

**COMMERCIAL PROPERTY ASSESSED
CLEAN ENERGY ("C-PACE") AGREEMENT**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2016, by and between [TOWN NAME], RHODE ISLAND, a municipal corporation organized and existing under the laws of the State of Rhode Island (the "Municipality"), and the RHODE ISLAND INFRASTRUCTURE BANK, a quasi-public agency of the State of Rhode Island, having its business address at 235 Promenade Street, Suite 119, Providence, Rhode Island 02908 (the "RIIB").

RECITALS

WHEREAS, Chapter 39-26.5 of the Rhode Island General Laws (the "PACE Act") established the C-PACE program in Rhode Island.

WHEREAS, the Act directs the RIIB to establish a commercial property assessed clean energy program. A commercial property assessed clean energy program (C-PACE) is a program that facilitates energy improvements to commercial or industrial property and utilizes municipal assessments authorized by the Act as security for financing the energy and other eligible improvements.

WHEREAS, to secure financing for the program, the RIIB and the Municipality are authorized to enter into a written agreement, as approved by the Municipality's legislative body, pursuant to which the Municipality, in conjunction with the RIIB, will coordinate in the recording of the PACE liens and the billing, collection, remittance and assignment of PACE assessments to the RIIB in return for energy improvements for benefited property owners within the Municipality.

WHEREAS, this Agreement constitutes the written agreement contemplated by the Act.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Act, it is hereby agreed as follows:

Section 1 - Definitions. - Terms not defined herein shall have the meaning set forth in the Act and the RIIB's C-PACE Rules and Regulations and Program Guidelines established pursuant to the Act.

- (1) "Commercial property" means a property operated for commercial purposes, or a residential property which contains five (5) or more housing units.
- (2) "Eligible renewable energy resources" means resources as defined in § 39-26-5.
- (3) "Energy efficient projects" means those projects that are eligible under § 39-1-27.7 or projects that have been defined as eligible in the C-PACE rules and regulations.
- (4) "Municipality" or "towns and cities" means any Rhode Island town or city with powers set forth in title 45 of the general laws.
- (5) "PACE assessment" or "assessment" means the special assessment placed on a PACE property owner's property tax or other special assessment bill, to be collected by the PACE municipality in which that PACE

property is located and remitted to the RIIB or lender that has financed that PACE project. The PACE assessment shall be owed by the current owner of the related PACE property as of the time each PACE assessment comes due. In the event of a transfer of ownership, all PACE assessments coming due after the date of the transfer, by foreclosure or otherwise, shall be owed by the transferee.

(6) "PACE lien" means the non-accelerating lien placed on a PACE property in accordance with the rules and regulations promulgated by the RIIB pursuant to Chapter 39-26.5 of the Rhode Island General Laws, in order to secure the repayment of a PACE assessment made in connection with that PACE property and to secure the repayment of each PACE assessment to be made by that PACE property owner as each assessment comes due.

(7) "PACE municipality" means a municipality voluntarily designated by its city or town council as a property-assessed clean energy municipality.

(8) "PACE project" or "project" means a distinct installation of an eligible energy efficiency system, renewable energy system, distributed generation system, alternative fuel infrastructure upgrade, and/or other eligible environmental health and environmental safety upgrades.

(9) "PACE property" or "property" means any commercial property which is the subject of an approved application for a PACE project filed pursuant to this chapter.

(10) "Property-assessed clean energy" or "PACE" is a voluntary financing mechanism which allows commercial property owners to access affordable, long-term financing for energy upgrades, and other eligible environmental health and environmental safety upgrades on their property.

(11) "Rhode Island Infrastructure Bank" means the Rhode Island Infrastructure Bank ("RIIB"). For the purposes of the C-PACE program, Rhode Island Infrastructure Bank shall include other related state agencies and/or third party administrators, as may be engaged by the RIIB for the purposes of providing the services envisioned by the rules and regulations promulgated in accordance with § 39-26.5-11.

Section 2 - Obligations of the RIIB.

(a) Program Requirements. Pursuant to the Act, the RIIB:

(1) Has developed program guidelines and rules and regulations governing the terms and conditions under which C-PACE financing may be made available through the C-PACE program;

(2) May use the services of one or more private or public third party administrators (the "PA") to administer, provide support or assist in the arrangement of financing for the C-PACE program;

(3) Shall, in coordination with the RIIB's program administrator, Sustainable Real Estate Solutions, Inc. ("SRS") or any successor program administrator, receive and review applications submitted by benefitted property owners within the Municipality for financing of energy improvements, and, in conjunction with third party capital provider(s), approve or disapprove such applications in accordance with underwriting procedures and requirements established by the RIIB;

(4) Shall prepare and deliver to the Municipality an annual report which shall contain information related to each qualifying commercial real property within the Municipality, including:

- i. A list of each qualifying commercial real property for which the benefitted property owner executed a financing agreement during the prior year;
 - ii. A list of each qualifying commercial real property where all obligations under the financing agreement have been satisfied or paid in full during the prior year, including the satisfaction date and a copy of the notice of satisfaction;
 - iii. The total benefit assessment payments made to the RIIB in respect of all qualifying commercial real properties; and
 - iv. For each non-satisfied (not paid in full) benefit assessment (including each benefit assessment approved in the prior year):
 - A. The date of the financing agreement;
 - B. The outstanding amount of the financing;
 - C. The total principal balance and accrued interest outstanding; and
 - D. The annual payment(s) due to the RIIB (which shall include principal and accrued interest) associated with such benefit assessment (including the amount of accrued interest on the initial payment, if different).
- (5) Shall establish the position of C-PACE program liaison within the RIIB;

(b) Project Requirements. If a benefitted property owner requests financing from the RIIB for eligible improvements under the Act, the RIIB shall:

(1) Impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose of the C-PACE program; and

(2) Require that the property owner provide notice to all existing lienholders and obtain the written consent of all existing mortgage holders of such property, prior to the execution of the financing agreement or the recording of any lien securing a C-PACE assessment for energy improvements for such property, to have a PACE Assessment Lien levied on the property to finance such energy improvements pursuant to the Act.

(c) Financing Agreement for Project. An approved capital provider may enter into a financing agreement with the property owner of qualifying commercial real property (the "Financing Agreement"). The Financing Agreement shall clearly state the PACE assessment that will be levied against the qualifying commercial real property at closing. The Financing Agreement shall disclose to the property owner the costs and risks associated with participating in the C-PACE program, including risks related to the failure of the property owner to pay the PACE assessment provided for in the Financing Agreement. The Financing Agreement shall disclose to the property owner the effective interest rate on the PACE assessment, including fees charged by the C-PACE program and the capital provider, if any, to administer the C-PACE program, and the risks associated with variable interest rate financing, if applicable. The Financing Agreement shall provide for (1) notice being provided to all existing lienholders on a property prior to a PACE Assessment and lien being filed, (2) all commercial property owners receive the consent

of all existing mortgage holder(s) on that property, and (3) the PACE Assessment Lien to be continued, recorded and released by the Municipality, as contemplated by the Act.

(d) Determination of Final Benefit Assessments and Payments.

(1) Upon execution of the Financing Agreement, the RIIB, in coordination with the selected capital provider, shall determine the total PACE assessment amount, including fees charged by the RIIB and its PA to administer the C-PACE program, and shall set a fixed rate of interest for the repayment of the PACE assessment amount. The RIIB shall provide written notice of the total benefit assessment amount and interest rate to the Municipality.

(2) The RIIB and the Municipality shall mutually agree upon a billing schedule for the PACE assessment within each Municipality.

Section 3 – Obligations of the Municipality.

(a) Levy of PACE Assessment. Upon receiving written notice from the RIIB of the PACE assessment as provided in the Act, the Municipality shall promptly levy the PACE assessment against the qualifying commercial real property to be benefited by the energy improvements financed by a pre-qualified private capital provider and described in the Financing Agreement, and shall place a lien on the qualifying commercial real property to secure payment of the PACE assessment substantially in the form of the attached Exhibit A (“PACE Assessment Lien”). The PACE Assessment Lien will have two attachments: (1) the legal description of the benefited property and (2) the Financing Agreement payment schedule provided by the RIIB. As provided in the Act, the PACE assessments levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial real property on which they are made until they are paid. The RIIB will reimburse the Municipality the cost charged by the Municipality for recording the PACE Assessment Lien. Such PACE Assessment Lien shall be levied and collected in the same manner as the property taxes or other special assessments 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 Act.

(b) Continuation, Recording and Release of Lien. As provided in the Act, each PACE Assessment 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, which lien for taxes shall have priority over such PACE Assessment Lien. To the extent required by law, the Municipality shall include outstanding PACE liens on municipal lien certificates.

(c) Assignment of Benefit Assessment Lien.

1) Upon the written request of the RIIB, the Municipality shall assign, substantially in the form of the attached Exhibit B, to the RIIB any and all PACE Assessment Liens filed by the Municipality, as provided in this Agreement. The RIIB may sell or assign, for consideration, any and all PACE Assessment Liens received from the Municipality. The assignee or assignees of such PACE Assessment Liens shall have and possess the same powers and rights at law or in equity as the RIIB and the

Municipality and its tax collector would have had if the PACE Assessment 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 Assessment Liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to the assignment and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

2) The Municipality hereby acknowledges that the RIIB may sell or assign any and all PACE Assessment Liens received from the Municipality under Section 3(c) of this Agreement to capital providers. Therefore, the Municipality unconditionally agrees that in the event the Municipality does not discharge its duties under this Agreement, the RIIB or a capital provider who has been assigned any PACE Assessment Lien shall have the right to enforce the Municipality's obligations under this Agreement by institution of legal action against the Municipality.

(d) Amendment of the PACE Assessment Lien. Pursuant to the Financing Agreement, the final amount of the benefit assessment may be adjusted after the levy of the PACE Assessment Lien. Such an adjustment would likely be the result of a change in the energy improvement service contract amount during the construction period, a change in the amount of capitalized interest, or an amendment to the Financing Agreement. In the event that the final PACE assessment amount needs to be adjusted at the completion of the project, or any other time, the RIIB will inform the Municipality of such change, provide the Municipality with an updated payment schedule and new lien amount, and the Municipality shall amend the PACE Assessment Lien to reflect such adjustment. The RIIB shall pay to the Municipality the cost charged by the Municipality for amending the PACE Assessment Lien.

(e) Billing and Collection; Payment to the RIIB.

1) Vision Government Services Inc. (VISION) has been retained by the RIIB to provide the billing services of PACE assessments to the Municipality. VISION, or any successor to VISION, in coordination with the RIIB, shall establish a mutually agreeable billing and collection schedule and system. The RIIB shall establish a lock-box collection system for the Municipality to receive payments for PACE assessments.

2) The Municipality, acting by and through VISION, shall bill the PACE assessments in the same manner as it bills its real property taxes or other municipal assessments. The PACE assessment payments shall be a separate bill and shall be due on dates mutually agreeable to the RIIB and the Municipality. The amount of the benefit assessment will be recorded in the land evidence records of the Municipality, such that the public will have access to its existence. The penalties and interest on delinquent PACE assessments shall be charged and collected by VISION in the same manner and rate as the Municipality charges for delinquent real property taxes, and shall be remitted to RIIB in accordance with the terms of the Financing Agreement.

3) Payments of the PACE assessments collected by the RIIB through a lock-box collection system on behalf of the Municipality shall be segregated from all other funds of the Municipality and deposited in a separate account for the benefit of the RIIB and identifying the RIIB as the beneficial owner. The Municipality disclaims any ownership interest or other interests in such account or the amount collected.

4) VISION will provide collection reports to the RIIB and the Municipality, and the RIIB, at its own expense, shall have the right to audit the records relating to the benefit assessments upon reasonable notice at reasonable times. The RIIB and the Municipality agree to provide each other with such reasonable information as they may request and the RIIB and the Municipality agree to provide such information in a computer format satisfactory to the other.

(f) Collection of Delinquent Payments.

1) In the event that any benefited property owner fails to make a PACE assessment payment pursuant to the payment schedule of the PACE Assessment Lien, RIIB shall provide written notice to the Municipality of such delinquency in a reasonably timely manner. After providing such notice by the RIIB, the Municipality has no obligation to collect delinquent PACE assessment payments.

2) The Municipality will provide written notice to the RIIB of any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any real property for delinquent real property taxes if such real property is subject to a lien securing a delinquent PACE assessment. Similarly, the RIIB shall provide written notice to the Municipality of the institution of a judicial foreclosure or other proceeding against any qualified commercial real property for a delinquent PACE assessment.

(g) Promotion of Program; Assistance for RIIB Financing;.

1) The Municipality shall use good faith efforts to assist the RIIB in local marketing efforts and outreach to the local business community to encourage participation in the C-PACE program, such as including C-PACE program information on the Municipality's website, distributing an informational letter from chief elected official to local businesses regarding the program, and conducting one or more business roundtable event(s).

Section 4 - Indemnification

The RIIB agrees that it will protect, defend, indemnify and hold harmless the Municipality and its officers, agents and employees to the extent of available proceeds derived from the PACE assessments 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 the RIIB's officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

Section 5 - Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be

in full force and effect until all of the PACE assessments have been paid in full or deemed no longer outstanding. The Municipality may opt-out of continuation in the program at any time on ninety (90) days advance notice to the RIIB, provided that the provisions of this Agreement shall continue with regard to PACE assessments assessed prior to such termination date until those PACE 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 7(c) of this Agreement.

Section 7 - Miscellaneous Provisions

- (a) Assignment or Transfer. Except as provided in Section 3(c) hereof, a party may not assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State of Rhode Island or to a private party or entity without the prior written consent of the other party.
- (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 the Municipality:

INSERT TOWN NAME
INSERT STREET
ADDRESS CITY, STATE,
ZIP CODE
Attention:

If to the RIIB:

Rhode Island Infrastructure Bank
235 Promenade Street, Suite 119
Providence, RI 02908
Attention: Executive Director

- (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 the RIIB and the Municipality.
- (f) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Rhode Island. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the State of Rhode Island.
- (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, the Municipality and the Rhode Island Infrastructure Bank have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)
ATTEST:

**INSERT
MUNICIPALITY
NAME**

By: _____

Its: _____

RHODE ISLAND INFRASTRUCTURE BANK

By: _____

Jeffrey R. Diehl
Executive Director

EXHIBIT A

FORM OF CERTIFICATE OF LEVY AND LIEN OF PACE ASSESSMENT

The undersigned Tax Collector of the City/Town of _____, Rhode Island ("Municipality"), with an office at _____, _____, Rhode Island, for and of behalf of the Rhode Island Infrastructure Bank ("RIIB"), with an office at 235 Promenade Street, Suite 119, Providence, Rhode Island 02908, pursuant to the Property Assessed Clean Energy Program established under Chapter 39-26.5 of the Rhode Island General Laws, as amended (the "Act"), and the Municipal Agreement between the Municipality and RIIB dated _____, 20____, HEREBY LEVIES A PACE ASSESSMENT AGAINST AND LIEN UPON certain real property as described more particularly in the attached **Exhibit A** (the "Property") of the Finance Agreement and also commonly referred to as

_____ situated in the Municipality and owned on the date hereof in whole or in part by _____ (the "Property Owner") for energy improvements made or to be made to the Property. The amount and repayment of said levy and lien, as determined by RIIB and provided to Municipality, are as follows: an installment payment plan is in effect for payment of the PACE assessment, and is based on the principal amount of the benefit assessment of \$ _____, with interest thereon at a fixed rate equal to _____% per annum, with equal installments of principal and interest due and payable, all as set forth in the attached **Exhibit B** of the Finance Agreement. In the event that any such installment shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid installment(s) at the rate of ___% per annum, as provided by the Act and by law. At such time as the principal and interest payments of the PACE assessment have been satisfied and paid in full, a release of this Certificate shall be filed in the Land Records of the Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Act to evidence a lien for the PACE assessment levied upon the Property for the special benefits conferred upon said Property by the energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances except a lien for taxes of the Municipality on real property, which lien for taxes shall have priority over this lien.

The portion of this Certificate which constitutes a levy of the PACE assessment and notice of installment payment of PACE assessments is filed pursuant to the provisions of the Act and the Rhode Island General Laws, as amended.

By order of the Tax Collector of the City/Town of _____.

Dated at _____, Rhode Island this _____ day of _____, 20 .

Received for Record: _____, 20____ at _____ A.M./P.M.

Recorded in the _____ Land Records at Volume _____, Page _____

City/Town Clerk

[insert page for amortization schedule, including dates of payments, principal, interest, annual fees and total payment due]

EXHIBIT B

FORM OF ASSIGNMENT OF PACE ASSESSMENT LIEN

KNOW ALL PERSONS BY THESE PRESENTS, that the CITY/TOWN OF _____, a Rhode Island municipal corporation (hereinafter referred to as "Assignor"), acting herein by _____, its Tax Collector, duly authorized pursuant to a Municipal Agreement dated _____, 20____, between the Assignor and the Rhode Island Infrastructure Bank (hereinafter referred to as "Assignee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to Assignor by the Assignee, the receipt of which is hereby acknowledged, hereby quit-claims, grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee, without warranty covenants and without recourse, all of its right, title and interest in and to that certain PACE assessment lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, filed by the _____ Tax Collector on the _____ Land Records, on property owned on the date hereof in whole or in part by _____ and as described on **Exhibit A** and also commonly referred to as _____, attached hereto and made a part hereof (the "Lien"), to have and to hold the same unto the said Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to the authority granted to Assignor as a municipality by Chapter 39-26.5 of the Rhode Island General Laws, as amended.

By execution of this Assignment, the Assignor assigns to Assignee, and the Assignee assumes, all of the rights at law or in equity, obligations powers and duties as the Assignor and the Assignor's Tax Collector would have with respect to the Lien, if the Lien had not been assigned with regard to precedence and priority of such lien, the accrual of interest, charges, fees and expenses of collection, pursuant to Chapter 39-26.5 of the Rhode Island General Laws, as amended.

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

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ of _____, 20__.

Assignor

By: _____
Tax Collector

STATE OF RHODE ISLAND))
COUNTY OF _____)

ss.: _____

On this the _____ day of _____, 20____, before me _____, the undersigned officer, personally appeared _____, Tax Collector, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained and that he/she acknowledged the same to be his/her free act and deed, before me, in his/her capacity as said Tax Collector.

Notary Public