternative energy improvements are encouraged, but are not required to be considered for PACE projects that include gas line extensions.

The following components to bring natural gas to a property are eligible for financing under PACE Massachusetts:

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

#### Useful life

The useful life of gas line extension improvements will be determined by the lesser of the length of the contract between the customer and the natural gas distribution company, or 10 years. Supporting documentation from the natural gas distribution company to substantiate the length of the contract must be provided as supporting documentation to the application.

#### Supporting Documentation

The following information must be provided as supporting documentation to the PACE application for a PACE project that includes a natural gas line extension:

- Current fuel use (including fuel oil, electricity or other conventional energy sources)
- Metering requirements included the location and number of meters
- Description of new equipment that will be installed to use natural gas
- Assessment of the expected performance of the system and any maintenance requirements to maintain operation
- Any identified performance guarantees and useful life of the equipment
- Contributions in Aid of Construction (CIAC) documentation

#### 4. Design, Construction, Operation

For all PACE projects, application submissions shall include a written plan that describes how the elements of Part 5.0 “Design, Construction and Verification” and Part 6.0 “Operations, Maintenance, and Monitoring” of the appropriate protocol will be incorporated as a project best practice. There are no specific protocol requirements that are required to be met; rather the application should describe how the design, construction and operations will be managed.

Commissioning of all commercial energy improvements is required under PACE Massachusetts.

## 5. Measurement and Verification

All PACE projects that receive PACE Massachusetts financing shall report building energy use annually through ENERGY STAR Portfolio Manager<sup>43</sup> for as long as the PACE lien is active. This information shall be shared with the DOER ENERGY STAR Portfolio Manager account, and will be available publicly. All projects are encouraged, but not required, to undertake the detailed measurement and verification requirements of ICP Part 7.0 "Measurement and Verification". Costs for detailed measurement and verification of commercial energy improvements may be included as part of the PACE financing.

DOER reserves the right to perform measurement and verification for the purposes of program evaluation for up to 24 months on any PACE project, with the cost being borne by DOER.

*The Savings to Investment Ratio **must be greater than 1** for a project to be eligible for PACE. Please use the SIR workbook on the PACE Massachusetts website.*

## 6. Certification

All projects are required to have the PD prepare the certification included at the end of the PACE Massachusetts guidelines. This completed certification shall be provided as part of the project application.

### Savings Investment Ratio<sup>44</sup>

The findings from the PACE project application savings calculations shall be put in terms of a Savings to Investment Ratio (SIR). The SIR is necessary to determine the project's key financial metrics, and to demonstrate that the energy cost savings of the improvements over their useful life exceeds the cost of the improvements. The SIR also needs to include any financing costs and associated fees as well as any energy efficiency incentives, energy efficiency or renewable rebates, RECs, AECs, tax credits, and net metering. The project developer will use the SIR workbook tool provided on the PACE Massachusetts web site<sup>45</sup> to provide a summary of all SIR inputs, with more additional supporting details provided in a report as backup documentation to the application.

- Savings calculation data points
  - Avoided energy usage including energy cost escalation assumptions
  - Unit costs for energy used in the building (e.g. Cost per kilowatt, cost per therm, if cost for a propane, etc.)
  - Annual demand reduction (may be part of avoided energy use calculation above)
  - Annual electricity sales back to grid for renewable projects (if applicable)
  - Annual revenue from REC and AEC certificate sales
  - Energy efficiency or renewable energy incentives and rebates
  - Tax credits and/or MACRS depreciation
  - Any other system-related revenues (FCM, etc.)
- Investment calculation data points
  - Cost for design, procurement, construction, installation and implementation of commercial energy improvements

<sup>43</sup> <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>

<sup>44</sup> G.L. c. 23M, § 3(a)(2), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23M/Section3>

<sup>45</sup> \*\*Will cite when posted live on website\*\*

- Cost estimates must be provided as supporting documentation. Unreasonable cost estimates may be a basis for rejection of a PACE application.
- Cost for related energy audits
- Cost for renewable energy system feasibility studies
- Cost for measurement and verification reports of the installation and effectiveness of such energy improvements
- PACE financing costs (including principal, interest, fees) and associated fees, including application fees (estimates can be provided by MassDevelopment)

For a PACE project to be eligible for PACE Massachusetts financing, the SIR must be greater than 1. This means that the savings over the project useful life for the PACE project is greater than the amount of money invested.

The SIR shall explicitly show all qualifying up front financial incentives. Such incentives must be presented and will be calculated to reduce the amount eligible to be financed under PACE Massachusetts. For other benefits, such as annual REC and AEC certificate sales and tax incentives, the project proponent may elect whether or not such benefits are used to offset the amount financed, or are used to contribute to financing payments. If REC and AEC certificates or other similar items are retired to realize the environmental benefits, please state this in the application.

### Approval letter

Upon approval of the project by DOER, an approval letter will be issued. This approval letter will be considered a public record and will contain the following information at a minimum:

- Project owner and project address
- Outline of the commercial energy improvements financed under PACE Massachusetts
- Project Developer who prepared the application, with credentials
- Lifetime for project
- If Mass Save<sup>®</sup>, MassCEC or other incentives were leveraged
- If benefits will flow through to tenants
- Any notes from DOER

## **APPENDIX C: FINANCIAL GUIDELINES**

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

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## Open Market Model

An open market, direct financing model is employed for PACE Massachusetts to create a robust market that attracts a diverse range of lenders including banks, credit unions and PACE capital providers. The open market model allows different paths to financing for PACE projects and it enables property owners the opportunity to develop PACE projects and access financing via the channel that best suits a property owner's needs. It will increase benefits to a property owner by allowing an owner to select from multiple lenders and leverage offerings for better terms and lower rates.

For a property owner with an owner-developed PACE project that has not yet selected a lender, MassDevelopment can solicit proposals from lenders for a property owner. Proposals allow a property owner to see information from the interested lenders such as PACE experience, ability to finance size of project (cost), loan terms and interest rates. Property owner(s) will evaluate lender proposals and select a lender based on their own criteria. MassDevelopment will not make lender selections.

*An Open Market model provides the most lending options for property owners*

PACE Massachusetts requires lenders to register with MassDevelopment before financing PACE projects in Massachusetts. The property owner/borrower may access a central registry of potential lenders. Entities interested in becoming a PACE Massachusetts registered lender should respond to the open Request for Information (RFI) for PACE Massachusetts lenders. If a lender provides the required RFI information, they will be registered as an interested PACE Massachusetts lender. Registered lenders may receive information regarding PACE Massachusetts financing. The list of registered lenders will be maintained by MassDevelopment and available upon request to a property owner pursuing PACE financing.

Please note MassDevelopment will not conduct a qualification process to register lenders and will make no assurances or certifications about registered lenders.

## Underwriting Standards

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

In order for projects to pursue financing under PACE Massachusetts, the property owner must be able to demonstrate in its application:

- it will have net cash flow from the property equal to or greater than the proposed annual PACE assessment.
- it is current with respect to mortgage loans and tax assessments, there have been no significant delinquencies in the recent past, and it is not currently and has not been in the prior seven years in a bankruptcy proceeding. See Appendix A for further details.
- the annual PACE assessment does not exceed projected annual savings, as determined by DOER approval. See Appendix B for further details.

- financing for PACE assessment term cannot exceed the lesser of: (1) the useful life of the longest-lived asset of the commercial energy improvements comprising the commercial PACE project financed by such betterment assessment or (2) 20 years.

### **Municipal Opt-In Provision**

PACE Massachusetts is available to property owners located in all municipalities within the Commonwealth, subject to the applicable municipality's initial, one time election to participate in the program. A municipality must authorize its participation in PACE Massachusetts through adoption of a local ordinance by a majority vote of the city or town council or Board of Selectmen or by its legislative body. Municipalities will not be required to authorize PACE for each project application. MassDevelopment will coordinate and support the efforts to assist each municipality that wishes to participate in PACE Massachusetts. Applicants are urged to contact MassDevelopment early to determine whether the municipality in which the project is located already has elected to participate in the program. To facilitate adoption, a form of ordinance is included as Appendix J.

### **Program Fees**

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

### **Interest Rates**

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

### **Financing Agreement**

The PACE Massachusetts Financing Agreement must be used by all lenders for PACE Massachusetts financing. The form of Agreement is included as Appendix F.

## **APPENDIX D: NOTICE OF PROPOSED BETTERMENT ASSESSMENT AND REQUEST FOR MORTGAGE HOLDER CONSENT**

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

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**PACE MASSACHUSETTS  
NOTICE OF PROPOSED BETTERMENT ASSESSMENT  
AND REQUEST FOR MORTGAGE HOLDER CONSENT**

**Date:** \_\_\_\_\_

**Name of Mortgage Holder:** \_\_\_\_\_

**Property Address:** \_\_\_\_\_  
\_\_\_\_\_

**Property Owner/Borrower:** \_\_\_\_\_

**Municipality:** \_\_\_\_\_

**Loan Number:** \_\_\_\_\_

Please be advised that the owner/borrower listed above (the "Owner") owns the property located at the address above (the "Property"). You are the holder of a loan secured by a mortgage lien on the Property.

**NOTICE OF PARTICIPATION IN PACE MASSACHUSETTS**

The Owner wishes to install commercial energy improvements to the Property using financing provided through the Massachusetts Commercial Property Assessed Clean Energy Program ("PACE Massachusetts" or the "Program") established by The Commonwealth of Massachusetts and administered by Massachusetts Development Finance Agency ("MassDevelopment") and seeks your consent to do so.

Massachusetts PACE, M.G.L.c. 23M (the "PACE Act") was enacted into law by Governor Baker in August 2016. A copy of the PACE Act is attached as **Exhibit A**. PACE Massachusetts is a financing mechanism for the owners of commercial, industrial, and multifamily properties (five or more units) ("qualifying commercial or industrial properties") to renovate their properties to reduce energy consumption, install renewable energy systems, or bring natural gas service to their properties.

Under PACE Massachusetts, commercial energy improvements that are renovations or retrofits to a qualifying commercial or industrial property are eligible for financing, provided that the commercial energy improvements are permanently fixed to the property.

MassDevelopment is responsible for administering the Program. Under the Program, financing for qualifying projects is repaid through a betterment assessment (a "PACE Betterment Assessment"), a mechanism long in general use by municipalities to finance improvements to real property that meet a public policy objective, such as sidewalks and water and sewer projects. Like other municipal assessments, PACE Betterment Assessments must be current upon the sale of a property and remain with a property upon sale. As with other municipal betterment assessments, any assessments in arrears (but only those in arrears) have a lien status senior to mortgages upon the sale of a property.

**QUALIFYING PACE PROJECTS**

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

- The property is located in a municipality that has opted to participate in the Program and has entered into an agreement with MassDevelopment regarding the municipality's participation in the Program, including assessing, collecting, remitting and assigning PACE Betterment Assessments on the benefited property.
- The property is a commercial, industrial, or multi-family (five or more units) property.
- The proposed project meets the technical eligibility requirements established by the Massachusetts Department of Energy Resources (the "Department") regarding a reduction of energy consumption, and/or an increase in the production of on-site renewable energy, or an extension of existing gas lines.
- The proposed improvements are permanently affixed to the property.
- The property is current on all municipal property tax and assessment payments.
- The property owner receives consent of the current mortgage holder(s).

#### WHY YOU SHOULD PROVIDE CONSENT

- **Improvements financed through PACE Massachusetts should reduce building operating costs.** Through the technical guidelines that govern the eligibility of projects under the Program, a proposed project must have a Savings to Investment Ratio (SIR) greater than one, meaning that the energy cost savings from the commercial energy improvements over the useful life of the improvements exceeds the costs of the improvements, including any financing costs and associated fees.
- **PACE Betterment Assessments do not accelerate.** In the event the mortgage holder forecloses on the property for any reason, only the amount of the PACE Betterment Assessment currently due and/or in arrears would come due. In the event of a property sale, PACE Betterment Assessments transfer to the new property owner.
- **Improvements financed through PACE Massachusetts generally improve properties, often reducing maintenance and repair costs.** In addition, energy measures improve the efficiency, health, and comfort of a building, making it more attractive to tenants and future owners.

#### WHAT YOU SHOULD KNOW

The Owner intends to apply for PACE Massachusetts financing for the improvements to the Property outlined in **Exhibit B**. The PACE Betterment Assessment is to be levied on the Property pursuant to an agreement between the Municipality and MassDevelopment, and agreed to by the Owner (the "Assessment Agreement"). The PACE Betterment Assessment will be assigned by the Municipality to MassDevelopment, which expects to further assign it as security for the financing. A PACE Betterment Assessment can be enforced in the same manner as any private party holding a lien on real property, including a mortgagee. The expected total amount of the PACE Betterment Assessment and the proposed payment schedule are set forth in **Exhibit C**.

#### PURPOSE OF THIS NOTICE

As required by the PACE Act, the Owner is sending this Notice of Proposed PACE Betterment Assessment to the Mortgage Holder to (i) provide notice of the proposed participation of the Owner in PACE Massachusetts, (ii) request confirmation from you as the holder of a mortgage on the Property that the levy of the PACE Betterment Assessment pursuant to the Assessment Agreement will not trigger a default or an event of default with respect to the Loan, or the exercise of any remedies under the documents and security instruments governing the Loan, (iii) provide notice that the PACE Betterment

Assessment will be collected in installments on the property tax bill in the same manner as and subject to the same penalties, remedies and lien priorities as real property taxes assessed against the Property by the Municipality, and (iv) declare the Owner's agreement to pay on a timely basis both the existing obligations secured by the property (including the Loan) and the proposed PACE Betterment Assessment.

**EXECUTION AND RETURN OF CONSENT**

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

Very truly yours,

PROPERTY OWNER NAME: \_\_\_\_\_

By: (signature): \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

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**EXHIBIT A**

**PACE ACT, M.G.L. c.23M**

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**EXHIBIT B**

**DESCRIPTION OF PROPOSED COMMERCIAL ENGERGY IMPROVEMENTS**

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**EXHIBIT C**  
**PAYMENT SCHEDULE**

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## **APPENDIX E: MORTGAGE HOLDER CONSENT TO PACE BETTERMENT ASSESSMENT**

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

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

**Date:** \_\_\_\_\_

**Name of Mortgage Holder:** \_\_\_\_\_

**Property Address:** \_\_\_\_\_  
\_\_\_\_\_

**Property Owner/Borrower:** \_\_\_\_\_

**Municipality:** \_\_\_\_\_

**Loan Number:** \_\_\_\_\_

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

**RECITALS**

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

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

**CONSENT**

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

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

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

priorities as real property taxes assessed against the Property by the Municipality, (ii) the PACE Betterment Assessment will be assigned by the Municipality to MassDevelopment, which expects to further assign it as security for the financing, and (iii) a PACE Betterment Assessment can be enforced in the same manner as any private party holding a lien on real property, including a mortgagee.

C. The Mortgage Holder agrees that the levy of the PACE Betterment Assessment will not constitute a default or an event of default by the Owner with respect to the Loan or trigger the exercise of any remedies under the documents and security instruments governing the Loan.

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

[NAME OF MORTGAGE HOLDER]

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

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## **APPENDIX F: FORM OF PACE MASSACHUSETTS FINANCING AGREEMENT**

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

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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 \_\_\_\_\_, with a principal office at \_\_\_\_\_, Massachusetts (the "Owner") and \_\_\_\_\_, a \_\_\_\_\_, with an address at \_\_\_\_\_ (the "Lender").

### RECITALS

WHEREAS, the Owner wishes to install commercial energy improvements to the property owned by the Owner 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.c. 23M (the "PACE Act"); and

WHEREAS, in accordance with the PACE Act and the technical guidelines developed thereunder by the Massachusetts Department of Energy Resources (the "Department"), the Department 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 administer 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 Lender; and

WHEREAS, the Owner has consented to the filing of a betterment assessment 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 Lender, as security for the financing; and

WHEREAS, the Lender 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.

"Administration Costs" means the cost incurred by MassDevelopment in administering the Program, including but not limited to initial fees, Program Administrator fees, Collection Costs and any

costs associated with recording of the PACE Lien and any assignments thereof, [and the fees of the Department in connection with its review and approval of the Improvements for financing through the Program], in the amount set forth in **Exhibit A**.

“Annual Payment” means the annual installment of the PACE Betterment Assessment levied by the Municipality and included on the property tax bill from the Municipality, which is due in any given Tax Year, including interest, and is payable in two installments on February 1 and March 1 of each year, as set forth on **Exhibit C**.

“Approved Amount” means the total cost of the Improvements, as approved by the Department [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**.

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

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

“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 Annual Payments, which costs may include administrative expenses incurred directly and indirectly by MassDevelopment.

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

“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 Lender, which in the aggregate shall not exceed the Approved Amount.

“Effective Date” as set forth on **Exhibit A**.

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

“PACE Lien” means the [Notice of PACE Betterment Assessment] filed by the Municipality on the Property, as instructed by MassDevelopment in accordance with the provisions of the Assessment Agreement.

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

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

“Submittal Package” means, collectively, the application, filings, documents, certifications, consents, contracts and other information required to be provided to MassDevelopment or the Department in connection with the Owner’s application for financing of the Improvements through PACE Massachusetts.

"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 Lender 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**.

(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 Lender, as security for the Financing.

(C) Upon execution of this Agreement, MassDevelopment will give notice to the Municipality to record the PACE Lien in the Registry, in accordance with the Assessment Agreement.

(D) Upon recording of the PACE Lien, the entire balance of the PACE Betterment Assessment (including interest thereon) shall constitute a legal, valid and binding non-ad valorem betterment assessment and a resulting lien upon the Property, 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.

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

(A) The Owner and no other person is vested with fee simple title of record to the Property.

(B) The Owner acknowledges that the Improvements confer direct special benefits to the Property equal to or in excess of any amounts due hereunder, and that 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.

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

(D) The Owner acknowledges that the PACE Lien has been assigned to the Lender as security for the repayment of the Financing.

(E) The Owner agrees and covenants to timely pay each Annual Payment, at the times and in the amounts set forth on **Exhibit C**, and acknowledges that failure to pay any Annual Payment may result in loss of title to the Property, as described in Section 10.

(F) The Owner acknowledges that the PACE Lien will be recorded in the Registry, and that upon such recording, the PACE Lien shall constitute a lien on the Property of equal rank and priority as the lien of all municipal taxes and other assessments, and senior to all other liens, titles, and claims, until paid in full.

(G) The Owner acknowledges and covenants that the PACE Betterment Assessment, 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.

(H) 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.

(I) 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.

(J) The Owner is solely responsible for obtaining all permits and approvals necessary for the construction and installation of the Improvements and for selecting and engaging the Contractor. The Owner shall provide copies of any permits or approvals necessary for the construction or installation of the Improvements to the Lender upon request.

(K) 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.

(L) The Owner has obtained the written consent of 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 to the imposition of the PACE Lien on the Property. The Owner has provided the Lender with a true and correct copy of any such written consents prior to the execution hereof.

(M) The Owner acknowledges that any inspection of the Improvements required by applicable building codes, the Program or the Lender 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.

(N) The Owner agrees to provide the annual reports required by the Department [pursuant to the Approval Letter], and any utility records requested by the Department or the Lender to assist in tracking utility savings resulting from the Improvements.

(O) 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 pay the monthly equivalent of the Annual Payment.

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

(Q) The Owner acknowledges and agrees that 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.

(R) The Owner acknowledges that the Annual Payment will be collected on the annual property tax bill administered by the Municipality and that the Annual Payment will include the Administration Costs.

(S) The Owner may prepay the PACE Betterment Assessment in accordance with the provisions of Section 11.

(T) The Owner has represented in its application filed with MassDevelopment for participation in PACE Massachusetts that it will have net cash flow from the Property equal to or greater than the proposed annual PACE Betterment Assessment. The Owner hereby reaffirms such representation, and both the Owner and the Lender acknowledge that MassDevelopment has not conducted any investigation or otherwise undertaken to confirm that such representation is accurate or correct and MassDevelopment does not make any warranties, guarantees, or representations with respect to the same.

#### **Section 5. DISBURSEMENT.**

(A) [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 Lender of a completed Requisition in the Form of **Exhibit D-1**, and (iv) inspection and approval of the completed Improvements by the Lender, the Lender shall cause disbursement of the Disbursement Amount directly to the Contractor.] [Subject to the terms and conditions set forth herein, upon (i) execution and delivery of this Agreement, and (ii) submission by the Owner to the Lender of a completed Requisition in the Form of **Exhibit D-1**, the Lender shall cause disbursement of the Disbursement Amount at the times and in the amounts set forth on **Exhibit D-2**, either directly to the Contractor, or to reimburse the Owner if the Owner has provided to the Lender evidence satisfactory to the Lender that the Owner has paid the Disbursement Amount to the Contractor directly.]

(B) By execution hereof, the Owner acknowledges and directs disbursement of the Disbursement Amount directly to the Contractor of the amounts set forth in each completed Requisition submitted by the Owner to the Lender.

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

(A) Annual Payments, including Administration Costs and annual interest on the PACE Betterment Assessment as provided in paragraph (C) below, shall be collected on the property tax bill issued by the Municipality pertaining to the Property as provided for in the PACE Act and M.G.L. c. 80. The Annual Payment 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 fees and interest as delinquent ad valorem taxes. By execution hereof, the Owner acknowledges that the failure to pay the PACE Betterment Assessment or any Annual Payment as and when due may result in the loss of title to the Property, as set forth in Section 10 below.

(B) Following recording of the PACE Lien in the Registry, Annual Payments shall be collected on the property tax bill issued by the Municipality with respect to the Property, as provided herein in the amounts and for the term set forth in **Exhibit C**, commencing with the property tax bill to be issued in first Tax Year set forth on **Exhibit A**.

(C) Interest shall accrue on the unpaid PACE Betterment Assessment commencing on the date set forth in **Exhibit A**, at a simple interest rate per annum equal to the rate set forth on **Exhibit A**, computed on a 30/360 day count basis. If applicable, the first Annual Payment may consist solely of capitalized interest representing interest accruing on the PACE Betterment Assessment as set forth on **Exhibit A** and shall be payable from proceeds of the Disbursement Amount. The amount of capitalized interest, if any, is set forth on **Exhibit A**.

**Section 7. USE OF PROCEEDS.**

Funds advanced by the Lender 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, but are not limited to, recording fees, accounting and legal fees, costs associated with energy audits, if applicable, including reimbursement to the Owner for energy audits related to the Improvements and approved by the Department, Administration Costs, and capitalized interest, if applicable, but 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]. Such costs and expenses are described in **Exhibit A**.

**Section 8. 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 9. 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 the Department within the Approved Amount, if such cost is to be financed as part of the Improvements. The Owner agrees and acknowledges that the Lender 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 shall be the sole responsibility of the Owner and shall not be payable from the Disbursement Amount.

**Section 10. DEFAULT; ACCELERATION.** Failure to make any installment of an Annual Payment as and when due shall subject the Property to the enforcement mechanisms available to the Lender under the PACE Act, which may result in loss of title to the Property. The Lender 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. The Owner shall pay all costs incurred by the Lender for such enforcement, including reasonable attorney's fees and costs, provided that the Lender will not be entitled to seek to accelerate the unpaid and not yet due balance of the PACE Betterment Assessment upon any such default or upon transfer of the Property to a successor owner.

(A) Foreclosure Sales. Upon any default in the payment as and when due of an installment of an Annual Payment, which default continues for more than 30 days, the Lender may 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. Chapter 244, Section 14 relating to notices to the Owner and any holders of a mortgage or other lien on the Property, 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.

(B) Foreclosure Expenses, Surplus. If foreclosure, bankruptcy or other legal proceedings involve the Lender's interest under this Agreement, whether the proceedings are begun by the Lender or others and whether the proceedings are suspended or terminated or the Property redeemed, the Lender will be entitled to collect and the Owner agrees to reimburse the Lender for all expenses, including reasonable attorneys' fees, incurred by the Lender in the foreclosure, bankruptcy or other legal proceeding. If surplus proceeds are realized from a foreclosure sale, the Lender will not be liable for interest on the proceeds pending distribution, and all costs and reasonable attorneys' fees 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 Lender 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 Lender receives additional consideration: (i) the sale of all or part of the Property, (ii) a forbearance by the Lender, (iii) an extension of the time for payment or performance of the Owner's obligations hereunder, or (iv) an indulgence given by the Lender 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 Lender of a default by the Owner under this Agreement will constitute a waiver of a future default in the same or any other provision of this Agreement.

**Section 11. 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 the Program Administrator and the Lender 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.

**Section 12. DISCLOSURE.** 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 Lender.

**Section 13. INDEMNIFICATION.** The Owner shall indemnify and hold harmless the Lender, including its officers, agents and employees (each, an "Indemnified Party") from, and, if requested, shall defend them against any and all loss, cost, damage, injury, or liability in connection with this Agreement, including the manufacture, supply or installation of the Improvements. The foregoing indemnity shall include, without limitation, 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 14. 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 15. GOVERNING LAW; VENUE.** This Agreement shall be governed by the laws of The Commonwealth of Massachusetts. 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 16. ASSIGNMENT.** The Lender, at its option, may (i) assign any or all of 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 Lender hereunder, without obtaining the consent of Owner, but only to a "qualified institutional buyer" as such term is defined in Rule 144A of the Securities and Exchange Commission under the Securities Act of 1933.

**Section 17. TERM.** The term of this Agreement shall be until the PACE Betterment Assessment, including all accrued interest thereon, has been paid in full.

**Section 18.** USA PATRIOT ACT NOTICE. The Lender hereby notifies the Owner that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), the Lender is required to obtain, verify and record information that identifies the Owner, which information includes the name and address of the Owner and other information that will allow the Lender to identify the Owner in accordance with the Patriot Act.

**Section 19.** 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 Lender have entered into this Agreement as of the last day signed below.

OWNER:

[NAME]

By: \_\_\_\_\_  
Name:  
Title:

LENDER:

[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. **Effective Date:**
6. **Administrative Costs:**
  - (a) **Initial Program Fee payable to MassDevelopment<sup>1</sup>:** \$ \_\_\_\_\_
  - (b) **Annual Fee payable to MassDevelopment:** \$ \_\_\_\_\_
  - (c) \_\_\_\_\_: \$ \_\_\_\_\_
7. **Disbursement Amount** (Costs of the Improvements):
8. **Capitalized Interest:** [None/From the effective date to and including \_\_\_\_\_, 20\_\_:  
\$\_\_\_\_\_.]
9. **Approved Amount:** [Total of 6, 7 and 8]
10. **Interest Rate:**
11. **Date from which Interest Accrues:**
12. **Aggregate Amount of PACE Betterment Assessment:**
13. **First Tax Year:** The tax year commencing July 1, 20\_\_
14. **Additional Prepayment Provisions:** [None.]

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<sup>1</sup> Includes the initial administrative fees and costs of MassDevelopment and the Department.

**EXHIBIT A-1**  
**DESCRIPTION OF PROPERTY**

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**EXHIBIT B**  
**DESCRIPTION OF THE IMPROVEMENTS**

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EXHIBIT C

SCHEDULE OF ANNUAL PAYMENTS

<u>Due Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Amount Due</u>	<u>Net Amount Due Lender</u>
February 1, 20__			\$	\$
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				
February 1, 20__				
May 1, 20__				

\* Represents amount due to Lender, less Administration Costs due to the Program Administrator.

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**EXHIBIT D**  
**DISBURSEMENT REQUIREMENTS**

**[To be provided by the Lender]**

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**EXHIBIT D-1**  
**FORM OF REQUISITION**

TO: [Name of Lender] (the "Lender")

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 Lender and \_\_\_\_\_ (the "Owner").

The Lender 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, to 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 PACE Betterment Assessment 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 Lender]**

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EXHIBIT E

FORM OF DISCLOSURE STATEMENT TO SUBSEQUENT OWNERS

Name of Owner:

Address of Property:

Name of Lender:

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 Lender (the "Lender"), 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. c. 23M (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. c. 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.**

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 Lender 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 Lender reserves the right to enforce any payment delinquency or default by the Owner or any successor owner of the Property in any manner authorized by law including foreclosure.**

## **APPENDIX G: PACE MASSACHUSETTS MUNICIPAL ASSESSMENT AND ASSIGNMENT AGREEMENT**

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

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**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 \_\_\_\_\_**], a political subdivision of The Commonwealth of Massachusetts (the "Municipality"), and **MASSACHUSETTS DEVELOPMENT FINANCE AGENCY** ("MassDevelopment"), a body politic and corporate and a public instrumentality of The Commonwealth of Massachusetts (the "Commonwealth").

**RECITALS**

**WHEREAS**, pursuant to M.G.L. c. 23M (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 (the "Department"); 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 [Ordinance/By-law No. \_\_\_], 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 imposition of betterment assessments and liens upon benefitted properties within the Municipality to secure the financing of Improvements to such benefitted properties;

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

Section 1. Definitions.

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

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

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

(c) "Chapter 80" means M.G.L. c. 80.

(d) "Financing Agreement" means a PACE Massachusetts Financing Agreement between the Owner of benefitted property within the Municipality and a Lender.

(e) "Lender" 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.

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

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

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

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

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

Section 2. Obligations of MassDevelopment. MassDevelopment shall:

(a) Notify 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 the Department and MassDevelopment has found that the project complies with the financial underwriting guidelines for PACE Massachusetts established by MassDevelopment, together with an estimate of the aggregate amount of the PACE Betterment Assessment to be levied on the benefitted property;

(b) Provide to the Municipality appropriate documentation to identify the benefitted property for purposes of levying the PACE Betterment Assessment and recording the corresponding PACE Lien;

(c) Notify the Municipality 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;

(d) Provide to the Municipality 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. MassDevelopment also shall provide to the Municipality a copy of the payment schedule (the "Payment Schedule") that is to be a part of the Financing Agreement, which shall indicate the portion of the PACE Betterment Assessment to be included on each property tax bill issued by the Municipality with respect to such benefitted property, including the required PACE Betterment Assessment payment date. It is expected that the Payment Schedule will indicate that the PACE Betterment Assessment shall be payable in two equal payments on February 1 and May 1 of each 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;

(e) Notify the Municipality when the PACE Betterment Assessment is to be levied and the PACE Lien recorded, which shall not be less than 10 Business Days prior to the closing of the PACE financing secured by such assessment and lien;

(f) Provide the Municipality with a completed PACE Massachusetts Assignment and Assumption Agreement with respect to the benefitted property, in the form of **Exhibit D** attached hereto.

With respect to paragraphs (a) and (b) above, MassDevelopment shall provide to the Municipality a completed Notice of Benefitted Property in the form of **Exhibit A** attached hereto, signed by MassDevelopment and acknowledged by the applicable Owner.

With respect to paragraphs (c), (d), and (e) above, MassDevelopment shall provide to the Municipality a completed Notice of PACE Betterment Assessment and Lien in the form of **Exhibit B** attached hereto, signed by MassDevelopment and consented to by the applicable Owner.

### Section 3. Obligations of the Municipality.

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

(b) Levy of PACE Betterment Assessment. Upon receipt of a completed **Exhibit B** from MassDevelopment, the Assessing Board of the Municipality shall promptly 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, in the Registry a PACE Lien on the benefitted property in the form of **Exhibit C** attached hereto, in accordance with Chapter 80 and the PACE Act. The PACE Lien will have three attachments: (i) the legal description of the benefitted property, (ii) the Payment Schedule, and (iii) a copy of the Financing Agreement. As provided in the PACE Act, the PACE Betterment Assessments levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the benefitted property on which they are made until they are paid, notwithstanding the provisions of Chapter 80, Section 12, and shall continue notwithstanding any alienation or conveyance of the benefitted property. The PACE Lien shall be collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies and lien priorities as provided by the PACE Act. The costs of recording the PACE Lien shall be paid by MassDevelopment, through its program administrative fee paid by the applicable Owner.

(c) Notification of Recording. Upon recording of the PACE Lien, the Assessing Board of the Municipality shall notify or cause to be notified the applicable Owner, providing a copy of the recorded PACE Lien. Upon agreement of the Municipality and MassDevelopment, MassDevelopment, on behalf of the Municipality, shall record the PACE Lien and provide a copy of the recorded PACE Lien to the 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, and 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** attached hereto, to MassDevelopment each PACE Lien recorded by the Municipality's tax collector, as provided in this Agreement. 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 section 21 of chapter 183 and a suit on the debt.

(f) Amendment of the PACE Betterment Assessment and Lien. Pursuant to a Financing Agreement, the final amount of a PACE Betterment Assessment may be adjusted after the levy 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 any other time, MassDevelopment will notify the Municipality of such change, and provide the Municipality with an updated Payment Schedule and new amount of the PACE Betterment Assessment and PACE Lien. The Municipality shall amend the PACE Betterment Assessment to reflect such adjustment. MassDevelopment or, if the applicable PACE Lien has been assigned by MassDevelopment, the applicable assignee will be responsible for the recording of a corresponding amendment to the PACE Lien in the Registry.

(g) Billing and Collection; Payment to MassDevelopment.

1. The Municipality shall bill the PACE Betterment Assessments in the same manner and at the same time as it bills its real property taxes. The PACE Betterment Assessment payments shall be a separate clearly defined line item on the property tax bill for the benefitted property and shall be due on the dates set forth in the Payment Schedule. The amount of the PACE Betterment Assessment will be recorded on the Municipality's tax rolls in the same manner as any other betterment assessment, such that the public will have access to its existence and payment status. The penalties and interest on delinquent PACE Betterment Assessments shall be charged in the same manner and rate as the Municipality charges for delinquent real property taxes.

2. Payments of the PACE Betterment Assessments collected by the Municipality shall be segregated from all other funds of the Municipality and deposited in a separate account for the benefit of MassDevelopment and identifying MassDevelopment as the beneficial owner. The Municipality disclaims any ownership interest or other interests in such account or the amount collected.

3. The Municipality shall pay all amounts collected with respect to the PACE Betterment Assessments to MassDevelopment or its designee, as identified in **Exhibit B** (the "MassDevelopment Designee") if so directed by MassDevelopment pursuant to Section 7(b) hereof, no later than 30 days after receipt of the collected amounts. The Municipality will provide collection reports MassDevelopment or the MassDevelopment Designee, if so directed by MassDevelopment pursuant to Section 7(b) hereof, and MassDevelopment and its agents, at MassDevelopment's own expense, shall have the right to audit the records relating to the PACE Betterment Assessments upon reasonable notice at reasonable times. The Municipality also will permit any assignee of a PACE Lien from MassDevelopment, at such assignee's own expense, to audit the records relating to the PACE Betterment Assessments upon reasonable notice at reasonable times. MassDevelopment and the Municipality agree to provide each other with such reasonable information as they may request and MassDevelopment and the Municipality agree to provide such information in a computer format satisfactory to the other.

(h) Collection of Delinquent Payments.

1. In the event that any Owner fails to make a PACE Betterment Assessment payment at the times and in the amounts set forth on the Payment Schedule, the Municipality shall provide written notice to MassDevelopment or the MassDevelopment Designee, if so directed by MassDevelopment pursuant to Section 7(b) hereof, of such delinquency in a reasonably timely manner, but in no event more than 30 days after the due date. After providing such notice to MassDevelopment or the MassDevelopment Designee, as applicable, the Municipality shall have no obligation to collect delinquent PACE Betterment Assessment

payments unless it 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, 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 Assessments with the same diligence it employs in the collection of the Municipality's real property taxes, including the commencement of foreclosure proceedings in accordance with the PACE Act, 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 Assessments upon written notice to the Municipality, and thereupon the Municipality will have no further responsibility to collect such amount.

3. The Municipality will provide written notice to MassDevelopment 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 applicable betterment assessments. Similarly, MassDevelopment shall provide or cause to be provided written notice to the Municipality of the institution of a foreclosure or other proceeding, of which MassDevelopment has knowledge, against any benefitted property for a delinquent PACE Betterment Assessment.

(i) 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, and conducting business roundtable events.

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

Section 4. No Liability.

Notwithstanding any other provision of law to the contrary, officers and officials of the Municipality, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or 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 Lender.

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 deemed no longer outstanding (the "Term"). The Municipality may elect to terminate its participation in PACE Massachusetts at any time on 60 days' advance 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 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, 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 applicable Bonds.

(b) Designation of MassDevelopment Designee. Notwithstanding the provisions of Section 7(a), MassDevelopment may designate an entity to serve as the MassDevelopment Designee 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 the notice sent in accordance with Section 2(b), or at a later date.

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

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

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

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

If to MassDevelopment:  
Massachusetts Development Finance Agency  
99 High Street  
Boston, MA 02110  
Attention:

(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 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 (the "Department").

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 10 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, together with the other information and documentation required pursuant to Section 2 of the Agreement.

MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY

Date:

By: \_\_\_\_\_  
Duly Authorized

**Owner:**

**Address of Benefitted Property:**

**Estimated Amount of PACE Betterment Assessment: \$**

ACKNOWLEDGED:

[OWNER]

By: \_\_\_\_\_  
Name:  
Title:

[MUNICIPALITY]

By: \_\_\_\_\_  
Duly Authorized

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

In accordance with that certain PACE Massachusetts 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 not later than the Recording Date set forth below for recording in the Registry identified below.
7. Attached as **Attachment 3** is the PACE Massachusetts Assignment and Assumption Agreement to be executed by the Municipality and returned to MassDevelopment not later than the Recording Date set forth below for recording 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:** Not later than \_\_\_\_\_

**Recording Date:** Not later than \_\_\_\_\_

**Registry:**

CONSENTED TO:  
[OWNER]

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT 1  
PAYMENT SCHEDULE**

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**ATTCHMENT 2**  
**PACE MASSACHUSETTS BETTERMENT ASSESSMENT STATEMENT**

(See Attached)

DRAFT

**ATTCHMENT 3  
PACE MASSACHUSETTS ASSIGNMENT AND ASSUMPTION AGREEMENT**

(See attached)

DRAFT

**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 G.L. c.23M and G.L. c.80, that by [ordinance/resolution] of the [Board of Selectmen/Town Council/City Council] of the [City/Town] of \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the [City/Town] of \_\_\_\_\_ (the "Municipality") has elected to participate in the Massachusetts Commercial Clean Energy Program (PACE Massachusetts), and has entered into a PACE Massachusetts Assessment and Assignment Agreement, dated \_\_\_\_\_, 20\_\_ (the "Agreement"), with Massachusetts Development Finance Agency ("MassDevelopment") pursuant to said [order/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 **Exhibit A** is to be levied on the property located in the Municipality and identified on **Exhibit A**, and the [Assessing Board] has levied a PACE betterment assessment in such amount on such property, which now constitutes a lien on such property. Such PACE betterment assessment is to be paid in accordance with the Payment Schedule attached as **Exhibit B** and the Financing Agreement attached as **Exhibit C**.

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 \_\_\_\_\_

**EXHIBIT D**  
**FORM OF PACE MASSACHUSETTS ASSIGNMENT AND ASSUMPTION AGREEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that the [City/Town of \_\_\_\_\_], Massachusetts (the "Assignor"), acting herein by \_\_\_\_\_, its \_\_\_\_\_, pursuant to that certain PACE Massachusetts 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, 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 by the Assignor 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.c. 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:

CITY/TOWN OF \_\_\_\_\_,  
MASSACHUSETTS

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

Name:

Title:

**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 the City/Town of \_\_\_\_\_ (the "Principal") and acknowledged to me that the Principal signed the preceding or attached document voluntarily for its stated purpose. The Principal proved to me through satisfactory evidence of identification that the Principal is the person whose name is signed on the preceding or attached document. The satisfactory evidence of identification provided to me was:

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

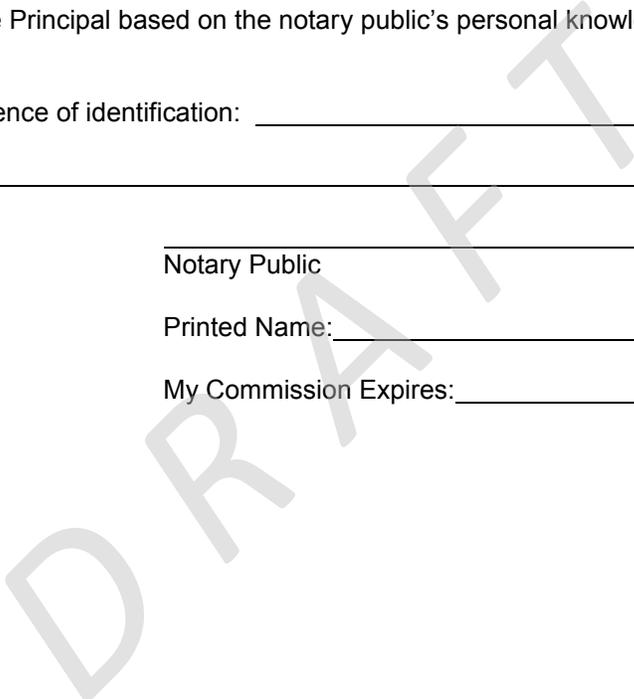
\_\_\_\_\_

\_\_\_\_\_  
Notary Public

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

My Commission Expires: \_\_\_\_\_

[Seal]



## **APPENDIX H: OWNER DISCLOSURE STATEMENT AND AGREEMENT**

This disclosure is required to be signed by the Property Owner. It acknowledges the receipt of the risks and characteristics of PACE Massachusetts as described in the statement.

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**PACE MASSACHUSETTS  
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

**Date:**

**Owner:**

**Property Address:**

**Municipality:**

**PACE Lender:**

**Date of Application:**

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

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

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

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

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

3. Consent to PACE Betterment Assessment. The Owner has freely and willingly consented to the levying of the PACE Betterment Assessment and the imposition of the PACE Lien upon the Property. Upon recording of the PACE Lien, the entire balance of the PACE Betterment Assessment (including interest thereon) will constitute a legal, valid and binding non-ad valorem betterment assessment and a resulting lien upon the Property, 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. Under the Financing Agreement, the Owner waives all rights to subsequently challenge the PACE Betterment Assessment on the basis of procedural irregularities, notice or due process claims, insufficient benefits, improper or unfair apportionment or any other basis.
4. Mortgage Holder Consent. Each holder of a mortgage on the Property must consent to the levying of the PACE Betterment Assessment and imposition of the PACE Lien and the Owner has obtained the consents of all such mortgage holders.
5. Amount of PACE Betterment Assessment. The aggregate amount of the PACE Betterment Assessment, as set forth in **Exhibit A**, includes the costs of the Improvements financed, plus any fees and costs to be financed, plus interest on such financing. Attached to **Exhibit A** is a copy of the payment schedule (the "Payment Schedule") that is to be included in the PACE Betterment Assessment and is part of the Financing Agreement between the Owner and the Lender. The Payment Schedule sets forth the portion of the PACE Betterment Assessment to be included on each property tax bill issued by the Municipality with respect to the Property, including the required PACE Betterment Assessment payment date.
6. Program Origination Fee. At the time of closing, MassDevelopment will charge an initial program administration fee, in the amount set forth on **Exhibit A**, to cover the costs of implementing the financing. This includes the fees of MassDevelopment and the Department, the costs of recording the PACE Lien and assignments, the initial costs of the PACE Betterment Assessment servicer, and the fees and costs of MassDevelopment's legal counsel. This fee is added to the amount of the PACE Betterment Assessment.
7. Annual Administration Fee. Each year, MassDevelopment will charge an annual administrative fee, in the amount set forth on **Exhibit A**. This fee is added to the amount of the PACE Betterment Assessment.
8. Interest Rate. You will be charged interest on the total financed amount. Your interest rate will be set at the time your financing documents are issued. Interest rates may change from the approval date to the date the Financing Agreement is signed. An estimate of the interest rate is included on **Exhibit A**.
9. Foreclosure. If any installment of the PACE Betterment Assessment is not paid as and when due, the Property shall be subject to all enforcement mechanisms available to the Lender under the PACE Act, which may result in the Owner's loss of title to the Property. The Lender has the right to enforce any payment delinquency or default by the Owner or any successor owner of the Property in any manner authorized by law including foreclosure. The Owner will be required to pay all costs incurred by the Lender for such enforcement, including reasonable attorney's fees and costs; provided, however, the Lender will not be entitled to accelerate the unpaid and not yet due balance of the PACE Betterment Assessment upon any such default or upon transfer of the Property to a successor owner.
10. Prepayment. The Owner may pre-pay the PACE Betterment Assessment in whole but not in part at any time, upon 15 Business Days' prior written notice to the Lender and MassDevelopment. The Lender selected by the Owner may impose a prepayment fee, which, if applicable, will be set forth in the Financing Agreement.

11. No Endorsement, Warranty or Liability. Neither MassDevelopment nor the Department endorse any manufacturer, contractor, product, or system, or in any way warranty any equipment, or the installation or efficiency or production capability of any such equipment. MassDevelopment and the Department make no representations and have no responsibility regarding the Improvements and their installation/construction, including the quality, safety, cost savings, efficiency or production capability of the Improvements; or any compliance of the Improvements with any applicable laws, regulations, codes, standards or requirements. Further, neither MassDevelopment nor the Department shall be in any way liable for any incidental or consequential damages resulting from the Improvements or their construction/installation.
12. Indemnification. The Owner will indemnify MassDevelopment and the Department and their respective directors, officers, employees, and agents against (a) any and all claims by any person related to the participation of MassDevelopment and the Department in the transactions contemplated in this Disclosure Statement and in PACE Massachusetts, including, without limitation, claims arising out of (i) any condition of the Property or the Improvements or the construction, installation use, occupancy or management thereof; (ii) any accident, injury or damage to any person occurring in or about or as a result of the Improvements or the Property; (iii) any breach by the Owner of its obligations under the Financing Agreement; or (iv) any act or omission of the Owner, or any of its agents, contractors, servants, employees or licensees; and (b) all losses, costs, counsel fees, expenses or liabilities reasonably incurred in connection with any such claim or any action or proceeding brought thereon. In case any action or proceeding is brought against MassDevelopment or the Department by reason of any such claim, the Owner will defend the same at its expense upon notice from MassDevelopment or the Department, as applicable, and MassDevelopment and the Department, as the case may be, will (except in any case in which their interests are adverse to that of the Owner) cooperate with the Owner, at the expense of the Owner, in connection therewith. This indemnification shall survive the termination of the Financing Agreement, the PACE Betterment Assessment and the PACE Lien.
13. Patriot Act Disclosure. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Accordingly, as part of applying to the PACE Massachusetts, MassDevelopment and/or the Lender may be required to ask for your name, address, date of birth, and other information and may need a copy of the driver's license or other identifying documents that will allow it to identify the Owner.

### ACKNOWLEDGEMENT AND AGREEMENT

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

[NAME OF OWNER]

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

**PACE MASSACHUSETTS  
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

**EXHIBIT A**

**Summary of Financing**

1. Total Amount Financed/Total Amount of PACE Betterment Assessment: \$ \_\_\_\_\_
2. Term: \_\_\_\_\_ Years
3. Interest Rate: \_\_\_\_\_% per annum.
4. Payment Schedule: [See Exhibit A-1]
5. Payment Dates: February 1 and May 1 of each year
6. First Payment Date:
7. Date Interest Begins to Accrue:
8. Program Origination Fee: \$ \_\_\_\_\_
9. Annual Administration Fee: \$ \_\_\_\_\_
10. Prepayment Fee (See Lender's Financing Agreement.)

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**PACE MASSACHUSETTS  
OWNER DISCLOSURE STATEMENT AND AGREEMENT**

**EXHIBIT A-1  
Payment Schedule**

*BOS 48340725v3*

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## **APPENDIX I: LENDER ASSIGNMENT AGREEMENT**

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

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**PACE MASSACHUSETTS  
LENDER ASSIGNMENT AGREEMENT**

This **LENDER 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 "Lender").

**RECITALS**

**WHEREAS**, pursuant to M.G.L. c. 23M (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 (the "Department"); 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**, \_\_\_\_\_, 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 [City/Town of \_\_\_\_\_, Massachusetts] (the "Municipality"), and to that end has entered into a PACE Massachusetts Financing Agreement with the Lender, dated \_\_\_\_\_, 20\_\_\_ (the "Financing Agreement"); 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"), and the assignment of the PACE Lien by the Municipality to MassDevelopment and from MassDevelopment to the Lender, as security for the Financing; and

**WHEREAS**, the Municipality has recorded the PACE Lien in the [\_\_\_\_\_ Registry of Deeds/District of the Land Court (the "Registry"), [at Book \_\_\_\_\_, Page \_\_\_\_/as Document No. \_\_\_\_\_ on Certificate of Title No. \_\_\_\_\_], and assigned the PACE Lien to MassDevelopment pursuant to a PACE Assignment and Assumption Agreement, dated \_\_\_\_\_, 20\_\_\_, and [recorded with the Registry [at Book \_\_\_\_\_, Page \_\_\_\_/as Document No. \_\_\_\_\_ on Certificate of Title No. \_\_\_\_\_]; and

**WHEREAS**, the Lender is willing to provide the financing for the costs of the Improvements (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 Lender 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 Lender 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) "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.

(b) "Payment Schedule" has the meaning assigned to such term in Section 3(a).

Section 2. Assignment of PACE Lien.

(a) MassDevelopment hereby agrees to assign to the Lender the PACE Lien as security for the Financing, in the form of the Assignment of PACE Lien set forth in **Exhibit B** attached hereto. The Lender 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 Lender 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 section 21 of chapter 183 and a suit on the debt.

(b) MassDevelopment shall record or cause to be recorded the Assignment of PACE Lien in the Registry not later than five Business Days following the date of this Agreement. 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 Lender and the Owner. The Lender 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 8(a).

(c) As provided in the PACE Act, each PACE Lien shall be continued, recorded and released by the Lender 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 taxes of the Municipality on the Property.

Section 3. Payment of PACE Betterment Assessment.

(a) The Lender acknowledges and agrees that 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 in the Financing Agreement as Exhibit C. MassDevelopment will pay over or cause to be paid over to the Lender, no later than five Business Days following the receipt of the same from the Municipality by MassDevelopment or its designee, the Net Amount Due of each installment of the PACE Betterment Assessment received from the Municipality, as shown on **Exhibit C**.

(b) MassDevelopment will provide or cause to be provided to the Lender copies of any collection reports received from the Municipality with respect to the PACE Betterment Assessment levied on the Property. The Lender, at its own expense, shall have the right to audit the records maintained by the Municipality relating to the PACE Betterment Assessment upon reasonable notice at reasonable times.

Section 4. Amendment of the Betterment Assessment Lien.

If the final amount of financing needs to be adjusted at the completion of the Improvements, or any other time after the levy of the PACE Betterment Assessment and recording of the PACE Lien, Lender shall notify MassDevelopment and provide MassDevelopment for its review and confirmation an updated Payment Schedule, and MassDevelopment will notify the Municipality of such change, and provide the Municipality with such updated Payment Schedule, as confirmed by MassDevelopment, and

the new amount of the PACE Betterment Assessment. The Municipality shall be required to amend the PACE Betterment Assessment to reflect such adjustment, and the Lender shall record or cause to be recorded, at its sole cost and expense, in the Registry an amendment to the PACE Lien to reflect the change in the Payment Schedule.

Section 5. Delinquent Payments.

(a) In the event that the Owner fails to make a PACE Betterment Assessment payment pursuant to the Payment Schedule on the dates and in the amounts set forth therein, the Municipality is required to notify MassDevelopment in a reasonably timely manner; MassDevelopment shall provide or cause to be provided to the Lender a written notice of any such delinquency within 10 Business Days following receipt of notice of the same from the Municipality. The Municipality has no obligation to take actions to collect delinquent PACE Betterment Assessment payments.

(b) MassDevelopment promptly shall provide to the Lender 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.

(c) The Lender shall provide to MassDevelopment and the Municipality not less than 30 days' prior written notice of the institution of a foreclosure or other proceeding against the Property for a delinquent PACE Betterment Assessment payment.

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 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.

Section 7. Indemnification.

The Lender agrees that it will protect, defend, indemnify and hold harmless MassDevelopment and the Department and their respective directors, officers, agents and employees from and against all claims, demands, causes of action, damages, judgments, losses and expenses, including reasonable attorney's fees, arising out of or in connection with the actions of MassDevelopment's or the Department's, as applicable, respective directors, officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

Section 8. Term.

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

Section 9. Miscellaneous Provisions.

(a) Assignment or Transfer. The Lender may only assign or transfer its rights or obligations under this Agreement or the Financing Agreement to a "qualified institutional buyer" as such term is defined in Rule 144A of the Securities and Exchange Commission under the Securities Act of 1933.

(b) 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.

(c) 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.

(d) 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: \_\_\_\_\_

If to the Lender:  
NAME  
STREET ADDRESS  
CITY, STATE, ZIP CODE  
Attention:

(e) 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 Lender.

(f) 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.

(g) 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.

(h) 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.

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

**MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY**

By: \_\_\_\_\_  
Name:  
Title:

**[LENDER]**

By: \_\_\_\_\_  
Name:  
Title:

BOS 48334437v3

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## **APPENDIX J: DRAFT MUNICIPAL ORDINANCE**

This is a draft ordinance for use by municipalities to enable PACE Massachusetts.

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**Ordinance/Bylaw Authorizing the City/Town of \_\_\_\_\_ to Participate in the Massachusetts  
Commercial Property Assessed Clean Energy Program  
(PACE Massachusetts)**

**WHEREAS**, pursuant to M.G.L. c. 23M (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 commercial and industrial properties for certain qualifying commercial energy improvements ("improvements"); and

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

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

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

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

**WHEREAS, NOW THEREFORE, BE IT ORDERED**, as follows:

The [City Council of the City of \_\_\_\_\_ [with the approval of the Mayor]] [the Board of Selectmen/Town Council of the Town of \_\_\_\_\_] hereby approves the Municipality participating in PACE Massachusetts pursuant to the PACE Act, and authorizes the [Mayor/Town Manager] to enter into an agreement with MassDevelopment (the "PACE Administration Agreement") pursuant to which the Municipality will agree to (i) levy and record PACE betterment assessments on benefitted properties located in the Municipality, in the amounts determined by MassDevelopment to be sufficient to repay the PACE Massachusetts financings, (ii) assign the PACE betterment assessments and the related liens to MassDevelopment, which MassDevelopment may in turn assign to the providers of the financing of the improvements (each a "capital provider"), as collateral for and the source of repayment of such financings, (iii) bill the owners of the benefitted properties for the installment payments necessary to repay the PACE betterment assessments, in the amounts determined by MassDevelopment, and (iv) enforce, to the extent required by such agreement, such PACE betterment assessments; such agreement to be in such form as the [Mayor/Town Manager] may approve as being in the best interest of the Municipality. The Collector Treasurer of the City/Town or such other City/Town agency as may be designated in such agreement is authorized to levy and record such PACE betterment assessments on behalf of the City/Town without further authorization by this legislative body.

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

## **APPENDIX K: PROJECT DEVELOPER CERTIFICATION FORM**

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

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## PACE Massachusetts Project Developer Certification

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

Please check all that apply:

<b>ICP Protocol Used:</b> (Check One)	
Commercial	<input type="checkbox"/> Large
	<input type="checkbox"/> Standard
	<input type="checkbox"/> Targeted
Multifamily	<input type="checkbox"/> Large
	<input type="checkbox"/> Standard
	<input type="checkbox"/> Targeted
<input type="checkbox"/> Energy Use Baseline	
<input type="checkbox"/> Energy Consumption Project Savings Calculations	
Renewable Project Savings Calculations <i>Check One</i>	<input type="checkbox"/> Path 1
	<input type="checkbox"/> Path 2
<input type="checkbox"/> Natural Gas Line Extension Costs	
<input type="checkbox"/> Design, Construction, Operation	
<input type="checkbox"/> Measurement and Verification	
<input type="checkbox"/> SIR Calculation Workbook	



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

- ICP Project Developer (PD) Credential
- Professional Engineer (PE) license
- Association of Energy Engineers (AEE) Certified Energy Manager® (CEM®) Certification
- AEE Certified Energy Auditor™ (CEA®)
- ASHRAE Building Energy Assessment Professional (BEAP) Certification BEA
- Five years (minimum) of demonstrated experience calculating energy savings

\_\_\_\_\_  
Name

\_\_\_\_\_  
License Number

\_\_\_\_\_  
Company/Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Email Address

## APPENDIX L: DEFINITIONS FOR PACE MASSACHUSETTS

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**Alternative energy systems** - Massachusetts Alternative Energy Portfolio Standard (APS) eligible technologies as listed in 225 CMR 16, <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr16.pdf>

**Benefitted property owner or property owner or owner**<sup>46</sup> - an owner of qualifying commercial or industrial property who desires to install commercial energy improvements and who provides free and willing consent to the betterment assessment against the qualifying commercial or industrial property.

**Commercial Energy improvements or improvements**<sup>47</sup> - (1) any renovation or retrofitting of a qualifying commercial or industrial real property to reduce energy consumption or installation of renewable energy systems to serve qualifying commercial or industrial property, provided such renovation, retrofit or installation is permanently fixed to such qualifying commercial or industrial property, or (2) the construction of an extension of an existing natural gas distribution company line to qualifying commercial or industrial property to enable the qualifying commercial or industrial property to obtain natural gas distribution service to displace utilization of fuel oil, electricity or other conventional energy sources.

**Commercial energy improvements to reduce energy consumption** - this term includes improvements that are installed for the purpose of energy efficiency and energy conservation.

**Commercial or industrial property** - any real property other than a residential dwelling containing fewer than five dwelling units.

**Commercial PACE project**<sup>48</sup> - with respect to a parcel of qualifying commercial or industrial property, (1) design, procurement, construction, installation and implementation of commercial energy improvements; (2) related energy audits; (3) renewable energy system feasibility studies; and (4) measurement and verification reports of the installation and effectiveness of such energy improvements.

**Conventional energy sources** - This definition specifically does not include renewable or alternative energy sources. Examples of conventional energy sources include propane, compressed natural gas, etc.

**PACE Massachusetts** - the name of the Commercial PACE program in Massachusetts

**Renewable energy systems** - Massachusetts Renewable Energy Portfolio Standard (RPS) Class I eligible technologies as listed in 225 CMR 14, <http://www.mass.gov/courts/docs/lawlib/220-229cmr/225cmr14.pdf>

**Savings to investment ratio (SIR)** – ratio of energy cost savings of the commercial energy improvements over the useful life of the improvements to the costs of the improvements, including any financing costs and associated fees.

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<sup>46</sup> G.L. c. 23M, § 1, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter23M/Section1>

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

1. Will revised guidelines be substantially different from draft? When are revised guidelines expected to be available? **Revised guidelines will be different. Possibly will eliminate items such as lighting because any new lighting options tend to be high efficiency so no need to use c-PACE to incentivize them. Expect more emphasis on insulation, air infiltration, and electrification of heat. New guidelines should be available in a few weeks.**
2. To qualify for PACE Massachusetts financing, PACE projects must meet the savings to investment ratio (SIR) test. This means that the **energy cost savings** from the commercial energy improvements over the useful life of the improvements **exceeds the costs of the improvements**, including any financing costs and associated fees. Suppose project cost is \$100,000 but 20-year cost savings is only \$50,000. Can PACE loan be used for \$50,000 and other means for remaining \$50,000? **Probably some flexibility to handle this. Probably couldn't use to pay for only a portion of a new heating system, but might be able to pay for the new heating system while not paying for some other energy efficiency improvement work that's part of the project's scope of work.**
3. What utility prices and price inflation are used to calculate energy cost savings over 20 years? **Simple annual cost escalation, such as x% per year for electricity.**
4. Is there a minimum project cost requirement? Won't mandated project analysis and review costs be prohibitive for small projects? **Not explicit, but soft cost would be a high percentage of small projects so that might eliminate projects below some cost threshold.**
5. Any thoughts on how to handle old brick buildings that are not candidates for insulation or, at least, insulation that is very expensive due to build details? **This is a likely limitation of the c-PACE program. Paul thinks longer term loans in line with expected lifetime, up to as much as 50 years will be needed to address this. Not possible now because legislation specifies 20-year maximum term.**
6. How is financing handled? MassDevelopment bonds? Can these bonds be made up by packaging bank loans made to property owners? **Yes. There is an existing national c-PACE bond market.**
7. Condos...the PACE Massachusetts betterment assessment lien will be senior to and have priority over all private liens on the property (if any), and be junior in priority only to a municipal tax lien. If there is an existing mortgage on the property, the consent of each mortgage holder will be required. **This is a question for MassDevelopment. Paul will give me name of someone to contact to pursue the questions about condo financing.**



# PACE Massachusetts Program Information

May 2020

# MassDevelopment Overview



- Massachusetts' finance and development agency, working with businesses, nonprofits, banks, and communities to stimulate economic growth.
- FY2019 Results
  - Financed or managed 316 projects
  - Invested more than \$2 billion in the Massachusetts economy
  - Created or supported 9,743 jobs and built or preserved 1,992 housing units

# Who We Serve



## Businesses

Helping companies expand, modernize, and relocate.



## Developers

Making the difference at every stage of development.



## Housing

Building expertise, from predevelopment to construction.



## Manufacturers

Finding skilled employees, opening global markets.



## Municipalities

Eliminating blight, revitalizing downtowns, creating opportunities.



## Nonprofits

Working with nonprofits to upgrade, renovate and expand.



## Banks

Partnering with banks to provide creative financing.

# How We Serve



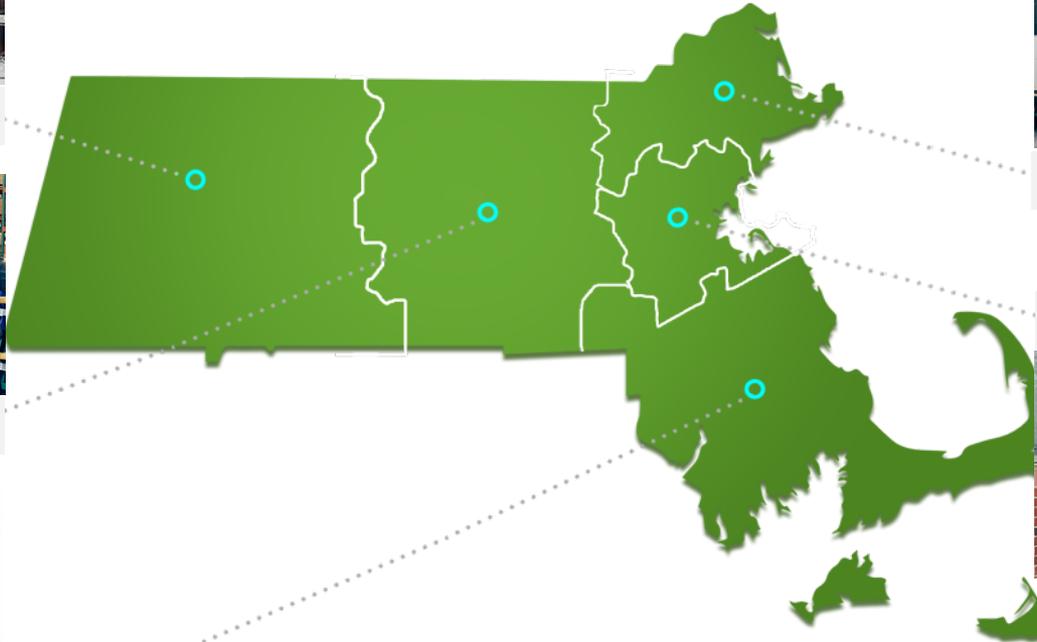
West



Central



South



North



Greater Boston

# What We Offer



## Real Estate

- Technical Assistance
- Development Projects



## Finance

- Bond Financing
- Grants
- Loans & Guarantees
- Tax Credits

# Partnering With Banks

- Loan participations
  - Spreading risk
  - Keeping customers
- Loan Guarantees
  - Supporting higher LTVs and LOC advance rates
- Tax-Exempt Bonds
  - Structuring bank loan as tax-exempt bond to pass on lower interest rate to customer

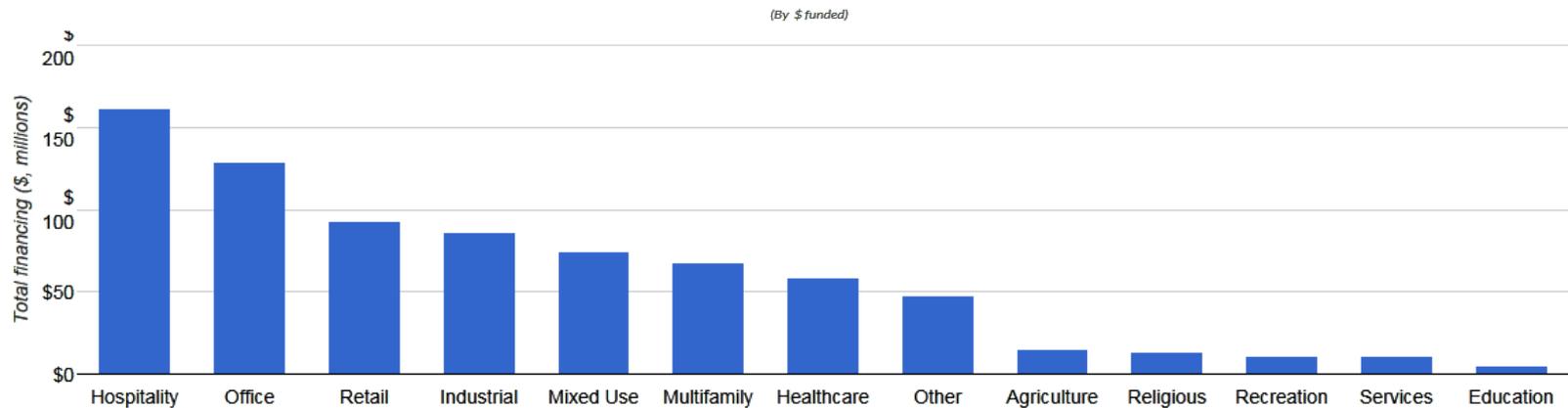
# What is PACE?

- Property Assessed Clean Energy (PACE) is a tax-based financing mechanism that enables low-cost, long-term funding for energy improvements
- PACE financing is repaid via a betterment assessment on a property's tax bill
- PACE betterment assessments work similar to improvements for public infrastructure that benefit specific properties (i.e., sidewalk or sewer)

# National Commercial PACE Market

- 20 States (plus DC) have active commercial PACE programs
- 36 states (plus DC) have PACE enabling legislation
- \$1.1 billion financed for 2,020 projects (as of 10/2019)

C-PACE dollars funded by building type

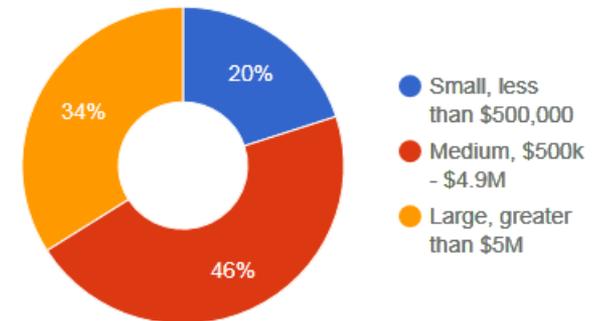


# New England Commercial PACE Programs

- Connecticut passed PACE enabling legislation in 2011 and a series of amendments in 2012 and 2015; C-PACE is administered by the Connecticut Green Bank
- Rhode Island passed PACE enabling legislation in 2016; RI C-PACE is sponsored by the RI Infrastructure Bank (SRS is administrator)
- New Hampshire passed PACE enabling legislation in 2016

*C-PACE projects by amount financed*

(By \$ funded)



# PACE in Massachusetts

- Commercial Property Assessed Clean Energy (PACE) was passed in H4568 and signed by Governor Baker in August 2016
  - Amendment for PACE technical correction signed August 2019
  - PACE Massachusetts will become available in Summer 2020
- MassDevelopment will act as Lead Program Administrator
- MassDevelopment will administer the PACE Massachusetts program in consultation with the Massachusetts Department of Energy Resources

# Eligible Properties: Existing Buildings



## Property Type

- Commercial/Industrial
- Not for profit
- Multifamily (5 units or more)

## Examples

- Office buildings
- Malls
- Hotels
- Restaurants
- Manufacturers
- YMCAs
- Schools
- Health Care
- Apartment complexes

# Eligible Measures

## Measure Type

- Energy efficiency
  
  
  
  
  
  
  
  
  
  
- Renewable energy
  
  
  
  
  
  
  
  
  
  
- Gas line extensions

## Potential Examples

- Energy management systems
- Insulation and air sealing
- HVAC systems
- Boilers and furnaces
- Lighting
- Energy Recovery and redistribution systems
  
- Solar panels
- Solar hot water
- Geothermal



# Key Elements of PACE Massachusetts

- Municipal opt-in (one time) required
- Maximum financing term allowed by statute is 20 years (dependent on useful life of project measures)
- Energy cost savings must exceed cost of improvements (including any financing costs and associated fees)
- Third party direct private financing (no public funds used)
- Existing mortgage holders must provide written consent to a PACE financing and lien

# Key Elements of PACE Massachusetts (continued)



- Municipal liens are senior to PACE liens; unpaid PACE assessments are senior to all other private mortgage liens in a foreclosure
- PACE assessments cannot be accelerated (only unpaid amount can be collected)
- If property is sold, the remaining PACE assessment and PACE lien stays with the property and transfers to new owner
- No limit or maximum financing cost\*
  - \* project must still meet energy cost savings requirement

# Project and Financing Steps



- Property Owner selects Capital Provider (before or after project application submission)
- Project Application submitted to MassDevelopment
- Review conducted by MassDevelopment and the DOER
- The DOER performs technical review of project energy measures and proposed energy savings

# Project and Financing Steps



- MassDevelopment
  - Verifies that municipality where project is located has authorized PACE
  - Reviews to ensure required property and financial information has been submitted by applicant
  - Verifies Mortgage holder consent was obtained (if applicable)
- If application approved, owner proceeds with Capital Provider and finalizes project details and financing terms
- Financing documents are drafted and prepared for closing

# Project and Financing Steps

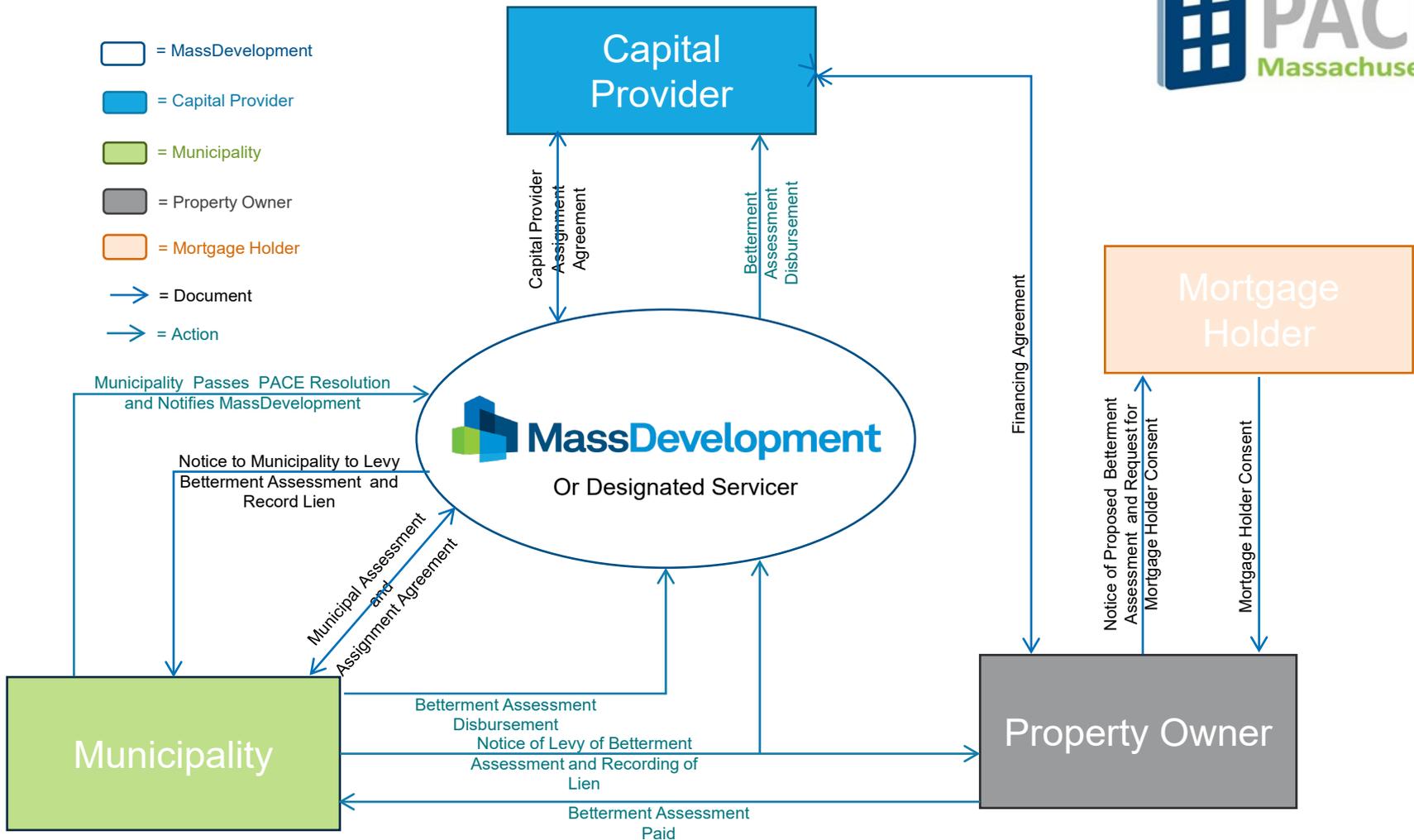


- When financing closes:
  - MassDevelopment instructs Municipality to levy PACE betterment assessment and record PACE lien
  - Municipality assigns lien to MassDevelopment
  - MassDevelopment assigns lien to Capital Provider
- Municipality responsible for billing and collecting PACE assessments via municipal property tax bill and disbursing amounts collected to MassDevelopment's Paying Agent
- Once received, the Paying Agent will disburse assessment funds to each appropriate Capital Provider

# PACE Authorized Municipalities

- Acton
- Agawam
- Amesbury
- Barnstable
- Devens
- Erving
- Fall River
- Fitchburg
- Greenfield
- Gardner
- Lexington
- North Adams
- Northampton
- Orange
- Pittsfield
- Randolph
- Rockland
- Wendell
- West Springfield
- Yarmouth

# Commercial PACE Structure





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