

Rhode Island Infrastructure Bank – [Capital Provider]
Term Sheet and Participation Agreement

Rhode Island Infrastructure Bank (“RIIB or “Program Sponsor”) hereby presents this Agreement, which summarizes the primary terms and conditions for RIIB; the Program Administrator, Sustainable Real Estate Solutions, Inc. (“Program Administrator” or “SRS”); and [Capital Provider] (the “Capital Provider”), regarding the origination, funding and administration of Rhode Island Commercial Property Assessed Clean Energy (“C-PACE”) transactions for qualifying commercial, industrial, not-for-profit and multifamily properties within the State of Rhode Island (the “Agreement”).

The transactions contemplated by this Agreement are subject to all necessary RIIB approvals, as directed by RIIB C-PACE Regulations, and Chapters 39-26.5 and 46-12.2 of the Rhode Island General Laws.

PROCESS FLOW AND OUTLINE FOR TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT

As described in more detail below, the outline of the project origination, funding and the relationship between RIIB, Program Administrator, Borrower and the Capital Provider, is as follows:

1. Contractor, Capital Provider, or Borrower may submit a completed C-PACE Application and all associated documents described in Capital Provider’s or Borrower’s Obligations for any Eligible Project, as such terms are defined below, to the Program Administrator.
2. Program Administrator and RIIB shall review such documents and, in their sole discretion, provide written Program Administrator Qualification of the Eligible Project (thereby becoming a “Qualified Project”).
3. Capital Provider may then enter into a Financing Agreement with Borrower (thereby becoming a “Closed Project”) and provide a completed copy of the Financing Agreement to the Program Administrator.
4. Within five (5) Business Days after receipt by the Program Sponsor of a notarized and executed Financing Agreement, the delivery of the documents described in the Participation Agreement and qualification of the Project by Program Administrator, Program Sponsor will provide notice to the Municipality and the Municipality will record the PACE Assessment and file a lien on the Property in an amount sufficient to pay the estimated costs of the Project and any associated costs (including program administration fee, servicing fee and lien filing fee) approved by the Program Administrator. Program Sponsor will facilitate the filing of the PACE Assessment and the assignment to Capital Provider of PACE Assessment.

5. The Assessment Billing Servicer and the Assessment Collection Servicer, on behalf of the municipality, will bill and collect PACE Assessments and remit such payments to the Program Sponsor, who shall remit such payments to the Capital Provider.

TRANSACTION PARTIES

Program Sponsor: Rhode Island Infrastructure Bank (“RIIB”), a quasi-public agency of the State of Rhode Island, is program sponsor of the Commercial Property Assessed Clean Energy Program authorized by Chapter 39-26.5 of the Rhode Island General Laws (the “Act”)

Program Administrator: Sustainable Real Estate Solutions, Inc., (“SRS”) a foreign corporation registered in the State of Rhode Island and statewide administrator of the Commercial Property Assessed Clean Energy Program (“C-PACE”) authorized by Section 39-26.5 of the Rhode Island General Laws (the “Act”), or any designee as determined from time to time by the Program Sponsor.

Assessment Billing Servicer: Vision Government Solutions, Inc., (“Vision”) a foreign corporation registered in the State of Rhode Island, or any designee as determined from time to time by RIIB.

Assessment Collection Servicer: Rhode Island Infrastructure Bank, or any designee as determined from time to time by RIIB.

Capital Provider: A Capital Provider which has been approved by the Program Sponsor and/or its designee to fund C-PACE transactions as described in this Agreement.

Trustee: [If applicable, Name]

Borrower: The real property owner of an Eligible Project.

Municipality: Any Rhode Island municipality in which an Eligible Project is located and which municipality has authorized and entered into a legal agreement with RIIB to participate in the C-PACE program.

PROJECT ORIGINATION, ELIGIBILITY AND APPROVAL

C-PACE Application: C-PACE program application published by the Program Administrator, as may be amended from time to time, posted on the Program website (www.ri-cpace.com). A C-PACE application must be completed for each Eligible Project by a Borrower, Contractor, or Capital Provider.

Program Guidelines: C-PACE program guidelines published by the Program Sponsor, as may be amended from time to time, pursuant to the Act.

Eligibility Criteria: The Eligibility Criteria may be modified from time to time by the Program Sponsor to reflect any changes in market conditions but at all times must meet the minimum eligibility criteria in the Act. Projects that were closed, qualified or approved under previous eligibility requirements will be grandfathered in as an Eligible Project and remain eligible for C-PACE financing.

Eligible Project: Qualifying improvements, as described in the Act, which conform to Eligibility Criteria and conform to the Program Guidelines.

Underwriting Guidelines: Underwriting Guidelines as they appear in the Program Guidelines, as updated from time to time on www.ri-cpace.com, attached hereto as Appendix 7. Projects that were closed, qualified or approved under previous eligibility requirements will be grandfathered in as an Eligible Project and remain eligible for C-PACE financing.

Capital Provider's or Borrower's Obligations: Borrower or Capital Provider (if authorized by Borrower to do so) must provide the following documents to the Program Administrator for each Eligible Project seeking approval:

1. Recent (within sixty days) title search of the real property on which Eligible Project would be located.
2. If applicable, a mortgage holder consent form signed by the Borrower and any existing mortgage holder(s) of any mortgage(s) on the property on which the Eligible Project is located. The mortgage holder consent shall be materially consistent with the form of Appendix 2 and such consent must be for not less than the financing amount of the Eligible Project for which Borrower is seeking Program Administrator Approval. Request for Lender Consent may be submitted to the mortgage holder and shall be materially consistent with the form of Appendix 1.
3. If applicable, copies of filed releases for any mortgages that appear on the title search but have since been released. Any releases which cannot be obtained must be addressed through a title affidavit acceptable to Program Administrator in its sole discretion.
4. Any documentation reasonably required by Program Administrator which demonstrates that the Eligible Project meets the C-PACE technical and financial requirements. Upon execution of the Participation Agreement, the Program Administrator will provide the Capital Provider with a list of required program

documents and will provide notice to qualified capital providers should additional documents be required.

5. Current assessor property card describing the property on which the Eligible Project is located and any additional documentation reasonably required by Program Administrator to confirm that the Eligible Project is located on a qualifying property pursuant to the Act and the Program Guidelines.

Program Administrator Project Qualification: Once a Contractor, Capital Provider, or Borrower has submitted all necessary technical and financial documents described under Capital Provider's or Borrower's Obligations for each Eligible Project, and submitted any additional documents which may be reasonably requested by Program Administrator, Program Administrator will review such documentation and confirm that it meets the requirement of the Act, Eligibility Criteria, Program Guidelines, Underwriting Guidelines (if applicable), this Agreement, and any documentation thereunder. Upon completion of such review, Program Administrator, in its sole discretion, will provide a signed project qualification letter to Borrower, which shall not be unreasonably withheld, for each Eligible Project in a reasonable time (thereby becoming a "Qualified Project").

FINANCING AGREEMENT:

Financing Agreement: Once an Eligible Project has become a Qualified Project, Capital Provider and Borrower may enter into a financing agreement for the Qualified Project (thereby becoming a "Closed Project"). Such financing agreement must contain terms and documentation consistent with this Agreement. The form of such financing agreement must be approved by Program Administrator in its reasonable discretion. Such financing agreement shall be secured by a PACE Assessment as described below.

PACE ASSESSMENT

PACE Assessment: A PACE Assessment which constitutes a valid and enforceable lien which takes precedence over all other liens or encumbrances except municipal property tax liens, as authorized by the Act. The PACE Assessment is subject to the consent of existing mortgage holders and does not accelerate upon sale or transfer of the property. Each PACE Assessment will be equal to the principal amount of the PACE Assessment for each Qualified Project with interest thereon at the contracted rate plus any additional fees and expenses pursuant to the Financing Agreement with equal installments of principal and interest required to fully amortize the assessment over the PACE Assessment term.

PACE Assessment Filing Process: Pursuant to this Agreement, for a Closed Project, the Program Sponsor, upon receiving notice from the Capital Provider by receipt of a Financing Agreement, will within five (5) Business Days, instruct the Municipality to file a PACE Assessment on the property and assign the PACE Assessment to the Program Sponsor. The Program Sponsor will assign the PACE Assessment to the Capital Provider within one business

day of the municipality assigning the PACE Assessment to Rhode Island Infrastructure Bank. Any amendments to the PACE Assessment payment schedule which may need to be filed pursuant to the Financing Agreement and Administration Agreement must be provided to Program Administrator no less than thirty (30) calendar days before the PACE Assessment billing cycle in which a payment is due pursuant to such PACE Assessment.

The Form of Certificate of Levy and Lien of PACE Assessment shall be in the form of Appendix 3.

The Form of Assignment of PACE Assessment Lien from Municipality to RIIB shall be in the form of Appendix 4.

The Form of Assignment of Assessment Lien from RIIB to Capital Provider shall be in the form of Appendix 5.

The Form of Confirmation and Amendment of PACE Assessment Lien and Payment Schedule shall be in the form of Appendix 6.

Billing Method: The RI C-PACE program will have two billing cycles a year for the PACE Assessments. The billing cycles begin on July 1st and on January 1st. To have the PACE Assessment be included on the January billing cycle, the final PACE Assessment payment schedule must be submitted to RIIB no later than November 30th of the previous year. To have the PACE Assessment be included on the July billing cycle, the final PACE Assessment payment schedule must be submitted to RIIB no later than May 31st of the current year. For the January billing cycle, PACE Assessments will be mailed before December 31st and for the July billing cycle, PACE Assessments will be mailed before June 30th.

Collection Method: The Assessment Collection Servicer will function as the master collection agent for the PACE Assessment cash flows by collecting all PACE Assessment payments on behalf of each municipality for disbursement to the Capital Provider, or the Capital Provider's designee(s). Payments due pursuant to the PACEs Assessment shall be due in accordance with the payment schedule attached to the PACE Assessment, such payment schedule shall be due quarterly to the Assessment Collection Servicer thirty calendar days from the following dates: July 1st, October 1st, January 1st and April 1st.

Payments from the Program Sponsor or designee will be transferred to the Capital Provider or Capital Provider's designee no later than 20 business days after the Program Sponsor's receipt of any such payments. Should the Capital Provider assign the PACE Assessment lien to another entity, the Capital Provider is responsible for providing to the Program Sponsor, evidence of the assignment, the name of the new entity and the wiring instructions at the time the PACE Assessment lien has been assigned to a new entity. The Capital Provider shall provide notice of assignment to the Program Sponsor no later than thirty calendar days (30) business days prior to the related PACE Assessment due date.

PROGRAM ADMINISTRATION COSTS

Program Administration Costs: Program Administration costs, which may be revised at the discretion of the Program Sponsor, shall be as follows:

1. A percentage of the project finance amount before interest and fees. The Program Administration fee may either (i) be included in the principal of each Closed Project to be paid by the Capital Provider, or (ii) be paid directly by the Borrower. Such fee shall be disbursed to the Program Administrator at the time of execution of the Financing Agreement.
2. Annual servicing fee for billing and collection of the PACE Assessment over the PACE Assessment term to be paid by the Borrower or Capital Provider from the PACE Assessment proceeds, as described in this Agreement.

Program Administration costs are found in the RI C-PACE program guidelines which can be accessed here: http://ri-pace.com/wp-content/uploads/RI_C-PACE_Program_Guide.pdf

CAPITAL PROVIDER'S FUNDING PROGRAM

Conditions of Capital Provider's Funding: The following conditions will be met before Capital Provider provides any Capital Provider Funding:

1. Verification that Capital Provider or Borrower received written Program Administrator Qualification for the Eligible Project.
2. A Financing Agreement has been signed by the Borrower and a fully-executed copy of the Financing Agreement has been provided to the Program Administrator.
3. At Capital Provider's discretion, confirmation that the PACE Assessment lien has been filed on the property and assigned to Capital Provider.
4. Signed service agreement or construction contract between Borrower and the contractor/vendor.

Capital Provider's Rate: Interest rates for the Capital Provider's Funding will be determined solely by the Capital Provider.

Term: Term of the PACE Assessment will not exceed 25 years, or the weighted-average useful life of any Qualified Project, whichever is less, as determined by the Program Administrator.

Closing Fees: The Capital Provider may, at its discretion, charge and capitalize closing fees to the Borrower.

Prepayment: The Capital Provider may, at its discretion, charge prepayment penalties to the Borrower.

Exclusivity: For any Borrower of any Eligible Project for which the Capital Provider submits a RI C-PACE Application, a different Capital Provider shall not enter into a C-PACE funding or finance agreement with such Borrower for the same project for a period of six months (measured from the date of a complete submission of all documents outlined in Capital Provider's or

Borrower's Obligations) without written notice to the Capital Provider from the Borrower that they have chosen to seek financing from other Qualified Capital Providers. Further, neither RIIB nor the Program Administrator may share any information contained in an application submitted by a Borrower or Capital Provider with any other Capital Provider. This section does not apply if

- (1) the same Borrower requests RI C-PACE funding or financing for a materially different Eligible Project, or
- (2) the Capital Provider fails to submit all necessary documents pursuant to Capital Provider's or Borrower's Obligations for an Eligible Project within a commercially reasonable time.

RI C-PACE PARTICIPATION AGREEMENT

THIS RI C-PACE PARTICIPATION (“**Agreement**”) is made as of the ____ day of _____, 201_, by and between Rhode Island Infrastructure Bank (“**RIIB**”) and _____ (“**Capital Provider**”).

BACKGROUND

- A. The State of Rhode Island has authorized a property assessed clean energy program for commercial or industrial properties (the “**Program**”) in Chapter 39-26.5 of the Rhode Island General Laws, as amended (the “**Act**”).
- B. Pursuant to the Act, RIIB has established the Program, entered into an agreement with a Program Administrator and entered into an Agreement with the municipalities in which qualifying properties are located to provide for the filing of PACE Assessments and PACE Assessment liens (as hereinafter provided) against the qualifying properties on the land records of the municipalities to secure the repayment of the PACE Assessments.
- C. RIIB has received an application from the Capital Provider, reviewed the submission and qualified the Capital Provider to participate in the Program.
- D. Capital Provider has the responsibility to execute a Financing Agreement and related financing documents with the Borrower (collectively, the “**Financing Documents**”) pursuant to which Capital Provider will advance funds for the Projects for the PACE of the Borrowers pursuant to the Financing Agreement.
- E. Borrower and Capital Provider have obtained consent from all existing mortgage holder(s) and, to the extent that any Property is encumbered indirectly by a [mezzanine loan secured by a mortgage, from such mezzanine lenders], to the PACE Assessment in accordance with the Act.
- F. Capital Provider desires RIIB to file a PACE Assessment against the Property, assign to the Capital Provider such PACE Assessment and the related lien, and collect and receive for the benefit of Capital Provider the sums payable under the Financing Documents, the PACE Assessments and the related lien and to remit the sums collected and received pursuant to the Financing Documents, the PACE Assessments and the related lien to the Capital Provider as provided for herein.

NOW, THEREFORE, the parties do hereby agree as follows:

Assignment of PACE Assessment and PACE Assessment Lien

(A) Within ten (10) Business Days after the execution and receipt of a Financing Agreement, the delivery of the documents described in the Term Sheet and approval of the Project by Program Administrator, Program Sponsor will provide notice to the Municipality and the Municipality will record the PACE Assessment and file a lien on the Property in an amount sufficient to pay the estimated costs of the Project, Financing Documents, and any associated costs (including program administration fee, servicing fee and lien filing fee). The PACE Assessment Lien shall include a schedule of payments due and payable pursuant to the PACE Assessment, the Financing Documents and the RI C-PACE billing cycle of the Municipality. A copy of a PACE Assessment Lien is attached hereto materially in the form of Appendix 3. The Municipality shall assign to RIIB all powers and rights under the PACE Assessment Lien by filing an Assignment of PACE Assessment Lien, attached hereto materially in the form of Appendix 4, on the land records of the Municipality. RIIB will assign to Capital Provider all powers and rights under the PACE Assessment Lien by filing an Assignment of PACE Assessment Lien, attached hereto materially in the form of Appendix 5, on the land records of the Municipality. The Capital Provider may amend the PACE Assessment Lien to adjust the payment schedule of the PACE Assessment in accordance with the terms of the PACE Assessment, PACE Assessment Lien and Financing Documents. In such event, the Capital Provider shall provide to RIIB an executed Confirmation and Amendment of PACE Assessment Lien and Payment Schedule, attached hereto materially in the form of Appendix 6, which shall include the payment schedule of the PACE Assessment consistent with the terms of the PACE Assessment, PACE Assessment Lien and Financing Documents. RIIB and/or Program Administrator shall promptly file such Confirmation and Amendment of PACE Assessment Lien and Payment Schedule on the land records of the Municipality. Any such Confirmation and Amendment of PACE Assessment Lien and Payment Schedule must be provided to RIIB no less than thirty (30) business days before the RI C-PACE billing cycle in which the next payment is due pursuant to such Confirmation and Amendment of PACE Assessment Lien and Payment Schedule. RIIB and/or Program Administrator shall provide to Capital Provider filed copies of the PACE Assessment Lien and any Confirmation and Amendment of PACE Assessment Lien and Payment Schedule, promptly after receiving such recorded filings from the Municipality. Any costs associated with filing any Confirmation and Amendment of PACE Assessment Lien and Payment Schedule shall be paid by the Capital Provider or Borrower.

(B) The Capital Provider shall have and possess the same powers and rights at law or in equity as 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 PACE Assessment Lien, the accrual of interest and the fees and expenses of collection. The Capital Provider shall have the same rights to enforce such PACE Assessment Lien 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 Capital Provider as a result of any foreclosure action or other legal proceeding and directly related to the proceeding shall be collected 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 Capital Provider at any time after demand for payment has been properly made by the Capital Provider.

RIIB's Warranties and Representations; Disclaimer.

(A) Warranties and Representations. RIIB hereby warrants and represents that:

- (i) RIIB is a quasi-public agency of the State of Rhode Island; and has full power and authority to enter into this Agreement and to carry out the terms and conditions contained herein;
- (ii) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by RIIB of this Agreement; and
- (iii) the execution, delivery and performance by RIIB of this Agreement and the transactions contemplated hereby:
 - (a) do not contravene any provisions of law applicable to RIIB, and
 - (b) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which RIIB is a party, by which RIIB may be bound, to which RIIB or its property may be subject, the Act or RIIB's regulations: and
- (iv) this Agreement, the PACE Assessment, the PACE Assessment Lien, and RIIB's role hereunder comply with the Act. In the event of a conflict between this Agreement and the Act, the Act shall govern.

(B) Disclaimer. Except as set forth in this Section or expressly provided in the Financing Documents:

- (i) RIIB has not heretofore made, nor does it make by this Agreement, any representations or warranties with respect to the Properties, including any warranty of title or any environmental matters, and
- (ii) RIIB makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of the Borrower, or with respect to the performance or observance by the Borrower of their obligations under the Financing Documents, after the date of execution of this Agreement.

Capital Provider's Warranties and Representations. With respect to this Agreement, Capital Provider hereby warrants and represents that effective on the date on which Capital Provider executes this Agreement:

(A) Capital Provider:

(i) is an entity (corporation, limited liability company, partnership) duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization, and

(ii) has full power, and all licenses necessary, to carry on its business as now being conducted and has full power to enter into this Agreement and to carry out the terms and conditions contained herein; and

(a) the execution of this Agreement on its behalf and its participation in the transaction specified herein and therein is in its ordinary course of business and within the scope of its existing corporate authority;

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

(C) no approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Capital Provider of this Agreement;

(D) the execution, delivery and performance by Capital Provider of this Agreement and the performance by Capital Provider hereunder and the transactions contemplated hereby,

(i) do not contravene any provisions of law applicable to Capital Provider, and (ii) do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which Capital Provider is a party, by which Capital Provider may be bound, to which Capital Provider or its property may be subject, or Capital Provider's charter or bylaws;

(E) this Agreement constitutes the legal, valid and binding obligation of Capital Provider, enforceable against Capital Provider in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein;

(F) Capital Provider has independently and without reliance upon RIIB conducted its own credit evaluation of the Borrower, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the Financing Documents;

(G) Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, RIIB or any agent or employee of RIIB, express or implied, concerning the financial condition of the Borrower, or the tax or economic benefits of an investment in the Financing Documents;

(H) Capital Provider has had (or acknowledges by its execution of this Agreement, that Capital Provider will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Financing Documents including the opportunity to ask questions, receive answers and obtain additional information from RIIB and the Borrower necessary to verify the accuracy of information provided;

(I) Capital Provider acknowledges that RIIB takes no responsibility for any financial information regarding the Borrower furnished to Capital Provider by RIIB, and the Capital Provider or its authorized representatives acting on its behalf have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Financing Documents;

(J) Capital Provider acknowledges that its underwriting standards used in underwriting the project executed in a Financing Agreement meet the standards provided to the Program Sponsor and/or Program Administrator in the Capital Provider Application. Any exception in project underwriting standards must be approved by the Program Sponsor.

(K) Capital Provider is experienced in making investments in energy upgrade projects similar to the Project and Financing Documents and that it is financially able to undertake the risks involved in such an investment; and

(L) Capital Provider acknowledges that the Financing Documents as well as any other documents signed by the Borrower and required by RIIB in connection with this Agreement were executed by a duly authorized signatory of the Borrower.

Delivery of Documents

(A) As a condition to RIIB's performance of its obligations with respect to this Agreement, all of the conditions precedent enumerated below must be satisfied (in RIIB's reasonable discretion):

(i) Capital Provider shall have delivered to RIIB all of the following, in form and substance reasonably satisfactory to RIIB: (A) true and correct photocopies of the notarized and duly executed Financing Documents which directly relate to the Property and (B) an original of this Agreement duly executed by Capital Provider;

(B) As a condition to Capital Provider's performance of its obligations with respect to this Agreement, all of the conditions precedent enumerated below must be satisfied (in Capital Provider's reasonable discretion):

(i) RIIB shall have delivered to Capital Provider all of the following, in form and substance reasonably satisfactory to Capital Provider: (A) certified true and correct photocopies of the PACE Assessment Lien and assignment of such lien to Capital Provider which directly relate to the Property and (B) an original of this Agreement duly executed by RIIB; and (c) All of Capital Provider's, RIIB's and Borrower's respective representations and warranties provided herein or in any of the Financing Documents shall be true and correct on the date of the execution of this Agreement.

Covenant

No Action. RIIB and Capital Provider shall not, without the prior written consent of the other, take any action which impairs the rights of the other party (or its assignee or successor) with respect to the Financing Documents in and to which such covenanting party has no right, title or interest. Under no circumstances may Capital Provider file Uniform Commercial Code financing statements against RIIB in connection with any of the transactions contemplated hereunder. For the avoidance of doubt, Capital Provider may file Uniform Commercial Code financing statements in connection with securing its rights to Project equipment and any related renewable energy incentives.

Future Environmental Land Use Restriction(s). Capital Provider or any future assignee of the PACE Assessment Lien or the Transaction Documents shall be bound by and irrevocably subordinated to any environmental land use restriction recorded against the Property on the land records of the Municipality.

Tax and Indemnities

(A) Charges. Capital Provider shall pay any and all sales or use taxes or similar taxes, if any, that may be imposed by any federal, state or local government authority on any remittances made by RIIB to the Capital Provider pursuant to this Agreement.

(B) Taxes. With respect to this Agreement, Capital Provider shall be solely responsible for, and shall indemnify, protect, defend, save and keep harmless, RIIB and each of its affiliates, and their respective officers, directors, employees and agents (each an "RIIB Indemnitee") from and against any and all federal, state and local taxes, in each such case, to the extent any of the same are attributable to or otherwise assessed with respect to the period subsequent to the effective date of this Agreement, together with any assessments, penalties, fines additions to tax or interest related thereto, which at any time or from time to time may be imposed on, or asserted against, the Property (or any part thereof or any interest therein) or any RIIB Indemnitee, by any federal, state, local or foreign government or taxing authority in connection with or relating to the Financing Documents or any of the transactions contemplated hereby and thereby.

(C) Notice of Claims. Each of RIIB and Capital Provider agrees to notify the other party promptly after becoming aware of any taxes or claims, whether pending or threatened that is the subject of indemnification pursuant to this Agreement; provided, however, that the failure by either such party to so notify the indemnifying party will not in any manner affect such indemnifying party's obligations under this Agreement, except to the extent, if any, the indemnifying party shall have been materially and adversely prejudiced by such failure.

Duties and Limitations

The following provision shall apply except to the extent otherwise provided in the Financing Documents:

(A) RIIB's and Capital Provider's Duties. It is the intent and purpose of the parties that RIIB or the Program Administrator shall bill for, collect and receive for the benefit of Capital Provider the sums payable under the Financing Documents and the PACE Assessment and PACE Assessment Lien, but shall otherwise act at the written direction of Capital Provider with respect to all consents, waivers, rights and remedies available to the Capital Provider under such Financing Documents and PACE Assessment. Unless RIIB indicates in writing to Capital Provider, Capital Provider shall be responsible for all other servicing duties pursuant to the Financing Documents, such as, if applicable, obtaining insurance renewals and financial statements from the Borrower and arranging for Property inspections. RIIB shall promptly, within one (1) business day of RIIB's receipt, deliver to Capital Provider all notices, demands and similar items received by it relating to the Financing Documents.

(i) In the event: (x) of an Event of Default under and as defined in the Financing Documents or an event which with the giving of notice or passage of time or both would constitute an Event of Default thereunder (any such event, an "Event of Default"); (y) RIIB breaches any of its material obligations hereunder; or (z) upon thirty (30) days prior written notice from RIIB or Capital Provider, and upon written notice by Capital Provider to RIIB in the case of (x) or (y), Capital Provider may (and in the case of (z), shall) take over the billing and collection duties of RIIB and, in such event, Capital Provider shall have the sole right, on behalf of RIIB, to exercise any and all remedies available to it in connection with the billing and collection duties pursuant to this Agreement which are the subject of the Event of Default or notice. If Capital Provider takes over such billing and collection duties pursuant to this Agreement then RIIB shall have no obligations to bill or collect pursuant to this Agreement. In such event, the Capital Provider, in its sole capacity, shall continue such billing and collection for the term of the Financing Documents. In an Event of Default, the Capital Provider may request, and RIIB in its sole discretion may accept, RIIB to pursue billing and collection of delinquent payments from the Borrower. If RIIB agrees to provide billing and collection services to Capital Provider after an Event of Default has occurred then Capital Provider shall reimburse RIIB for all costs, fees and expenses associated with such billing and collection services. (iii) If either party has actual knowledge of an Event of Default, it shall promptly notify the other party thereof.

(B) Payments. All monies received by RIIB shall be held by RIIB, or its designee, for the benefit of the Capital Provider for the purpose for which they were paid, but need not be segregated in any manner from any other monies of RIIB and may be deposited by RIIB, or its designee, in any general account maintained by RIIB or, its designee, (the "Collection Account"), provided, however that such funds shall be designated in the books and records of the Collection Account as being for the benefit of the Capital Provider. RIIB, or its designee, shall pay all moneys from Collection Account due from the Borrower under the Financing Documents within five (5)

Business Days of receipt of such good funds in the Collection Account (each such date, a "Payment Date"), provided that RIIB, or its designee, has collected payment in good funds from the Borrower, such as a received wire or cleared check. . Notwithstanding the forgoing, if the applicable Payment Date is not a Business Day, then the Payment Date shall be deemed to be the next Business Day. As used herein, "Business Day" shall be deemed to mean any day other than a Saturday, Sunday or holiday in which RIIB or Capital Providers are closed in Rhode Island. RIIB, or its designee, shall make such monies available to Capital Provider by wire transfer of such monies to Capital Provider at such account as Capital Provider may specify in writing from time to time. If RIIB fails to make such payment (or any part thereof) to Capital Provider within ten (10) business days of when due, RIIB shall pay Capital Provider one percent (1%) interest per month on, and in addition to, the amount of such payment (or any part thereof) but not exceeding the lawful maximum, if any.

(C) Limitations of Liability. RIIB undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into this Agreement against RIIB. In performing its obligations hereunder, RIIB shall use the same level of care as it uses for transactions in which it holds the entire interest for its own account, but shall not be liable to Capital Provider for any action taken or omitted to be taken by it hereunder or pursuant hereto, except for RIIB's failure to make sums available to Capital Provider as required under this Agreement or RIIB's gross negligence or willful misconduct. The duties of RIIB shall be mechanical and administrative in nature and RIIB shall not have by reason of this Agreement a fiduciary relationship with Capital Provider. RIIB shall not be required to take any action if RIIB shall have been advised by counsel that such action is contrary to law, the provisions of this Agreement or the provisions of the Financing Documents. As to any matters not expressly provided for by this Agreement, RIIB shall not be required to exercise any discretion or take any action and in case of any question concerning its rights and duties hereunder, RIIB may request written instructions from Capital Provider and refrain from taking action until it receives written instructions from Capital Provider. RIIB shall be fully protected and have no liability to any person for acting or refraining from acting hereunder in accordance with the written instructions of Capital Provider. RIIB shall, in the absence of knowledge to the contrary, be entitled to rely on any written instructions believed in good faith to be genuine and correct and to have been signed by an officer of Capital Provider.

Titling

(A) Holder of PACE Assessment. The Property described in the Financing Documents shall demonstrate that Municipality is the original holder of the PACE Assessment that is contractually obligated to immediately assign such PACE Assessment to RIIB. Upon the assignment described in this Participation Agreement hereof, RIIB shall assign all of its interest in the PACE Assessment and the PACE Assessment Lien to the Capital Provider or its designee, such that the Capital Provider, or its designee, shall become the holder of the PACE Assessment and PACE Assessment Lien upon the Property. RIIB shall be responsible for promptly recording the assignment of the PACE Assessment Lien in the applicable land records, with the costs of recording to be paid by Capital Provider.

(B) Appointment and Authorization. RIIB shall take any actions reasonably requested in writing by Capital Provider relating to the Capital Provider being named as the holder of the PACE Assessment and PACE Assessment Lien relating to the Property.

RI C-PACE Program Costs

- (A) Upon the execution of this Agreement, Capital Provider or Borrower shall pay RIIB and/or Program Administrator a program administration fee of equal to a percentage of the project finance amount before interest and fees. The Program Administration fee may either
- (i) be included in the principal of each Closed Project to be paid by the Capital Provider, or
 - (ii) be paid directly by the Borrower. Such fee shall be disbursed to the Program Sponsor at the time of execution of the Financing Agreement.

Any costs associated with filing any Confirmation and Amendment of PACE Assessment Lien and Payment Schedule shall be paid by the Capital Provider or Borrower. Additionally, the Capital Provider or Borrower shall pay RIIB an annual servicing per year for RIIB duties and services provided pursuant to this Agreement, including the billing and collection of funds pursuant to such PACE Assessment Lien, this annual fee shall be collected by RIIB and/or Program Administrator from the funds deposited in the Collection Account pursuant to the PACE Assessment and PACE Assessment Lien, before such funds are remitted to the Capital Provider pursuant to Section 7 of this Agreement. Any additional expenses incurred by RIIB and/or Program Administrator in connection with its performance of its duties obligations under this Agreement shall be borne by Capital Provider and Capital Provider shall reimburse RIIB and/or Program Administrator for any such out-of-pocket costs and expenses incurred by RIIB and/or Program Administrator.

(B) No provisions of this Agreement shall require RIIB

- (i) to expend or risk its own funds except as necessary in the ordinary course of business as the statewide administrator of the Program or to perform its obligations under this Agreement or
- (ii) to otherwise incur any financial liability in the performance of any of its duties hereunder. Any expenses incurred by RIIB in connection with any actions with respect to the Financing Documents to which Capital Provider has requested shall be borne by Capital Provider and Capital Provider shall reimburse RIIB for any such out-of-pocket costs and expenses incurred by RIIB.

Program Administration costs are found in the RI C-PACE program guidelines which can be accessed here: http://ri-cpace.com/wp-content/uploads/RI_C-PACE_Program_Guide.pdf

Indemnity

(A) Capital Provider agrees to indemnify and hold harmless RIIB and any of its directors, officers, employees or agents, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses, taxes or disbursements of any kind or nature whatever (including attorneys' fees) which may be imposed on, incurred by or asserted against any of them in any way relating to or arising out of any action taken or omitted by either or any of them pursuant to a breach by Capital Provider of this Agreement, to the extent not reimbursed by the Borrower, provided that Capital Provider shall not be liable to RIIB for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses or disbursements resulting from the gross negligence of willful misconduct of RIIB or any of its directors, officers, employees or agents; and

(B) Capital Provider agrees to indemnify and hold harmless the Program Administrator and any of its directors, officers, employees or agents, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses, taxes or disbursements of any kind or nature whatever (including attorneys' fees) which may be imposed on, incurred by or asserted against any of them in any way relating to or arising out of any action taken or omitted by either or any of them pursuant to a breach by Capital Provider of this Agreement, to the extent not reimbursed by the Borrower, provided that Capital Provider shall not be liable to the Program Administrator for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses or disbursements resulting from the gross negligence of willful misconduct of the Program Administrator or any of its directors, officers, employees or agents; and

(C) RIIB shall indemnify and hold harmless Capital Provider, its successors and assigns, and all of its directors, officers, employees or agents, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgment, suits, costs, expenses or disbursements of any kind or nature whatever (including attorneys' fees) which may be imposed on, incurred by or asserted against any of them in any way arising out of or resulting from a breach by RIIB of this Agreement or the gross negligence or willful misconduct of RIIB or any of its directors, officers, employees or agents.

Miscellaneous

(A) Assignment. Neither party may assign or delegate its respective rights or obligations hereunder without the prior written consent of the other party which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of the parties hereto.

(B) Notices. All notices and other communications hereunder shall be in writing, personally delivered or sent by certified mail, return receipt requested, addressed to the other party at its respective address stated below the signature of such party or at such other address as such party

shall from time to time designate in writing to the other party; and shall be effective from the date of receipt.

(C) GOVERNING LAW. THIS AGREEMENT AND EACH SPECIFICATION AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF RHODE ISLAND (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

(D) Entire Agreement. This Agreement and the Assignment and the Notice constitutes the entire agreement between the parties with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

(E) Titles. Section titles are for convenience of reference only and shall not be of any legal effect.

(F) Further Assurances. The parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, and covenant and agree to use their respective reasonable best efforts to cause their successors and assigns to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for implementing the intention of the parties under this Agreement, as the parties and their successors and assigns reasonably shall request.

(G) Not an Extension of Credit. This Agreement constitutes an assignment of future PACE Assessments and their related PACE Assessment Liens and shall in no way be construed as an extension of credit by Capital Provider to RIIB. In the event of an insolvency of RIIB, RIIB shall not claim any such PACE Assessment or its related PACE Assessment Lien as an asset of its estate, the parties hereto acknowledging that their intent is to treat assignment as a transfer of RIIB's right, title and interest in and to any such PACE Assessment and its related PACE Assessment Lien as they relate to the Property.

(H) Transaction Expenses. Each of RIIB and Capital Provider shall bear and be responsible for its own costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other agreements, documents, certificates and instruments relating hereto, and it shall not have any right of reimbursement or indemnity for such costs and expenses as against the other party.

(I) Counterparts. With respect to each of this Agreement, the Notice and any of the other documents to be delivered pursuant to this Agreement, each such agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

(J) Survival. The respective representations and warranties of RIIB and Capital Provider contained in this Agreement shall survive the termination of this Agreement.

(K) Recitals. Both parties agree that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.

(L) Waiver of Jury Trial. RIIB AND CAPITAL PROVIDER HEREBY UNCONDITIONALLY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE FINANCING DOCUMENTS, ANY DEALINGS BETWEEN RIIB AND CAPITAL PROVIDER RELATING TO THE SUBJECT MATTER HEREOF OR THEREOF, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN RIIB AND CAPITAL PROVIDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY SPECIFICATION OR THE FINANCING DOCUMENTS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Confidentiality and Non-Use

In consideration of receiving confidential information, the Capital Provider and the Program Administrator and RIIB agree as follows:

(A) The Parties hereby acknowledge that any Confidential Information received by it is the property of the other Party and the Borrower, as applicable, and that the receiving Party shall hold confidential and not disclose to any Person, without the prior written consent of the disclosing Party, and if such consent is given, obtain a written commitment from such third party, all Confidential Information and any information about the Project, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto or the status thereof, or the fact that Confidential Information has been made available to the Receiving Party or its Representatives; provided, however, that the receiving Party may disclose such Confidential Information to its Representatives who are actively and directly participating in its evaluation of the Project or who otherwise need to know the Confidential Information for the purpose of the Project;

(B) Both parties shall cause all its Representatives to observe the terms of this Agreement and shall be responsible for any breach of the terms of this Agreement by it or its Representatives; and,

(C) Each Party shall return or destroy all Confidential Information (including all copies thereof) within 10 days of receipt of a written request by the RI C-PACE Program Administrator or Program Sponsor, except for one record copy that may be maintained by each Party in its legal archives.

(D) In addition to the foregoing, neither Party will use the Confidential Information for any purpose other directly than in connection with the Project and as expressly authorized in writing by the disclosing Party.

Exceptions to the Confidentiality and Non-Use Obligations

The obligations imposed by Section (m) hereof shall not apply, or shall cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:

(A) was known to the receiving Party or was already in its lawful possession prior to the receipt of the Confidential Information;

(B) was or becomes, through no breach of the receiving Party's obligations hereunder, known to the public;

(C) becomes known to the receiving Party from sources other than the disclosing Party or their respective Representatives under circumstances not involving any breach of any confidentiality or non-use obligation; and/or,

(D) is independently developed by the receiving Party, as evidenced by written records thereof.

Confidential information, as a whole, shall not be deemed to be in the public domain merely because any part of said Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public. It shall not be a breach of the confidentiality obligations hereof for the receiving Party to disclose Confidential Information where, but only to the extent that, such disclosure is required by law or applicable legal process, provided in such case the receiving Party shall (i) give the earliest notice possible to the disclosing Party that such disclosure is or may be required and (ii) reasonably cooperate in protecting such confidential or proprietary nature of the Confidential Information which must so be disclosed.

No Further Agreements Hereunder

RI C-PACE, shall be not under any obligation to enter into any further agreements with the Capital Provider of any nature whatsoever as a result of this Agreement. RI C-PACE hereto reserves the right, in its sole discretion, to decline, to retract or to reject at any time any proposal which has not yet become legally binding by execution of a written agreement between the Parties with respect thereto, or with respect to any further agreements or business arrangements with the other Party hereto, its parents, subsidiaries or affiliates and to terminate all further discussions and negotiations. Nothing in this Agreement shall obligate RI C-PACE or its Representatives to provide any specific information, including Confidential Information, it or its Representatives otherwise desire to withhold.

Non-Circumvention

In connection with any Eligible Project for which a Borrower or Contractor submits a RI C-PACE Application without designating a Qualified Capital Provider, Capital Providers agree that any contact with such Borrower or Contractor shall conform to the Program Guidelines, the

Term Sheet and this Participation Agreement and shall not directly or indirectly, interfere with, circumvent or attempt to circumvent, avoid, by-pass, or obviate Program Administrator, or its relationship with the Borrower.

Exclusivity

For any Borrower of any Eligible Project for which the Capital Provider submits a RI C-PACE Application, a different Capital Provider shall not enter into a C-PACE funding or finance agreement with such Borrower for the same project for a period of six months (measured from the date of a complete submission of all documents outlined in Capital Provider's or Borrower's Obligations) without written notice from the Borrower to the Capital Provider that they have chosen to seek additional financing term sheets from other Qualified Capital Providers. Further, neither RIIB nor the Program Administrator may share any information contained in an application submitted by a Borrower or Capital Provider with any other Capital Provider. This section does not apply if (1) the same Borrower requests RI C-PACE funding or financing for a materially different Eligible Project, or (2) the Capital Provider fails to submit all necessary documents pursuant to Capital Provider's or Borrower's Obligations for an Eligible Project within a commercially reasonable time.

Governing Law; thereto. Disputes

This Agreement is made subject to and shall be construed and enforced under the laws of the State of Rhode Island, without giving regard to conflict of laws or choice of law principles and that the state and federal courts of the State of Rhode Island have exclusive jurisdiction to resolve any disputes with respect to this Agreement or the Confidential Information with each Party irrevocably consenting to the jurisdiction thereof for any actions, suits or proceedings arising out of, or relating to, this Agreement or the Confidential Information, and each Party irrevocably waives its rights to jury trials with respect thereto.

Non-Publicity by Capital Provider

All media releases, public announcements and other disclosures, initiated by the Capital Provider, relating to any Project including promotional or marketing material, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by Program Sponsor prior to release. In addition, the Capital Provider shall refrain from removing, overprinting or defacing any notices of copyright, trademark, logo or other proprietary identifications or notices of confidentiality, from any originals or copies of the Program Administrator's or the Capital Provider's Confidential Information.

Access to Public Records Act. RIIB is a “public agency” for purposes of the Rhode Island Access to Public Records Act (“APRA”). This Agreement and information received pursuant to this Agreement will be considered public records and will be subject to disclosure under the APRA, except for information falling within one of the exemptions in Rhode Island General Laws §38-2-2.

Because only the particular information falling within one of these exemptions can be withheld by RIIB pursuant to an APRA request, Capital Provider should specifically and in writing identify to RIIB the information that Capital Provider claims to be exempt. Capital Provider should further provide a statement stating the basis for each claim of exemption. It will not be sufficient to state generally that the information is proprietary or confidential in nature and not, therefore, subject to release to third parties. A convincing explanation and rationale sufficient to justify each exemption consistent with General Laws §38-2-2 must be provided.

Capital Provider acknowledges that (1) RIIB has no obligation to notify Capital Provider of any APRA request it receives, (2) RIIB may disclose materials claimed by Capital Provider to be exempt if in its judgment such materials do not appear to fall within a statutory exemption, (3) RIIB may in its discretion notify Capital Provider of APRA requests and/or of complaints made to the Rhode Island Attorney General’s Office concerning items for which an exemption has been claimed, but RIIB has no obligation to initiate, prosecute, or defend any legal proceeding, or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to an APRA request, (4) Capital Provider will have the burden of establishing the availability of any APRA exemption in any such legal proceeding, and (5) in no event shall RIIB or any of its officers, directors, or employees have any liability for the disclosure of documents or information in RIIB’s possession where RIIB, or such officer, director, or employee, in good faith believes the disclosure to be required under the APRA or other law.

Representations: The Program Administrator and/or Program Sponsor shall provide representations to the Capital Provider that shall include but are not limited to:

1. Each PACE Assessment is a legal, valid and binding obligation and enforceable in accordance with provisions of Rhode Island law.
2. No Eligibility Criteria have been waived, altered or modified in any respect, except as approved by the Program Administrator and the Capital Provider.

The Capital Provider shall represent that any Eligible Projects will be submitted to the Program Administrator in good faith and with a willingness to fund, subject to Eligibility Criteria, Program Guidelines, Administration Agreement, Underwriting Guidelines (if applicable) and this Agreement.

Covenants: Key covenants of the Program Administrator and the Capital Provider include, but are not limited to:

1. Continuation as a legal entity.
2. Compliance with applicable laws.
3. Compliance with the terms of all transaction documents.
4. Compliance with reporting requirements.
5. Provision of all reasonably necessary assistance for the Program Administrator to perform its functions in a prudent manner.
6. Use of all reasonable means to resolve disputes with the property owner, contractors, vendors, or public officials in favor of full and timely payment to the Capital Provider and Program Administrator.

Account Remediation/Dispute Resolution: The Capital Provider will have the right to participate in any formal or informal dispute or disagreement involving any private party or public official, including the Town Clerks, Tax Collector or Tax Assessors (or the functionally equivalent official) in the Municipality in order to represent the interests of the Capital Provider, in any matter associated with the PACE Assessments, the prompt and proper posting and collection of same and the timely and accurate disbursement of such revenues, including the filing or participation as an intervener or amicus in any administrative, injunctive, or court proceeding Capital Provider deems necessary to protect its interests or otherwise compel the collection and delivery of any revenue pledged to support the repayment of any obligations of the Program Administrator.

Documentation: This Agreement is subject to mutually agreeable final documentation, including but not limited to:

1. Satisfactory legal opinions if requested by the Program Administrator.
2. Completion of due diligence.
3. Satisfactory legal documentation

RHODE ISLAND INFRASTRUCTURE BANK

Signature _____

Name: JEFFREY R. DIEHL

Title: EXECUTIVE DIRECTOR and CEO

Date:

CAPITAL PROVIDER

Signature _____

Name:

Title:

Appendix 1

**REQUEST FOR LENDER CONSENT
AND NOTICE OF PROPOSED PACE ASSESSMENT**

Notice Date: _____

Lender Address:

Lender: _____

Street: _____

City/State/Zip Code: _____

ATTN: _____

Property/Loan Information: _____

Address: _____

Why has the bank received this notice?

The property owner listed below owns the property located at the address above. You are the holder of a loan secured by the property.

[Building owner] wishes to install energy upgrades to the property using the Commercial Property-Assessed Clean Energy (C-PACE) financing mechanism established by the State of Rhode Island and seeks your consent to do so.

Background on C-PACE in Rhode Island.

In 2015, Rhode Island passed legislation that provides access for owners of commercial, industrial and multi-family housing property in the state to a new form of financing for energy efficiency and on-site renewable energy (EE/RE) upgrades to their buildings. C-PACE financing can allow building owners to increase the value of their buildings and meet important energy policy goals of the State and its municipalities.

Rhode Island Infrastructure Bank ("RIIB") is responsible for administering a statewide Commercial PACE program. With C-PACE, financing for EE/RE projects is repaid with a PACE assessment, a mechanism long used to finance improvements to real property that meet a public policy objective, such as sidewalks, parks, lighting districts, and water and sewer projects. Like other municipal assessments, C-PACE assessments must be current upon the sale of a property and remain with a property upon sale. As with other municipal assessments, only assessments in arrears have a lien status senior to mortgages upon the sale of a property.

Rhode Island's C-PACE program has been designed to meet the needs and concerns of Rhode Island's residents, property owners, and existing mortgage lenders. To qualify, the proposed project must meet the following basic criteria:

- The property is located in a municipality that has signed a legal agreement with the RIIB regarding C-PACE.
- The property is a commercial, industrial, or multi-family property
- The proposed measures reduce energy consumption and/or increase the production of on-site renewable energy
- The proposed measures are permanently affixed to the property
- The property is current on all municipal property tax and assessment payments
- The proposed project results in energy savings and/or related project revenues as confirmed by a professional engineer and approved by RIIB.
- The property owner receives consent of the current mortgage holder(s)

Why should you provide consent?

1. Measures financed through PACE should reduce building operating costs. Through the Program Guidelines RIIB has established to govern the C-PACE program, a proposed project must demonstrate energy cost savings or project related revenues. C-PACE financing is then generally structured to achieve savings over the project lifetime that are greater than the total project investment cost (including financing and closing costs).
2. C-PACE Assessments do not accelerate. In the event the mortgage holder forecloses on the property for any reason, only the amount of the C-PACE assessment currently due and/or in arrears, a relatively small proportion of the C-PACE assessment, would come due. In the event of a property sale, C-PACE assessments transfer to the new property owner.
3. Measures financed through C-PACE 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 should you know?

[Building owner] has indicated its intention to apply for C-PACE financing for the improvements outlined in [an Exhibit to this document](#) on the property listed above. The PACE assessment is to be levied on the property pursuant to an agreement between the property owner, RIIB, and the funding source for the C-PACE improvements. The related payment terms are proposed to consist of the following:

Total cost of improvements*:

Utility rebates/incentives:

Total C-PACE financing requested*:

Annual interest rate not to exceed:

Term of repayment period:

Total estimated annual installment*:

Payments per year:

Capital Provider may provide financing for up to 110% of the financing amount requested contingent upon the savings-to-investment ratio being greater than 1. As such, the above amounts are subject to minor deviation.

Estimated PACEs of the Authorized Improvements:

Based on a recently prepared energy savings estimate which is attached as [an Exhibit](#), the following cash flow savings – as a result of the installation of the Authorized Improvements and using the assumptions noted in the calculator – are expected to accrue to the property.

Electric and Fuel Bill Savings:

Other Savings (specify):

- a. Federal Investment Tax Credit = \$X
- b. C-PACE Interest Deduction (cash value @ 35% tax rate) = \$X
- c. Depreciation Cash Impact (cash value @ 35% tax rate) = \$X
- d. REC Income (taxed at 35% rate) = \$X

TOTAL:

NOTE: The savings noted above represent estimations based on the assumptions contained in the calculator attached as Exhibit C. In order to close PACE financing, a third party professional engineer or another Investor Confidence Project compliant process as provided by RIIB must confirm that the projected energy savings and project related revenues are reasonable. However, actual results are likely to be different and may be greater or less than estimated.

Purpose of this Notice. As required by the C-PACE enabling legislation (Chapter 39-26.5 of Rhode Island General Laws, as amended), [Name of Property Owner] is sending this Notice of Proposed PACE Assessment to Lender to (i) provide notice of the proposed participation of the property above in C-PACE financing; (ii) request confirmation from you (the current lender) that the levy of the PACE Assessment pursuant to the Assessment Agreement will not trigger an event of default or the exercise of any remedies under the Loan documents, (iii) provide notice

that the Contractual Assessment will be collected in the same manner as property taxes and be subject to the same penalties, remedies and lien priorities as real property taxes and (iv) declare the [Name of Property Owner]'s agreement to pay on a timely basis both the existing obligations secured by the property (including the Loan) and the proposed PACE Assessment.

Execution and Return of Consent. The Property Owner would appreciate you executing the attached Lender Consent to Proposed PACE Assessment and returning it to the undersigned at your earliest convenience.

Very truly yours,

BY: (signature): _____

PROPERTY OWNER NAME: _____

MAILING ADDRESS (if different than Property address): _____

Appendix 2

LENDER CONSENT TO PACE ASSESSMENT

Date: _____

Property/Loan Information: _____

Address: _____

Owner: _____

Municipality: _____

This Lender Consent to PACE Assessment (this "Consent") is given by the undersigned entity (the "Lender") with respect to the above-referenced loan (the "Loan") and the above-referenced property (the "Property").

RECITALS

A. Lender is in receipt of written notice (the "Notice") from the above-referenced owner of the Property (the "Property Owner") that it intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property (the "Authorized Improvements") by participating in the Commercial Property-Assessed Clean Energy (C-PACE) financing program (the "Program"), sponsored by the Municipality.

B Lender understands that, as a result of an agreement between the Municipality and the Property Owner (the "Assessment Agreement"), the PACE Assessment described in the Notice will be levied on the Property, and that the PACE Assessment will be collected in the same manner as property taxes and be subject to the same penalties, remedies and lien priorities as real property taxes.

CONSENT

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

A. Lender is in receipt of written notice (the "Notice") from the above-referenced owner of the Property (the "Property Owner") that it intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property by participating in the Commercial Property-Assessed Clean Energy financing a program sponsored by the Municipality.

B Lender understands that, as a result of an agreement between the Municipality and the Property Owner, the PACE Assessment described in the Notice will be levied on the Property, and that the PACE 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.

C. The Lender consents to the PACE Assessment being placed and agrees that the levy of the PACE Assessment will not constitute an event of default or trigger the exercise of any remedies under the Loan documents.

The Lender hereby acknowledges that the Property Owner and the Municipality will rely on the representation and Consent of the Lender set forth in this Consent.

LENDER: [Lender]	
	DATED: ENTER DATE HERE
	By: _____
	ENTER NAME HERE
	ENTER TITLE HERE
	By: _____
	ENTER NAME HERE
	ENTER TITLE HERE

APPENDIX 3

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 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 PACE 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

EXHIBIT A to Appendix 3 OF CERTIFICATE OF PACE ASSESSMENT

DESCRIPTION OF PROPERTY

[Insert legal description of Property]

**EXHIBIT B TO APPENDIX 3 OF CERTIFICATE OF PACE ASSESSMENT
PAYMENT SCHEDULE**

[Insert Legal Description of Payment Schedule]

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

**EXHIBIT A to Appendix 4 - Form of Assignment of PACE Assessment Lien from
Municipality to RIIB**

DESCRIPTION OF PROPERTY

[Insert legal description of Property]

APPENDIX 5

FORM OF ASSIGNMENT OF PACE ASSESSMENT LIEN FROM RIIB TO CAPITAL PROVIDER

KNOW ALL PERSONS BY THESE PRESENTS, that RHODE ISLAND INFRASTRUCTURE BANK, (hereinafter referred to as "Assignor"), acting herein by Jeffrey R. Diehl, its Executive Director, pursuant to a RI PACE Assessment And Lien Assignment And Administration Agreement dated _____, 20____ (the "Agreement"), between the Assignor and _____ (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 (except as set forth in the Agreement), 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 and Assigned to Assignor 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 by Rhode Island General Laws 39-26.5, as amended.

By execution of this Assignment, the Assignor assigns to 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, pursuant to Rhode Island General Laws 39-26.5, as amended.

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, we have hereunto set our hands and seal this _____ of _____, 20_____.

RHODE ISLAND INFRASTRUCTURE BANK,
Assignor

By _____

**EXHIBIT A to Appendix 5 – Form of Assignment of PACE Assessment from RIIB to
Capital Provider**

DESCRIPTION OF PROPERTY

[Insert legal description of Property]

APPENDIX 6 OF C-PACE PACE ASSESSMENT AND LIEN ASSIGNMENT

**FORM OF CONFIRMATION AND AMENDMENT OF PACE ASSESSMENT LIEN
AND PAYMENT SCHEDULE**

_____ (the “Capital Provider”) and _____ (the “Borrower”) are parties to that certain Financing Agreement dated as of _____, 201__, as may be amended (the “Financing Agreement”).

Pursuant to the Financing Agreement, the Borrower has renovated or retrofitted the property located at _____, Rhode Island (the “Property”), in accordance with the requirements of the Program for which Capital Provider has provided the financing for through the PACE Assessment Advance in the amount of \$_____, which PACE Assessment Advance has been converted into a PACE Assessment against the Property; and

The Borrower is obligated to make PACE assessment payments required by that certain Certificate of Levy and Lien of PACE Assessment (the “PACE Assessment Lien”) dated _____, 201__ and filed by the _____, Rhode Island (the “Municipality”) and recorded in the Land Records of the Municipality in Volume ___ at Page ___; which PACE Assessment Lien was assigned by the Municipality to RIIB pursuant to that certain Assignment of PACE Assessment Lien dated _____, 201__ and recorded in the Land Records of Municipality in Volume ___ at Page ___; which PACE Assessment Lien was assigned by RIIB to Capital Provider pursuant to that certain Assignment of PACE Assessment Lien dated _____, 201__ and recorded in the Land Records of Municipality in Volume ___ at Page ___.

Pursuant to the Financing Agreement, the PACE Assessment Lien shall be repaid in accordance with the installment payment plan attached hereto as Schedule 1 (the “Payment Schedule”). The Payment Schedule is based on the principal amount of the PACE Assessment of \$_____, including any capitalized interest or any additional fees and expenses pursuant to the Financing Agreement, with interest thereon at the rate set forth in the Financing Agreement and with equal installments of principal and interest coming due as set forth in the Payment Schedule.

Except as amended and modified hereby, the Financing Agreement and the PACE Assessment Lien shall continue unmodified and in full force and effect and each is hereby ratified and confirmed.

Dated this ____ day of _____, 201__.

WITNESSES:

[CAPITAL PROVIDER]

Print Name:

By: _____
Name:

Title:

Print Name:

STATE OF RHODE ISLAND)

)

COUNTY OF _____)

Personally appeared _____, the _____ of _____, a
_____, signer and sealer of the foregoing instrument and acknowledged the same to
be his/her free act and deed and the free act and deed of said body politic and corporate, before
me.

Notary Public
My Commission Expires: _____

EXHIBIT A Appendix 6 - FORM OF CONFIRMATION AND AMENDMENT OF PACE
ASSESSMENT LIEN AND PAYMENT SCHEDULE

AMENDED PAYMENT SCHEDULE

[Insert Legal Description of Amended Payment Schedule

Appendix 7
RI C-PACE Underwriting Guidelines

RI C-PACE requires capital providers to use at minimum, the following factors when determining whether or not to underwrite RI C-PACE projects:

- a) Total property-related debt to property value ratio (total property-related debt includes mortgage debt, the RI C-PACE financing and any other obligations secured by the property). The property value which may be established either (i) as the assessed value of the property, or (ii) its appraised value, as supported by a recent appraisal. In either case, the property's value may include the enhanced value of the property resulting from the installation of the improvements being financing with RI C-PACE.
- b) The property owner has been current on its property tax and assessment payments.
- c) The property owner must not have any involuntary liens, defaults, or judgments applicable to the subject property. A property owner may be able to participate if it can be demonstrated that there is an acceptable reason for the lien, default, or judgment and provide supporting documentation.
- d) The property owner(s) or their affiliated companies have not been a debtor in a bankruptcy.
- e) Cash flow generated by the property as evidenced by a debt service coverage ratio or other similar cash flow metric.

RI C-PACE will review each capital provider's underwriting standards in the RI C-PACE Capital Provider Application for Participation.

Appendix 8: Additional Resources

C-PACE Statute: <http://webserver.rilin.state.ri.us/Statutes/TITLE39/39-26.5/INDEX.HTM>

Program Website: <http://ri-pace.com/>

Program Regulations: http://ri-pace.com/wp-content/uploads/RI_C-PACE_Program_Regulations.pdf

Program Guidelines: http://ri-pace.com/wp-content/uploads/RI_C-PACE_Program_Guide.pdf

Project Application Form: http://ri-pace.com/wp-content/uploads/RI_C-PACE_Application_Form.pdf

Participating Municipalities: <http://ri-pace.com/participating/>