



PACE PROGRAM REPORT

Property Assessed Clean Energy Program
Oakland County, Michigan
2nd Edition

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The Oakland County PACE Program Report was amended by the Oakland County Board of Commissioners on April 24, 2024.

PURPOSE OF THE PACE REPORT

Recognizing that there is a continuous need to enhance sustainable building practices, conserve natural resources, increase job opportunities, and improve quality of life, the Oakland County Board of Commissioners established a countywide Property Assessed Clean Energy (“PACE”) Program and PACE District in 2016. Oakland County has partnered with Lean & Green Michigan™ (“LAGM”) since that time to administer the program and uses the criteria identified in this *PACE Program Report 2nd Edition* and the current version of the *LAGM PACE Program Manual* as a basis to work from. This Report supersedes the *2016 PACE Program Report* and complies with amendments made to Michigan Public Act 270 of 2010 (“the PACE Statute”), effective on February 13, 2024.

This PACE Program Report contains the information required by Section 9 of the PACE Statute. Additional information is available from Oakland County and LAGM. The PACE Program and PACE Program Report were initially approved by the Board of Commissioners by Miscellaneous Resolution #16276 subsequent to a public hearing on November 10, 2016.

INTRODUCTION

The PACE Program offers eligible property owners an innovative financing tool, through a long-term special tax assessment on the property, to make the buildings more energy and water efficient without incurring upfront costs. There is a wide range of eligible projects that help to reduce utility costs and conserve natural resources, which may include installing energy efficient windows, doors, roofs, lighting, and insulation. In addition, renewable energy solutions like solar, wind, and geothermal systems may also qualify.

LAGM is a public-private partnership that works with local units of government, lenders, contractors, and owners of commercial, industrial, multi-family, nonprofit, and agricultural properties to implement PACE projects. Many local units of government throughout the state have partnered with LAGM. This growing network of participants and partners creates an efficient statewide marketplace, allowing property owners, lenders and contractors to utilize a standardized process as they employ PACE financing in multiple jurisdictions throughout the state.

LEAN & GREEN MICHIGAN™ PACE PROGRAM MANUAL DESCRIPTION

LAGM developed a collaborative process that streamlines establishing local PACE Programs, program administration, project eligibility, financial evaluations, legal reviews, and agreement templates. LAGM prepared the *PACE Program Manual* that provides additional details and eligibility information for property owners that may be interested in participating in the PACE Program. A copy of the manual is available at: www.leanandgreenmi.com.

OAKLAND COUNTY PACE PROGRAM REQUIREMENTS

Michigan Public Act 270 of 2010, as amended authorizes local units of government to adopt PACE programs that promote the installation of renewable energy systems, energy efficiency improvements, water usage improvements, and environmental hazard projects by owners of certain real property within a district designated by the local unit of government.

As many of the details of a PACE transaction are determined on a project-specific basis, adjustments to the Model PACE Special Assessment Agreement (Appendix A) may be required to fit a particular transaction. Additionally, there are several blanks left in the model agreement that should be filled in when the corresponding information becomes available.

The following information is required by Section 9 of the PACE Statute:

a. Form of PACE Contract

A copy of the PACE Special Assessment Agreement Template is attached hereto as **Appendix A**. Individual property owners may negotiate project-specific terms to be included in an actual agreement based upon the specific renewable energy systems, energy efficiency improvements, water usage improvement, and environmental hazard projects to be financed through the individual agreement, subject to the limitations set forth herein.

b. Authorized Official and Program Administration

- i. The Chairperson of the Board of Commissioners or the Chairperson's designee, (the "Authorized Official") is authorized to enter into PACE Contracts or PACE Special Assessment Agreements on behalf of Oakland County in consultation with LAGM. The Authorized Official is further authorized to sign any agreement, documents or certificates necessary to facilitate the participation of property owners and to facilitate the purposes hereunder, and take all other actions necessary to convenient to implement a PACE Program consistent with this PACE Program Report.
- ii. PACE County Coordinator: The Planning Manager of the Oakland County Department of Economic Development shall oversee the Program on behalf of Oakland County, including receiving and reviewing all project information from LAGM and ensuring coordination among County Departments including, but not limited to: Corporation Counsel, Treasurer, Equalization, Assessor, Board of Commissioners, and their staff.

- iii. PACE Administrator: In partnering with LAGM, Oakland County agrees to have LAGM act as PACE Administrator and manage Oakland County's PACE Program. LAGM is authorized to negotiate with credit providers and PACE project participants to facilitate the use of the PACE Program and to assist PACE project applicants in obtaining financing.

c. Financing Parameters

In establishing its PACE District, Oakland County intends for PACE projects to be funded through owner-arranged private financing.

- i. There is no limit on the maximum aggregate annual amount of financing provided by private commercial lenders under the program.
- ii. The dollar amount for financing of a particular project will be established by the property owner seeking to make the property improvement(s) and the commercial lender seeking to finance the energy efficiency improvement(s), environmental hazard project(s), and/or renewable energy system(s), as approved by LAGM and the Authorized Official.
- iii. Oakland County will not issue any debt, including bonds, notes or other forms of indebtedness or provide any funding of any kind under the Program.
- iv. Oakland County is not a party to the underlying owner-arranged private financing and assumes no fiduciary responsibility regarding the underlying owner-arranged private financing.
- v. Oakland County is not responsible for managing the underlying owner-arranged private financing and will NOT fund any losses should the borrower default.
- vi. The Program is not considered a bank agreement to provide funds to Oakland County nor does it create any form of financial obligation for Oakland County.

d. Application Process and Eligibility Requirements

- i. Application Process: The application process for financing projects under the Program shall be established by LAGM. A copy of the application form is attached hereto as **SAA Appendix F**. This form may be changed or amended as necessary by LAGM.
- ii. Eligibility Requirements: The eligibility requirements for financing projects under the Program shall be established by LAGM. Eligibility requirements may be changed or amended as necessary by LAGM. A copy of the list of eligibility requirements is attached hereto as **SAA Appendix A**.

e. Financing Terms of Assessments

- i. The interest rate for PACE special assessment installments supplied by commercial lenders shall be negotiated by the parties based on current market conditions.
- ii. The maximum allowable repayment period of a PACE special assessment must be included in the PACE Special Assessment Agreement and will be determined on a project-specific basis and shall not exceed the lesser of the useful life of the Project financed by the assessment or 25 years.
- iii. The maximum dollar amount of a PACE special assessment shall be negotiated on a project-specific basis between the property owner and the entity providing the financing based upon the specific renewable energy systems, energy efficiency improvements, and environmental hazard projects included in the individual PACE Special Assessment Agreement.

f. Assessment Collection Process

- i. Within the parameters set forth herein, the Authorized Official will authorize one or more commercial lenders to provide financing to defray all or part of the cost of the Project, by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the renewable energy systems, energy efficiency improvements, water usage improvement, or environmental hazard projects.
- ii. The Authorized Official, or appropriate official, on behalf of Oakland County and without objection by the property owner, will spread the Special Assessment Roll, attached hereto as **SAA Appendix C**, to allocate one hundred percent (100%) of the PACE special assessment levy created hereby to the Special Assessment Parcel.
- iii. The PACE special assessment, as allocated by the Authorized Official, or appropriate official, on behalf of Oakland County without objection by the property owner, will be finally established against the property and the Project to be constructed on the Special Assessment Parcel. The PACE special assessment will be effective immediately upon the execution and delivery of the PACE Special Assessment Agreement by the property owner to LAGM and the County. The PACE special assessment may be paid in annual or semi-annual installments pursuant to Section 13(2) of the PACE Statute. The Authorized Official, on behalf of Oakland County, will confirm the Special Assessment Roll.

- iv. The Oakland County Delinquent Tax Revolving Fund (“DTRF”) shall not be used to advance, satisfy, or pay any delinquent installment of the PACE special assessment, and no County funds will be used to repay any PACE special assessment placed under this program. The commercial lender will waive any claim to be able to seek payment from Oakland County through the DTRF in the PACE Special Assessment Agreement.

g. Financing Program

- i. LAGM has developed and will continue to develop an active roster of financial institutions, institutional investors and other sources of private capital available to finance PACE projects in Michigan. By partnering with LAGM, Oakland County helps its constituent property owners gain access to private capital made available through the statewide program.
- ii. Oakland County authorizes the use of owner-arranged financing from commercial lenders to finance qualified Projects under the Program.

h. Reserve Fund and Fee Schedule

- i. Reserve Fund: By participating in the Lean & Green Michigan™ program, Oakland County assists its constituent property owners in taking advantage of any and all appropriate loan loss reserve and gap financing programs of the Michigan Economic Development Corporation (“MEDC”) and other federal and state entities. Such financing mechanisms can be used to finance a reserve fund if deemed necessary and appropriate by Oakland County. The Program is not considered a bank agreement to provide funds to Oakland County nor does it create any form of financial obligation on Oakland County.
- ii. Fee Schedule: All application, administration and program fees are collected from the record owner by LAGM. Oakland County will have no obligation whatsoever in providing any application, administration, or program fees for the initiation or management of the private lender debt. Administration and program fees will be determined on a project-specific basis and will depend on the size, nature and complexity of the project(s) and financing mechanism(s) involved. A copy of the current LAGM administration and program fees is published by LAGM in its PACE Program Manual available upon request and at LAGM’s website.

i. Useful Life

- i. The maximum length of time allowable for repayment of a PACE assessment shall not exceed the lesser of the useful life of the Project paid for by the assessment or 25 years and will be determined on a project-specific basis by LAGM.
- ii. Projects involving multiple energy efficiency improvements, renewable energy systems, or environmental hazard improvements may aggregate the useful life of each improvement to determine an overall useful life figure for financing purposes. In aggregating the improvements, the property owner must appropriately weigh each improvement's dollar cost.
- iii. Oakland County will bear no responsibility in determining the viability of the efficiency improvements assisting in the funding of the underlying debt service arrangement agreed to by LAGM, the lender and /or borrower, or the borrower's ability to fund the debt service should the efficiencies anticipated not occur.

j. Property Eligibility Parameters

- i. The ratio of the amount of the assessment to the market value of the property must be appropriate and shall be set forth in the PACE Special Assessment Agreement for each project. Additionally, the overall indebtedness on the property must be appropriate.
- ii. In calculating the appropriate ratios, the property owner and the lender providing the financing may determine the market value of the property using either: 1) the market value of the property before the Project as agreed to by the property owner and the lender providing the financing using a proper measure such as a recent appraisal or two times the State Equalized Value; or 2) the market value of the property upon completion of the Project as agreed to by the property owner and the lender providing the financing using a proper measure such as an appraisal of the "as completed" value of the property.
- iii. In calculating the appropriate ratio of the amount of the assessment to the market value of the property, the cost of the Project (excluding closing costs and interest) shall generally not exceed 25% of the market value of the property.
- iv. In calculating the appropriate ratio of total indebtedness on the property to the market value of the property, prior debt secured by the property plus the PACE loan shall generally not exceed 90% of the market value of the property.

- v. LAGM and the Authorized Official may permit projects that exceed these values for reasonable cause on a case-by-case basis, and in such cases must include a letter of explanation as an addendum to the Special Assessment Agreement.

k. Mortgage Consent Requirement

If a property is subject to a mortgage, the record owner must obtain written consent from the mortgagee to participate in the Program. Proof of lender consent must be submitted before a Special Assessment Agreement may be executed. A copy of the lender consent to participate in a PACE Program form is attached as **SAA Appendix H**.

l. Marketing and Education Program

- i. LAGM has developed an ongoing marketing and participant education program. By partnering with Lean & Green Michigan™, Oakland County gains access to this program and agrees to collaborate with LAGM in promoting the Program and educating property owners in Oakland County about opportunities to save energy, save money and improve their property value.
- ii. Subject to LAGM agreeing to and executing Oakland County's Servicemark license agreement, Oakland County authorizes LAGM the non-exclusive right to use its Servicemarks, as previously provided (hereinafter "Marks"), on any marketing materials, electronic presentations, and on its web site www.leanandgreenmi.com relating to the adoption and implementation of the PACE program in Oakland County. The Marks must be used by LAGM with no variations of color, design or proportion. LAGM shall not use the Marks for any other purpose. LAGM acknowledges that Oakland County has intellectual property rights in the Marks. Nothing in this Agreement gives LAGM any right, title, or interest in the Marks. Oakland County may rescind authorization to use the Marks for any reason upon prior written notice to LAGM. Within ten (10) business days of receipt of the notice of intent to rescind authorization, LAGM shall cease using the Marks on its web site, marketing materials or communications.
- iii. More information regarding the Program can be obtained at LAGM's website: www.leanandgreenmi.com or at Oakland County's website at: www.oakgov.com.

m. Debt Service Reserve Fund

Oakland County is not utilizing a Debt Service Reserve Fund and will not offer any lending or financing to any property owner under this Program.

n. Quality Assurance and Antifraud Measures

LAGM includes the following quality assurance and antifraud measures:

- i. Business integrity review on clean energy contractors conducted by Michigan Saves.
- ii. Background check process on clean energy contractors conducted by Michigan Saves.
- iii. Other general due diligence as may be necessary or required.

o. Energy Audit or Energy Modeling Requirement

As set forth in the PACE Program Application, a baseline energy audit or energy modeling must be completed before a Project is approved. Each contract should provide adequate funding for monitoring and verification of energy savings throughout the life of the special assessment.

p. Savings-to-Investment Ratio and Savings Guarantee Requirements

- i. Unless waived by the record owner, Projects financed with more than \$250,000 require ongoing measurements to establish energy savings and a guarantee from the contractor that the energy project will achieve a savings to investment ratio greater than one.
- ii. This requirement may be waived by the record owner and is not applicable to a new construction energy project.

q. Michigan Uniform Energy Code Requirements

New Construction Energy Project(s) will demonstrate that the project will result in a building or other structure that exceeds the applicable requirements of the Michigan Uniform Energy Code and the Michigan Administrative Code.

r. Right to Review Oakland County PACE Program Documents

Oakland County reserves the right to review records relating to the Oakland County PACE Program in possession of LAGM with prior written notice at any time during the term of this Program.

s. Amendments to the Program

- i. A public hearing is not required to amend this Program Report, except for any changes to the aggregate annual amount of financing provided by Oakland County.
- ii. LAGM may propose amendments to the Oakland County PACE Program Report as needed, in consultation with the Oakland County Program Manager and associated County Departments.
- iii. Any amendment(s) to the Oakland County PACE Program requires approval by the Oakland Board of Commissioners.

t. Oakland County PACE Program and PACE District

The Oakland County PACE Program and PACE District shall coincide with Oakland County's jurisdictional boundaries.

u. Assessment as Lien Against Property

In accordance with Section 13(1) of the PACE Statute:

- i. An assessment imposed under the PACE Program, including any interest on the assessment and any penalty, shall constitute a lien against the property on which the assessment is imposed until the assessment, including any interest or penalty, is paid in full.
- ii. The lien runs with the property and has the same priority and status as other property tax and assessment liens.
- iii. The County has all rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes.
- iv. When the assessment, including any interest or penalty, is paid, the County shall remove the lien from the property.

v. Joint Implementation

In accordance with Section 19(1) of the PACE Statute, the County may join with any other local unit of government, or with any person, or with any number or combination thereof, by contract or otherwise as may be permitted by law, for the implementation of the County's PACE Program, in whole or in part.

APPENDIX A
SPECIAL ASSESSMENT AGREEMENT TEMPLATE

SPACE ABOVE FOR RECORDING PURPOSES

**PACE SPECIAL ASSESSMENT AGREEMENT
(OWNER-ARRANGED FINANCING)**

by and among

OAKLAND COUNTY, MICHIGAN

and

PROPERTY OWNER

and

PACE LENDER

Dated: _____

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APPENDIX:

APPENDIX A:	PROGRAM ELIGIBILITY REQUIREMENTS
APPENDIX B:	SPECIAL ASSESSMENT PARCEL DESCRIPTION
APPENDIX C:	SPECIAL ASSESSMENT ROLL
APPENDIX D:	PAYMENT SCHEDULE
APPENDIX E:	DESCRIPTION OF IMPROVEMENTS
APPENDIX F:	LEAN & GREEN MICHIGAN PACE PROGRAM APPLICATION
APPENDIX G:	FORM OF CERTIFICATE OF ASSIGNMENT
APPENDIX H:	FORM OF LENDER CONSENT
APPENDIX I:	FORM OF WAIVER OF SIR AND SAVINGS GUARANTEE
APPENDIX J:	INSURANCE REQUIREMENTS

Oakland County PACE Special Assessment Agreement

PACE SPECIAL ASSESSMENT AGREEMENT (OWNER-ARRANGED FINANCING)

THIS PACE SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made this [DATE] between Oakland County, a Michigan constitutional corporation (the “County”), whose address is 1200 North Telegraph, Pontiac, Michigan 48341, [PROPERTY OWNER], a Michigan limited liability company (the “Property Owner”), whose address is [ADDRESS], and [PACE LENDER], a Michigan limited liability company (the “Lender”), whose address is [ADDRESS].

RECITALS:

A. Pursuant to the PACE Statute and a resolution adopted by the Oakland County Board of Commissioners on November 10, 2016, the County has established the PACE Program as described in the PACE Program Report and has created the Special Assessment District under the PACE Program for the purpose, *inter alia*, of assisting a record owner of property within the Special Assessment District in obtaining Owner-Arranged Financing from a commercial lender to defray the costs of one or more Project on the property.

B. Under the PACE Statute, the County is authorized, pursuant to an agreement with the record owner of property within the Special Assessment District, to impose a special assessment on the property to be benefitted by the Project in order to secure and provide for the repayment of the Owner-Arranged Financing.

C. The Property Owner desires to undertake a certain Project on commercial, industrial, or agricultural property of the Property Owner located within the Special Assessment District, as described herein, and has obtained a commitment from the Lender to make the Loan to the Property Owner to defray its cost.

D. In order to induce the Lender to make the Loan to the Property Owner, the Property Owner has requested that the County enter into this Agreement to impose a special assessment on the property to be benefitted by the Projects, in accordance with the PACE Statute, which special assessment will secure and provide for repayment of the Loan from the Lender.

E. Pursuant to the PACE Statute and the PACE Program, the County is authorized to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, the County, the Property Owner and the Lender agree that:

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ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms used in this Agreement and Recitals shall have the meanings stated in the PACE Statute and as stated immediately below, except to the extent the context in which they are used requires otherwise:

(a) “**Agreement**” means this PACE Special Assessment Agreement as same may be amended and/or restated.

(b) “**Applicable Interest Rate**” means the per annum rate of interest specified in the Loan Documents at which the Special Assessment Roll bears interest as calculated by the Lender in accordance with the provisions of Section 4.01 of this Agreement.

(c) “**Assessor**” means the of the appropriate individual, or their designee, serving as the assessor of the local jurisdiction in which the Special Assessment Parcel is located, within Oakland County.

(d) “**Authorized Official**” means the Chairperson of the Board of Commissioners, or the Chairperson’s designee, who is authorized to exercise the authority of an Authorized Official under the terms of the PACE Program Report.

(e) “**Default Rate**” means the rate(s) dictated for counties by the Michigan General Property Tax Act of 1893 as amended (MCL 211.78a and 211.78g).

(f) “**Energy Efficiency Improvement**” means the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; and any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the County.

(g) “**Energy Project**” means any of the following: an Energy Efficiency Improvement; or the acquisition, installation, replacement or modification of a Renewable Energy System or anaerobic digester.

(h) “**Event of Default**” has the meaning set forth in Section 7.01 hereof.

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(i) **“Environmental Hazard Project”** means the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, including, but not limited to, measures to do any of the following: mitigate lead, heavy metal, or PFAS contamination in potable water systems; mitigate the effects of floods or drought; increase the resistance of property against severe weather; mitigate lead paint contamination.

(j) **“Force Majeure”** means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.

(k) **“General Property Tax Act”** means the General Property Tax Act, Act 206, Public Acts of Michigan, 1893, as amended.

(l) **“Improvements”** means the Renewable Energy Systems, Energy Efficiency Improvements, water usage improvements, and Environmental Hazard Projects being undertaken by the Property Owner on the Special Assessment Parcel as described in **Appendix E** attached hereto.

(m) **“LAGM”** shall mean Lean & Green Michigan, LLC, a Michigan limited liability company.

(n) **“Lean & Green Michigan™”** means a statewide property assessed clean energy program open to all local units of government operated as a public-private partnership by LAGM in order to facilitate property assessed clean energy program-financed transactions.

(o) **“Lender”** has the meaning set forth in the preamble.

(p) **“Loan”** means the loan obtained by the Property Owner from the Lender pursuant to Owner-Arranged Financing to defray a portion of the cost of the Improvements under the terms of the Loan Documents.

(q) **“Loan Documents”** means the Loan Agreement, dated as of [DATE], between the Property Owner and the Lender and any and all exhibits or attachments thereto, including any documents amending, restating, replacing, extending or otherwise modifying the Loan Agreement and all documents provided to the Lender from time to time by the Property Owner to evidence or secure the Loan as required pursuant to the terms of the Loan Agreement.

(r) **“Owner-Arranged Financing”** means the process by which a property owner secures financing for improvements to its property that does not involve bonds or any other form of funding provided by the County.

(s) **“PACE Program”** shall mean the property assessed clean energy program implemented by the County pursuant to the PACE Statute and the PACE Program Report to

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stimulate Renewable Energy Systems, Energy Efficiency Improvements, water usage improvement, and Environmental Hazard Projects in conformity with the PACE Statute.

(t) “**PACE Program Report**” means the Lean & Green Michigan™ PACE Program Report approved by the Oakland County Board of Commissioners on April 24, 2024, including any amendments or changes thereto made before the date of this Agreement.

(u) “**PACE Statute**” means Act 270 of the Michigan Public Acts of 2010, as amended, commonly referred to as the Property Assessed Clean Energy Act, MCL 460.931 *et seq.*

(v) “**Payment Schedule**” has the meaning set forth in Section 4.01 hereof.

(w) “**Project**” means an Environmental Hazard Project or Energy Project.

(x) “**Property Owner**” has the meaning set forth in the preamble.

(y) “**Renewable Energy System**” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one (1) or more renewable energy resources to generate electricity, gas, or other power. Renewable Energy System includes a biomass stove but does not include an incinerator or digester.

(z) “**Special Assessment**” means the money obligation created pursuant to this Agreement with respect to the Special Assessment Parcel used to defray the cost of the Improvements and which shall, together with all interest, charges and penalties which may accrue thereon, be a lien upon the Special Assessment Parcel of the same priority and status as other property tax liens and other assessment liens as provided in the PACE Statute until such amounts have been paid in full.

(aa) “**Special Assessment District**” means the Special Assessment District established as part of the PACE Program pursuant to the PACE Statute.

(bb) “**Special Assessment Parcel**” means the property located in the Special Assessment District to which one hundred percent (100%) of the Special Assessment has been spread by the County and which is more particularly described on the attached **Appendix B**.

(cc) “**Special Assessment Roll**” has the meaning set forth in Section 4.01 hereof.

ARTICLE II DESCRIPTION OF IMPROVEMENTS

Section 2.01 Description of Improvements. The Improvements to be acquired, constructed, installed and financed by the Property Owner under the PACE Program are described in **Appendix E** attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, **Appendix E** may be amended or supplemented from time to time. Such additional Improvements must meet all the eligibility criteria of the PACE Program and the PACE

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Program Report and may be added to the original application as a modification, or submitted as a new project, at the discretion of LAGM and the Authorized Official.

ARTICLE III COVENANTS OF THE PROPERTY OWNER

Section 3.01 Acquisition, Construction and Installation of Improvements.

(a) The Property Owner covenants and agrees to acquire, construct and install the Improvements as described in **Appendix E** on the Special Assessment Parcel described on **Appendix B** in full conformity with all applicable laws and regulations and in compliance with the PACE Program eligibility requirements set forth in **Appendix A**. If the proceeds of the Loan are not sufficient to pay the costs of the Improvements as required, the Property Owner agrees to complete the Improvements and to pay that portion of the costs of the Improvements in excess of the amount of the Loan. The Property Owner acknowledges and agrees that the County makes no representation, either express or implied, that the proceeds of the Loan will be sufficient to pay the total costs of the Improvements, and the Property Owner agrees that if, after exhaustion of the proceeds of the Loan, the Property Owner shall be required to pay any portion of the costs of the Improvements from its own funds, the Property Owner shall not be entitled to any reimbursement therefore from the County or from the Lender, nor shall the Property Owner be entitled to any abatement or diminution of the amount of the Special Assessment created by this Agreement or of any interest, fees, charges, or penalties which may accrue thereon.

(b) To provide for monitoring and verification of the Project, the Property Owner has created an Energy Star Portfolio Manager account and has linked this account to the LAGM Energy Star Portfolio Manager account. The Property Owner has entered all electricity bills for the Special Assessment Parcel for the year (12 consecutive months) immediately preceding the installation of the Project. The Property Owner further agrees to enter its electricity bills for the duration of the Agreement on an annual basis. Annual electricity bills for the Special Assessment Parcel will be entered into the Property Owner's Energy Star Portfolio Manager account by January 31 of each year after the year for which the electricity bills are to be entered. The County shall have no responsibility and makes no representation regarding the Project, and shall have no responsibility and makes no representation regarding the Owner-Arranged Financing, except as expressly stated in this Agreement.

ARTICLE IV PACE SPECIAL ASSESSMENT

Section 4.01 PACE Special Assessment Created.

(a) At the request of the Property Owner, the County hereby determines to assist the Property Owner in obtaining the Loan to defray a portion of the cost of the Improvements on the Special Assessment Parcel by the levy of the Special Assessment upon the Special Assessment Parcel, which the Authorized Official on behalf of the County finds is especially benefited in proportion to the cost of the Improvements. The Special Assessment created hereby has been

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spread by the Assessor on behalf of the County on the Special Assessment Roll attached hereto as **Appendix C** (the “Special Assessment Roll”), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Special Assessment to the Special Assessment Parcel.

(b) The Special Assessment, as allocated by the Authorized Official with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Parcel as described on the attached **Appendix B** in the principal amount of [LOAN AMOUNT] as stated on the Special Assessment Roll. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner. The Special Assessment shall be paid by the Property Owner in [NUMBER] semi-annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix D** (the “Payment Schedule”). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Authorized Official on behalf of the County. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and delivery of this Agreement at the Applicable Interest Rate, as calculated by the Lender in accordance with the terms of the Loan Documents, payable by the Property Owner semi-annually on each date on which any installment of the Special Assessment is due in accordance with the Payment Schedule. Notwithstanding the foregoing, (i) if any installment of the Special Assessment or any interest due and payable on the Special Assessment Roll is not paid by the Property Owner when and as the same shall become due and payable in accordance with the provisions of this Section 4.01 or (ii) any “event of default” under the Loan Documents has occurred and is continuing, the unpaid amount of the Special Assessment Roll shall bear interest at the Default Rate as calculated by the Lender in accordance with the terms of the Loan Documents, for as long as such amounts remain unpaid or for so long as such “event of default” under the Loan Documents exists and is continuing. The County, the Property Owner and the Lender agree that the Lender shall be solely responsible for the determination from time to time of the Applicable Interest Rate and the Default Rate and the amount of interest due and payable by the Property Owner on the Special Assessment Roll on each day on which interest thereon is due and payable as provided in this Agreement, and the Lender’s determination thereof shall be binding on the Property Owner absent manifest error. The Property Owner and the Lender agree that the County shall under no circumstance have any obligation to determine the Applicable Interest Rate or the Default Rate or to calculate the amount of any interest payment due on the Special Assessment Roll as provided in this Agreement, and the County may conclusively rely upon the Lender’s determinations thereof for the purpose of exercising and discharging all of the County’s rights and obligations under this Agreement. The Lender agrees to provide, or cause to be provided, notice to the Property Owner and the County of the determinations of the Applicable Interest Rate and the Default Rate, as applicable, pursuant to this Section 4.01(b) at such times, and from time to time, as the Property Owner or the County may request.

Section 4.02 Assignment of Special Assessment Payments to Lender. At the request of the Property Owner and the Lender, and pursuant to Section 9(g)(iii) of the PACE Statute, the County hereby irrevocably assigns to the Lender its right to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01(b) of this Agreement. In pursuance of the

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foregoing, the County, the Property Owner and the Lender agree that, except as provided in Section 4.05 of this Agreement, (i) all installments of the Special Assessment, whether payable in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable upon the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, shall be paid by the Property Owner directly to the Lender when due at such address in the United States as may be designated by the Lender in writing to the Property Owner and the County; (ii) the County shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll; and (iii) absent receipt by the County of written notice from the Lender of a payment default in accordance with Section 4.05 hereof, the County shall be entitled to conclusively presume that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll and any penalties, fees, or charges on the Special Assessment have been made by the Property Owner to the Lender when due as required by the terms of this Agreement.

Section 4.03 Property Owner's Consent to Special Assessment; Waiver.

(a) The Property Owner hereby irrevocably consents to and confirms the creation of the Special Assessment Roll and the levy of the Special Assessment established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING AND DEFENSES TO, THE LEGALITY, VALIDITY, ENFORCEABILITY OR COLLECTABILITY OF THE SPECIAL ASSESSMENT, including, but not limited to, claims arising from, relating to or otherwise based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special Assessment Roll and the Payment Schedule, the County's right to place the Special Assessment lien on the Special Assessment Parcel, any foreclosure action taken by the County regarding the Special Assessment Parcel, the collectability and due dates of the Special Assessment installments and interest due and payable on the Special Assessment Roll, or any other theory or claim. The Property Owner further waives notice of hearing and the right to file objections if and to the extent such rights exist under any special assessment ordinance of the County.

(b) Following the signing of this Agreement, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of the Special Assessment, and the Property Owner, for itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Special Assessment Parcel, hereby irrevocably waives its rights to contest the Special Assessment with any adjudicative body having jurisdiction over the subject matter, including, but not limited to, the Michigan Tax Tribunal.

(c) In addition to any conditions, covenants, warranties and representations specified in the Loan Documents, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its

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interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the PACE Lender with the Register of Deeds of Oakland County, State of Michigan.

(d) The Property Owner agrees that it, its successors and assigns shall, during the term of this Agreement and the Special Assessment, pay all ad valorem real property taxes and assessments levied against the Special Assessment Parcel when due and the Property Owner specifically waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Parcel, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to property owners in the County.

(e) The County agrees that following (i) payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges, fees, and penalties which may accrue thereon, and (ii) receipt by the County of written acknowledgment from the Lender that the Special Assessment, together with all accrued interest on the Special Assessment Roll, and all other interest, charges, fees, and penalties which may accrue thereon, has been paid to the Lender in full, and (iii) an attestation by an authorized officer of the Lender that the statements contained in the foregoing notice are true, correct, and complete as of the date of such notice, it will promptly execute and deliver documentation discharging the lien of the Special Assessment on the Special Assessment Parcel. Until the Special Assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Parcel, as a condition of closing on such purchase, shall execute and deliver to the County a written notice: (i) acknowledging the principal amount unpaid and outstanding on the Special Assessment; (ii) agreeing to the assumption of the liability to pay the Special Assessment, and any interest charges, fees, or penalties which may accrue thereon, on a timely basis, when due, until the remaining balance and interest on said Special Assessment has been paid in full; (iii) acknowledging that the title insurance policy will state that the Special Assessment has not been paid at time of closing thereon; and (iv) agreeing to pay to the Lender at or prior to the close of the purchase all past due installments of the Special Assessment and all past due payments of interest on the Special Assessment Roll. The representations set forth in such written notice shall be enforceable at law and in equity, including without limitation, by way of specific performance.

Section 4.04 Lien. The Special Assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be a lien upon the Special Assessment Parcel for the amount of the Special Assessment and all interest, charges, fees, and penalties that may accrue thereon. Such lien shall be of the same character and effect as liens created pursuant to the ordinances of the County for County taxes and shall be treated as such with respect to procedures for collection as set forth in the General Property Tax Act and the ordinances of the County, including accrued interest, charges, fees, and penalties. The Special Assessment confirmed hereby is a debt to the County from the Property Owner and its successors in interest, lessees, purchasers and assigns. The right of the County to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01, has been irrevocably assigned by the County

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to the Lender in accordance with the provisions of Section 4.02 of this Agreement. No judgment or decree shall destroy or impair any lien of the County upon the premises assessed for such amount of the Special Assessment as may have been equitably or lawfully charged and assessed thereon. Failure of the Property Owner or any subsequent property owner to receive any notice required to be sent under the provisions of the ordinances of the County or this Agreement shall not invalidate the Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement. Notwithstanding any term of this Agreement to the contrary, no delinquent taxes and penalties and interest thereon or fees and costs related thereto or the collection thereof relating to the Special Assessment Parcel shall have priority over any amounts due from any property tax or assessment liens to the County.

Section 4.05 Payment Default.

(a) If any installment of the Special Assessment or interest due on the Special Assessment Roll shall not have been paid by the Property Owner to the Lender, as assignee of the County, at the time and in the amount required by Section 4.01 hereof (a "Payment Default"), the Lender shall, within thirty (30) days following the date such sums were due and payable (the "Payment Default Date"), deliver written notice to the County stating all of the following: (i) that a Payment Default has occurred under this Agreement; (ii) the Payment Default Date; (iii) the amount of the Special Assessment that was due and payable as of the Payment Default Date and which remains unpaid and the amount of interest on the Special Assessment Roll and any penalties, fees, or charges on the Special Assessment that was due and payable as of the Payment Default Date and which remains unpaid and any penalties, fees, reasonable attorney's fees or charges owed under this Agreement or the Loan Documents (collectively, the "Payment Default Amount"); and (iv) an attestation by an authorized officer of the Lender that the statements contained in the foregoing notice are true, correct and complete as of the date of such notice. Upon receipt of such notice from the Lender, the County shall take such actions as may be required to cause the Payment Default Amount to be certified for collection on the summer or winter tax bill next succeeding the Payment Default Date, and such Payment Default Amount shall be collected at the same time and in the same manner as is prescribed for the collection of the County taxes under the General Property Tax Act and the ordinances of the County. The County may assess a fee for delinquent taxes, interest, penalties, and fees as provided under General Property Tax Act Section 211.78. Notwithstanding the foregoing provisions of this Section 4.05(a), if the County shall determine that the notice of the Lender described in this Section 4.05(a) was not received by the County in sufficient time to permit the Payment Default Amount to be placed for collection on the summer or winter tax bill next succeeding the Payment Default Date, such Payment Default Amount shall be certified for collection on the next summer or winter tax bill issued thereafter. The County shall be entitled to conclusively rely upon any notice of the Lender delivered pursuant to this Section 4.05(a) as to the existence of a Payment Default and as to the Payment Default Amount, and shall not be liable to the Property Owner or to any other person for any action taken by the County pursuant to the terms of this Agreement or otherwise in reliance upon the information contained in such notice. Absent receipt by the County of written notice from the Lender of a Payment Default in accordance with this Section 4.05(a), the County shall be entitled to presume conclusively that all installments of the Special Assessment and all payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement, and the County shall have no obligation or

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duty to include any installments of the Special Assessment on any tax bill issued by the County or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll.

(b) Oakland County hereby agrees that, pursuant to the assignment set forth in Section 4, it will cause to be paid over to the Lender all amounts received by the County Treasurer as collections of any Payment Default Amount, with the exception fees for delinquent taxes, interest, penalties, and fees as provided under General Property Tax Act Section 211.78 and assessed pursuant to Section 4.05(a) above, of the Special Assessment within forty-five (45) days of the date such sums are received by the County Treasurer. The parties hereto expressly acknowledge and agree that in no event shall Oakland County advance to the Lender the amount of any unpaid Payment Default Amount of the Special Assessment, and Oakland County shall be obligated to pay over to the Lender only such sums as are actually received by the County Treasurer as collections of any Payment Default Amount of the Special Assessment.

(c) In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Parcel or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the County or the General Property Tax Act, by Oakland County, Michigan, for the administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to Oakland County, Michigan, as their interests may appear, and shall not be deemed to have been assigned to the Lender pursuant to the terms of this Agreement or otherwise.

(d) The Lender hereby agrees and acknowledges that it shall have no right, and if such right were to be found to exist, hereby waives such right, to seek payment of any delinquent installment of the Special Assessment, and any interest, penalties, fees, or other charges, through the Oakland County Delinquent Tax Revolving Fund (“DTRF”), or any subsequent County fund which may replace the DTRF, or any other County funds.

Section 4.06 Prepayment of Special Assessment. Subject to the provisions of the Loan Documents, including, without limitation, prepayment penalties, if any, the Property Owner may, upon sixty (60) days’ written notice to the Lender and the County, prepay any installment of the Special Assessment specified in the Payment Schedule by causing to be paid to the Lender the amount of the installment to be prepaid, together with accrued interest thereon to the date of prepayment. If such prepayment of any installment is not received by the Lender on the date specified for prepayment, the Lender shall promptly deliver written notice to the County that such prepayment was not received by the Lender.

Section 4.07 Invalidity; Cure. In the event of any invalidity of the Special Assessment, the Authorized Official, at the request of the Lender, and if the County shall have received indemnity satisfactory to the Authorized Official for its costs and expenses (including reasonable attorneys’ fees), shall cause a new Special Assessment to be made for all or any part of the Improvements in accordance with the PACE Statute and the PACE Program as reasonably determined by the Authorized Official. The Property Owner, on behalf of itself and its successors in interest, lessees, purchasers, and assigns, hereby waives any objections to and agrees to the imposition of such new Special Assessment; *provided, however,* that the amount of the new

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Special Assessment shall not exceed the unpaid principal amount of the Loan at the time the new Special Assessment shall be established.

Section 4.08 County or County Treasurer Becoming Owner of the Special Assessment Parcel. In the event that Oakland County or Oakland County Treasurer takes ownership of the Special Assessment Parcel by operation of law, the County Treasurer and the Lender agree that while the lien on the Special Assessment Parcel will remain in full force and effect, and all principal, interest, penalties, fees, and other charges, either based under law or on the Loan Documents will continue to accrue during the period of time that Oakland County or Oakland County Treasurer owns the Special Assessment Parcel. No loan or special assessment payments, including interest, penalties, fees or other charges, are required to be paid or will be accrued by Oakland County or Oakland County Treasurer to the Lender. Additionally, neither Oakland County nor the Oakland County Treasurer shall be required or obligated to pay Lender any installment of the Special Assessment or the accrued interest, penalties, fees, or other charges which accrue during such time of their ownership. Any and all principal, interest, penalties, fees, and other charges which accrue during the period by which the Oakland County or Oakland County Treasurer owns the Special Assessment Parcel will, in the sole and unlimited discretion of the Lender, either be: (1) considered immediately due and payable by any person or entity who purchases the Special Assessment Parcel from Oakland County or Oakland County Treasurer, and no sale or transfer of the Special Assessment Parcel is valid unless and until all principal, interest, penalties, fees, and other charges have been paid by the subsequent owner of the Special Assessment Parcel; or (2) capitalized into the outstanding principal balance of the Special Assessment, causing the Lender to provide a revised Payment Schedule in an amount necessary to amortize the new outstanding principal balance of the Special Assessment over the remaining number of payments. The lien created by the Special Assessment shall not be extinguished or released until all necessary principal and interest payments, as well as all penalties, fees, and other charges, as determined solely by Lender, have been paid and received by Lender.

ARTICLE V CONDITIONS PRECEDENT

Section 5.01 Conditions Precedent to the County's Obligations.

The obligations of the County under this Agreement shall be subject to the satisfaction of the following conditions precedent on or prior to the date of execution and delivery of this Agreement by the County, unless waived in writing by the County:

(a) The County, the Property Owner and the Lender shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.

(b) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which the Property Owner or the County is a party, or shall be threatened in writing against the Property Owner or the County, contesting the validity or binding effect of this Agreement, the Special Assessment or the Owner-Arranged Financing contemplated hereby, or which, if adversely decided, could have a material adverse effect upon the ability of the Property Owner to pay or the County to levy the Special Assessment or to assign to the Lender the right to

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receive payments of the Special Assessment, or which could have a material adverse effect on the ability of the Property Owner or the County to comply with any of the obligations and terms of this Agreement.

(c) There shall be no ongoing breach of any of the covenants and agreements of the Property Owner required to have been observed or performed by the Property Owner under the terms of this Agreement and no Event of Default by the Property Owner, and no event which, with the passage of time or the giving of notice or both could become an Event of Default by the Property Owner under this Agreement, shall have occurred.

(d) All documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement shall have been fully completed by the Property Owner to the County's reasonable satisfaction and such Appendices shall be true, accurate and complete.

(e) The Property Owner shall meet all eligibility requirements as set forth in **Appendix A**.

(f) The Property Owner and the Lender shall have authorized, executed and delivered the Loan Documents, and the Lender shall have funded the Loan in accordance with the terms of the Loan Documents.

(g) The Property Owner shall not have filed for bankruptcy or sought the protections of any state or federal insolvency law providing protections to debtors.

(h) The Property Owner shall have obtained consent from each holder of a mortgage interest or lien upon the Special Assessment Parcel prior to the execution and delivery of this Agreement in substantially the form set forth in the PACE Program Report.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties of the County.

The County represents and warrants to the Property Owner that, as of the date of this Agreement:

(a) The execution and delivery of this Agreement has been duly authorized by the County, this Agreement binds the County, and is enforceable against the County in accordance with its terms, except as enforceability may be limited by law, bankruptcy, insolvency, fraudulent conveyance, or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principals of equity, including those relating to equitable subordination.

(b) To the best of its knowledge, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of

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any existing law, ordinance, rule, resolution or regulation to which the County is subject, or any agreement to which the County is a party or by which the County is bound, or any order or decree of any court or governmental entity by which the County is subject.

(c) There are no delinquent taxes, special assessments, or water or sewer charges on the Special Assessment Parcel that will be assessed under this Agreement; and there are no delinquent assessments on the Special Assessment Parcel under a PACE program.

Section 6.02 Representations and Warranties of the Property Owner.

The Property Owner represents and warrants to the County and the Lender that:

(a) The Property Owner is duly organized and validly existing as a limited liability company in good standing under the laws of the State of Michigan, with power under the laws of the State of Michigan to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and the Property Owner has the power and authority to own the Special Assessment Parcel and to carry out its obligation to complete the Improvements.

(b) The execution and delivery of this Agreement will not result in a violation or default by the Property Owner of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject.

(c) The Property Owner is the sole and exclusive legal and equitable title owner of fee simple title to the Special Assessment Parcel and the Improvements located, or to be located, thereon and has full legal power and authority to consent to the finalization and levying of the Special Assessment as provided herein.

(d) The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action, and this Agreement has been duly executed and delivered by the Property Owner and constitutes a valid and binding agreement enforceable against the Property Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principles of equity, including those relating to equitable subordination.

(e) Property Owner warrants and agrees that any contractual, legal, equitable, or other disputes between it and the Lender--other than matters specifically related to enforcement of property tax obligations--or the contractor involved in the Improvements, do not involve the County, and Property Owner agrees to release, discharge, and hold the County, its employees and agents, and LAGM, harmless in any such disputes, claims, or causes of action.

(f) The Property Owner, the Special Assessment Parcel and the Improvements satisfy all of the PACE Program eligibility and program requirements set forth in **Appendix A**.

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(g) The Property Owner has no knowledge of or reasonably should know of, any action, suit, proceeding or investigation pending before any court, public board or body to which the Property Owner or Oakland County is a party, or shall be threatened in writing against the Property Owner or Oakland County, contesting the validity or binding effect of this Agreement, the Special Assessment or the Owner-Arranged Financing contemplated hereby, or which, if adversely decided, could have a material adverse effect upon the ability of the Property Owner to pay or Oakland County to levy the Special Assessment or to assign to the Lender the right to receive payments of the Special Assessment, or which could have a material adverse effect on the ability of the Property Owner or Oakland County to comply with any of the obligations and terms of this Agreement.

(h) The Property Owner is not currently in breach of and has no knowledge of any ongoing breach of any of the covenants and agreements of the Property Owner required to have been observed or performed by the Property Owner under the terms of this Agreement and no Event of Default by the Property Owner, and no event which, with the passage of time or the giving of notice or both could become an Event of Default by the Property Owner under this Agreement, shall have occurred.

(i) The Property Owner has reviewed and hereby approves all documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement, which have been fully completed by the Property Owner to Oakland County's reasonable satisfaction, as true, accurate and complete.

Section 6.03 Representations and Warranties of the Lender.

The Lender represents and warrants to the County that:

(a) The Lender has experience in the market for property assessed clean energy programs and assessments and is capable of evaluating the merits and risks of its participation in the Owner-Arranged Financing contemplated by this Agreement.

(b) The Lender has made its own independent investigation of the Property Owner, the terms of this Agreement, the nature of the Special Assessment created hereby and the procedures for the collection and enforcement of the Special Assessment under this Agreement and the laws of the State of Michigan, and is not relying on the County, its agents, attorneys or employees for any of such information or with respect to the sufficiency and scope of such investigation. The Lender has not received, and is not relying on, any representations of the County with respect to the Property Owner.

(c) Lender warrants and agrees that any contractual, legal, equitable, or other disputes between it and Property Owner--other than matters specifically related to enforcement of property tax obligations--do not involve the County, and Lender agrees to release, discharge, and hold Oakland County, its employees and agents, and LAGM, harmless in any such disputes, claims, or causes of action.

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ARTICLE VII DEFAULT

Section 7.01 Property Owner Event of Default. If the Property Owner shall default in the performance of any covenant or agreement on its part contained in this Agreement and such default shall continue for a period of ten (10) days after written notice thereof has been given to the Property Owner by the County, an “Event of Default” shall be deemed to have occurred under this Agreement.

Section 7.02 Remedies for Property Owner Event of Default. Upon the occurrence of an Event of Default as provided in Section 7.01 hereof, the County, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or have the right to recover from the Property Owner any damages incurred by the County and any costs incurred by the County in enforcing or attempting to enforce this Agreement or the Special Assessment, including attorneys’ fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that neither the County nor the Oakland County Treasurer shall be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 7.02 upon the occurrence of an Event of Default hereunder, and that its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be limited to those obligations set forth in Article IV of this Agreement. The Lender acknowledges that neither the Special Assessment nor any installment thereon can be accelerated. Future installments of the Special Assessment shall continue to be a lien on the Special Assessment Parcel in accordance with the General Property Tax Act until notice has been provided to Oakland County by Lender that such amounts have been paid in full, including an attestation by an authorized officer of the Lender that the statements contained in the foregoing notice are true, correct and complete as of the date of such notice.

Section 7.03 The County Default. If the County materially defaults in the performance of any covenant or agreement on its part contained in this Agreement and shall fail to proceed in good faith to cure such material default within sixty (60) days after written notice thereof has been received by the County from the Property Owner or the Lender, a “County Default” shall be deemed to have occurred under this Agreement.

Section 7.04 Remedy for County Default. Upon the occurrence of a County Default as provided in Section 7.03 hereof, and if the Property Owner or the Lender, as the case may be, shall have otherwise fully performed all of its obligations hereunder, the Property Owner or the Lender, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but neither the Property Owner nor the Lender shall have any claim or the right to recover money damages against the County, including, but not limited to, any costs or fees (including attorneys’ fees and/or other legal expenses) incurred by the Property Owner or the Lender in enforcing or attempting to enforce this Agreement. Neither the occurrence of a County Default nor the institution of any proceeding

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or the exercise of any remedy upon the occurrence of a County Default shall negate or diminish the obligations of the Property Owner hereunder to pay the installments of the Special Assessment and interest accrued on the Special Assessment Roll and all other costs hereunder when the same shall become due and payable.

Section 7.05 Indemnification of Oakland County.

(a) By Property Owner. Except to the extent claims arise from Oakland County's gross negligence or intentional misconduct, Property Owner agrees to indemnify, defend and save harmless Oakland County against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against Oakland County because of any of the following:

(1) Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to the extent it is attributable, to the Property Owner, or any of its personnel, employees, consultants, agents, or any entities associated or affiliated with the Property Owner (directly or indirectly) or any subsidiary to the Property Owner now existing, or to be created, its agents and employees for whose acts any of them might be liable.

(2) Any failure by the Property Owner, or any of its employees to perform their obligations either implied or expressed under this Agreement.

Nothing in this article shall be deemed to relieve the Property Owner of its duties to defend Oakland County, as specified, pending a determination of the liabilities of the Property Owner, by legal proceeding or agreement. Oakland County shall cooperate with the Property Owner in the defense against the suit. In no event shall the Property Owner make any admission of guilt or liability on behalf of Oakland County without Oakland County's prior, written consent.

(b) By Lender. Except for claims arising from Oakland County's gross negligence, Lender agrees to indemnify, defend and save harmless Oakland County against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against Oakland County because of any of the following:

Any gross negligent or tortious act, error or omission held in a court of competent jurisdiction to be attributable in whole or in part to the Lender, or any of its personnel, employees, consultants, agents, or any entities associated or affiliated with the Lender (directly or indirectly) or any subsidiary to the Lender now existing, or to be created, their agents and employees for whose acts any of them might be liable.

Nothing in this article shall be deemed to relieve Lender of its duties to defend Oakland County, as specified, pending a determination of the liabilities of the Lender, by legal proceeding or agreement. The County shall cooperate with Lender in the defense against the suit. In no event

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shall Lender make any admission of guilt or liability on behalf of Oakland County without Oakland County's prior, written consent.

For purposes of these provisions, the term "County" includes the County of Oakland and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents, employees, and elected or appointed officials.

This indemnity must not be construed as a waiver of any governmental immunity Oakland County, its agencies, or employees, has as provided by statute or modified by court decisions.

Section 7.06 Waiver. Failure of any party hereunder to act upon discovery of a default or to act upon the existence of an Event of Default shall not constitute a waiver of the right to pursue the remedies provided herein.

Section 7.07 Acknowledgment. Notwithstanding any term of this Agreement or any other document or instrument relating to the subject matter hereof, Property Owner and Lender acknowledge and agree that Oakland County is not issuing any debt, including bonds, notes or other forms of indebtedness or providing any funding of any kind under the PACE Program or this Agreement, is not a party to the underlying Owner-Arranged Financing between Property Owner and Lender and assumes no fiduciary responsibility regarding the underlying Owner-Arranged Financing private financing, is not responsible for managing the underlying Owner-Arranged Financing, and has no obligation to, and will not, fund any losses should the Lender default in the performance of its obligations under this Agreement, any Loan Documents, or otherwise fail to comply with any law or ordinance of any nature. The PACE Program is not considered a bank agreement to provide funds to Oakland County nor does it create any form of financial obligation for Oakland County.

Section 7.08 Insurance. At all times during the term of this Agreement (as defined in Section 8.01 "Term" below), Property Owner and Lender shall obtain and maintain insurance according to the requirements listed in **Appendix I**.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Term. Except as otherwise provided in this Agreement, the terms of this Agreement shall commence on the date first written above and shall terminate at such time as the Special Assessment liability shall have been fully satisfied as provided in Section 4.03(e) hereof.

Section 8.02 Assignment.

(a) Except as otherwise provided herein and as provided in Section 8.02(b) hereof, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of the other parties hereto excepting as otherwise expressly provided herein.

Oakland County PACE Special Assessment Agreement

With a copy to: Oakland County Program Administrator
Lean & Green Michigan
3400 Russell Street, Suite 255
Detroit, Michigan 48202

If to the Property Owner: **PROPERTY OWNER
ADDRESS**

With a copy to: **PACE LENDER
ADDRESS**

With a copy to: Oakland County PACE Administrator
Lean & Green Michigan
500 Temple Street, Suite 6270
Detroit, MI 48201

If to the Lender: **PACE LENDER
ADDRESS**

With a copy to: Oakland County PACE Administrator
Lean & Green Michigan
500 Temple Street, Suite 6270
Detroit, MI 48201

Section 8.04 Amendment and Waiver No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other parties hereto.

Section 8.05 Entire Agreement. This Agreement constitutes the entire agreement between the County, on the one hand, and the Lender and the Property Owner, on the other hand. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, between the County, on the one hand, and the Lender or the Property Owner, on the other hand.

Section 8.06 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Oakland County PACE Special Assessment Agreement

Section 8.07 Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

Section 8.08 Applicable Law; Venue. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan. All parties consent to the personal jurisdiction of any competent court in Oakland County, Michigan, for any action arising out of this Agreement. Parties agree that it will not commence any action against the County because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Oakland, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

Section 8.09 Mutual Cooperation. Each party to this Agreement shall take all actions required of it by the terms of this Agreement as expeditiously as possible and shall cooperate to the fullest extent possible with the other parties to this Agreement. Each party to this Agreement shall exercise reasonable diligence in reviewing, approving, executing and delivering all documents necessary to accomplish the purposes and intent of this Agreement. Each party to this Agreement also shall use its best efforts to assist the other parties to this Agreement in the discharge of its obligations hereunder and to assure that all conditions precedent to the financing arrangements are satisfied.

Section 8.10 Binding Effect; No Third-Party Beneficiary. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns. In no event shall the provisions of this Agreement be deemed to inure to the benefit of or be enforceable by any third party, except for permitted assigns.

Section 8.11 Force Majeure. No party hereto shall be liable for the failure to perform its obligations hereunder if said failure to perform is due to Force Majeure. Said failure to perform shall be excused only for the period during which the event giving rise to said failure to perform exists; *provided, however*, that the party seeking to take advantage of this Section shall notify the other party in writing, setting forth the event giving rise to said failure to perform, within ten (10) business days after the occurrence of said event.

Section 8.12 Merger. This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Parties have not made any representations except those expressly set forth. No rights or remedies are, or will be acquired by any of the parties by implication or otherwise unless set forth.

Section 8.13 Severability. If any provision of this agreement or the application to any person or circumstance is, determined to be invalid or unenforceable by means of law, the remainder of the agreement will remain in full force and effect.

Oakland County PACE Special Assessment Agreement

[SIGNATURES ON THE FOLLOWING PAGE]

Oakland County PACE Special Assessment Agreement

IN WITNESS WHEREOF, Oakland County, [PROPERTY OWNER], and [LENDER] have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

[PROPERTY OWNER]

Signature

By:

Its:

State of Michigan)
) ss
County of Oakland)

The foregoing instrument was acknowledged before me this ____ day of _____, 202X, by _____ the Authorized Signatory of [PROPERTY OWNER] on behalf of [PROPERTY OWNER].

Notary Public

_____ County, Michigan

My commission expires _____

Oakland County PACE Special Assessment Agreement

IN WITNESS WHEREOF, Oakland County, [PROPERTY OWNER], and [LENDER] have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Oakland County

Signature
By: David T. Woodward
Its: Chairman, Board of Commissioners

State of Michigan)
) ss
County of Oakland)

The foregoing instrument was acknowledged before me this _____ day of _____, 202X, by David T. Woodward, Chairman, Board of Commissioners, on behalf of Oakland County.

Notary Public
_____ County, Michigan
My commission expires _____

Oakland County PACE Special Assessment Agreement

APPENDIX A

PROGRAM ELIGIBILITY CHECKLIST

Property is privately owned commercial, industrial, agricultural, or multifamily residential with 4 or more dwelling units, real property within the County's jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g).

There are no delinquent ad valorem taxes, special assessments, or water or sewer charges on the property. The Authorized Official at his discretion may disqualify properties that although not currently delinquent, have been delinquent within six months of the application's submission. MCL 460.941(2)(a).

There are no delinquent assessments on the property under a PACE program. MCL 460.941(2)(b).

The term of assessment shall not exceed the lesser of the useful life of the Project paid for by the assessment or 25 years. Projects that consist of multiple energy projects or environmental hazard projects with varying lengths of useful life may blend the lengths to determine an overall assessment term that does not exceed the useful life of the improvements in aggregate. MCL 460.939(i).

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. MCL 460.939(j).

Written consent from the mortgage holder must be obtained if the property is subject to a mortgage. MCL 460.939(k).

A baseline energy audit or energy modeling must be conducted for the Project on property that is approved by LAGM. Such approval may be granted retroactively if the audit meets the standards of LAGM. MCL 460.939(o).

For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). The performance guarantee must meet the standards set by LAGM, and include financial and logistical arrangements for ongoing measurement and verification of energy savings. This requirement may be waived by the Property Owner and is not applicable to new construction energy project. MCL 460.939(p).

Oakland County PACE Special Assessment Agreement

APPENDIX B

SPECIAL ASSESSMENT PARCEL DESCRIPTION

Parcel Number:

Address:

LEGAL DESCRIPTION:

Oakland County PACE Special Assessment Agreement

APPENDIX C

SPECIAL ASSESSMENT ROLL

PACE Project Special Assessment

Parcel Number:

Address:

City:

Owner:

Assessment:

Percent:

I certify that the above is the special assessment roll created for the PACE project referenced in this document in the applicable county, city, village, or applicable entity in the State of Michigan, subject to payment of the special assessment as outlined in Appendix C of this document.

Dated

Oakland County PACE Special Assessment Agreement

APPENDIX D

**PAYMENT SCHEDULE
(TBD)**

Oakland County PACE Special Assessment Agreement

APPENDIX E

DESCRIPTION OF IMPROVEMENTS

APPENDIX F

PACE Program Application

Property and Property Owner Information

1. **Property/Parcel Legal Name(s)** (as they appear on property tax records)

Parcel #: _____
Address: _____
Owner: _____

2. **Property Type** (double-click to check all that apply)

- Agricultural**
- Commercial** (including multifamily with 4 or more units)
 - Type of commercial property - _____
- Industrial**
- Nonprofit**

3. **Property Record Owner(s) Contact Information**

Property Owner/Company Name: _____
Signatory Name: _____
Address: _____
E-mail Address: _____
Telephone Number: _____

4. **Property Owner(s) Type**

- Individual LLP LLC
- Corporation 501(c)3 Other _____

5. **Property Valuation**

State Equalized Value (SEV): \$ _____
Date of SEV: _____
Valuation (per Appraisal): \$ _____
Date of Appraisal: _____

6. **Existing Liens Against Property** (tax, special assessment, water or sewer charges, etc.)

Amount	Type	End Date
\$ _____	_____	_____
\$ _____	_____	_____

Total Dollar Amount of Liens Against Property: \$ _____

7. **Balance of Any Mortgage(s):**

	Amount of Mortgage	Name of Mortgage Holder
Mortgage	\$ _____	_____
Additional Debt on Property	\$ _____	_____

a. **Consent:** If subject to a mortgage - Consent by mortgage holder(s) must be obtained.

Oakland County PACE Special Assessment Agreement

Project Information

1. PACE Project Developer (Lean & Green Michigan can make referrals if necessary.)

Name: _____
Address: _____
E-mail Address: _____
Telephone Number: _____
Other Contractors: _____

2. Overall Project Cost: _____

3. Savings to Investment Ratio* (as provided in Savings Guarantee)

3a. Year 1: _____
3b. Overall: _____
3c. Waived _____

4. Useful Life of Project Measures: _____ years

5. User ID for Energy Star Portfolio Manager (for property): _____

PACE Loan Details

1. PACE Lender/Capital Provider (Lean & Green Michigan can make referrals if necessary.)

Name: _____
Address: _____
E-mail Address: _____
Telephone Number: _____

2. Requested Assessment Amount

Project Cost:	\$	_____
Energy Audit or Model	\$	_____
Engineering/Architect Plans	\$	_____
Building Permit Fees	\$	_____
Other (Please explain)	\$	_____
Total Assessment Amount:	\$	_____ (Total of all lines above)

3. Requested Assessment Repayment Period: _____ years

4. Interest Rate Offered by Lender: _____%

Oakland County PACE Special Assessment Agreement

APPENDIX G

FORM OF CERTIFICATE OF ASSIGNMENT

This Certificate of Assignment of the Special Assessment Agreement (“**Assignment**”), dated effective as of date, (the “**Effective Date**”), is made by **LENDER** (“**Assignor**”) to _____ (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

Agreement

1. For good and valuable consideration and the payment of [PAYMENT AMOUNT], the receipt and sufficiency of which is hereby acknowledged, confessed, stipulated and agreed upon by Assignor, Assignor ASSIGNS, BARGAINS, GIVES, SETS OVER, CONVEYS, TRANSFERS and DELIVERS to Assignee all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement entered into by Assignor, Property Owner, and _____ (the “**Transferred Interest**”), together with all of Assignor’s rights to receive payments from Property Owner attributable to the Transferred Interest arising on and after the date of this Assignment.

2. Assignor warrants that: (i) it is authorized to execute this document; (ii) it is conveying good, indefeasible title to the Transferred Interest; and (iii) the Transferred Interest is free and clear of all liens and encumbrances, and no party has any rights in or to acquire, or hold as security, or otherwise, the Transferred Interest.

3. Assignor hereby agrees to make, execute and deliver to Assignee any and all further instruments of conveyance, assignment or transfer, and any and all other instruments, as may be necessary or proper to carry out the purpose and intent of this Assignment and/or to fully vest Assignee in all rights, titles, interests obligations, and duties of Assignor in and to the Transferred Interest, which instruments shall be delivered to Assignee as soon as possible without any condition or delay on the part of Assignor.

4. Assignee hereby accepts all of Assignor’s rights, title, interest, obligations, and duties under the Special Assessment Agreement and agrees to be bound by its terms. From and after the date of this Assignment and satisfaction of the conditions contained in Section 8.02(b) of the Special Assessment Agreement, Assignee shall be a party to the Special Assessment Agreement and shall have the rights and obligations of the Assignor specified thereunder, and Assignee shall be deemed to be the “Lender” for all purposes of the Special Assessment Agreement.

5. All notices, certificates or communications provided pursuant to the Special Assessment Agreement to Assignee shall be delivered as provided in the Special Assessment Agreement to:

Oakland County PACE Special Assessment Agreement

(Name)

(Address)

(Attention)

IN WITNESS WHEREOF, Assignor and Assignee hereby agree to be bound by the terms of this Assignment and each has executed this Assignment to be effective as of the Effective Date.

ASSIGNOR:

[LENDER]
By: _____
Its: _____

ASSIGNEE:

Name: _____
By: _____
Its: _____

Oakland County PACE Special Assessment Agreement

APPENDIX H

FORM OF LENDER CONSENT

Lender Consent and Acknowledgement of Owner Participation in Oakland County, Michigan, PACE Program

This acknowledgement is granted date, 20__, by Name of Mortgage Holder (the “Lender”), and for the benefit of PROPERTY OWNER (the “Property Owner”), and Oakland County in the State of Michigan.

Recitals

A. Pursuant to Public Act No. 270 of 2010, the County established the County Property Assessed Clean Energy (“PACE”) Program on date, 20__, by resolution, to promote installation of energy projects and/or environmental hazard projects.

B. The Property Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Property Owner’s real property, described in **Appendix D** attached hereto (the “Property”), over a period of twenty years.

C. Owner has previously executed a mortgage, deed of trust, dated _____, 20__, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on _____, 20__ at __, Page ____, Oakland County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the County Clerk/Register of Deeds for Oakland County, and which assessment, together with interest and any penalties, shall constitute a lien (the “Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

Consent and Acknowledgement

Lender acknowledges that it has been informed of the Property Owner’s participation in the County PACE Program and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the County PACE Program.

Oakland County PACE Special Assessment Agreement

Name of Lender: _____

Date: _____

By: _____

Title: _____

STATE OF MICHIGAN

COUNTY

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, on behalf of _____.

_____, Notary Public
County, State of _____
Acting in _____ County
My Commission Expires:

Oakland County PACE Special Assessment Agreement

APPENDIX I

FORM OF WAIVER OF SIR AND SAVINGS GUARANTEE

This waiver of the savings-to-investment ratio requirement and guarantee of savings ("Waiver") is acknowledged on this ___ day of ___, 20__ by [Property OWNER]

Recitals

- A. Pursuant to Public Act No. 270 of 2010, as amended, Oakland County established the Oakland County PACE Program to promote installation of renewable energy systems, energy efficiency improvements, water usage improvement, and environmental hazard projects.
B. The Property Owner has elected to participate in this program and plans to enter into a Special Assessment Agreement with Oakland County and [LENDER] for the purpose of financing the installation of [IMPROVEMENTS] on its property.
C. Pursuant to MCL 460.939(1)(p)(ii), unless waived by the Property Owner, the contractor must guarantee to the Property Owner that the project will achieve a savings-to-investment ratio greater than one, and agree to pay the property owner for any shortfall in savings, on an annual basis.
D. The Property Owner has elected to waive this requirement.

IN WITNESS WHEREOF, the Property Owner hereby waives the requirement that the project achieve a savings-to-investment ratio greater than one, and that the contractor guarantee the savings, and make up for any shortfall on an annual basis. Property Owner expressly waives any and all claims challenging the legality or validity of this waiver or the legality, validity, or collectability of the PACE special assessment.

[PROPERTY OWNER]

By:
Its:

State of Michigan)
) ss
County)

The foregoing instrument was acknowledged before me this ___ day of ___, 20__, by ___ the ___ of ___ on behalf of ___.

Notary Public
County, Michigan
My commission expires _____

Oakland County PACE Special Assessment Agreement

APPENDIX J

INSURANCE REQUIREMENTS

During the term of this Agreement, Property Owner shall provide and maintain, at Property Owner's own expense, all insurance as set forth and marked below, protecting Oakland County (referred to in this appendix as the "County") against any Claims, as defined below. The insurance shall be written for not less than any minimum coverage herein specified. Limits of insurance required in no way limit the liability of the Property Owner. "Claims" means any loss; complaint; demand for relief or damages; lawsuit; cause of action; proceeding; judgment; penalty; costs or other liability of any kind which is imposed on, incurred by, or asserted against the County or for which the County may become legally or contractually obligated to pay or defend against, whether commenced or threatened, including, but not limited to, reimbursement for reasonable attorney fees, mediation, facilitation, arbitration fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement.

Primary Coverages

Commercial General Liability Occurrence Form including: (a) Premises and Operations; (b) Products and Completed Operations (including On and Off Premises Coverage); (c) Personal and Advertising Injury; (d) Broad Form Property Damage; (e) Broad Form Contractual including coverage for obligations assumed in this Contract;

\$1,000,000 – Each Occurrence Limit

\$1,000,000 – Personal & Advertising Injury

\$2,000,000 – Products & Completed Operations Aggregate Limit

\$2,000,000 – General Aggregate Limit

\$ 100,000 – Damage to Premises Rented to You (formally known as Fire Legal Liability)

Workers' Compensation Insurance with limits statutorily required by any applicable Federal or State Law and Employers Liability insurance with limits of no less than \$500,000 for each accident, \$500,000 for a disease for each employee, and \$500,000 for a disease policy limit. Property Owner must comply with the following:

1. Be a Fully Insured or State approved self-insurer;
2. Sole Proprietors must submit a signed Sole Proprietor form; or
3. Exempt entities, Partnerships, LLC, etc., must submit a State of Michigan form WC-337 Certificate of Exemption.

Evidence of workers' compensation insurance is not necessary if neither Property Owner nor any Property Owner's Employees come onsite to any County real property, land, premises, buildings, or other facilities in the performance of this Contract.

Commercial Automobile Liability Insurance covering bodily injury or property damage arising out of the use of any owned, hired, or non-owned automobile with a combined single limit of \$1,000,000 each accident. This requirement is waived if there are no Property Owner owned, hired, or non-owned automobiles utilized in the performance of this Contract.

Oakland County PACE Special Assessment Agreement

Commercial Umbrella/Excess Liability Insurance with minimum limits of \$2,000,000 each occurrence. This coverage shall be in excess of the scheduled underlying General Liability, Automobile Liability, and Employer's Liability Insurance policies with exclusions that are not broader than those contained in the underlying policies. This Umbrella/Excess requirement may be met by increasing the primary Commercial General Liability limits to meet the combined limit requirement.

General Insurance Conditions

The aforementioned insurance shall be endorsed, as applicable, and shall contain the following terms, conditions, and/or endorsements. All certificates of insurance shall provide evidence of compliance with all required terms, conditions and/or endorsements.

1. All policies of insurance shall be on a primary, non-contributory basis with any other insurance or self-insurance carried by the County;
2. The insurance company(s) issuing the policy(s) shall have no recourse against the County for subrogation (policy endorsed written waiver), premiums, deductibles, or assessments under any form. All policies shall be endorsed to provide a written waiver of subrogation in favor of the County;
3. Any and all deductibles or self-insured retentions shall be assumed by and be at the sole risk of the Property Owner;
4. Property Owner shall be responsible for their own property insurance for all equipment and personal property used and/or stored on Special Assessment Parcel;
5. The Commercial General Liability and Commercial Automobile Liability policies along with any required supplemental coverages shall be endorsed to name the County of Oakland and its officers, directors, employees, appointees, and commissioners as additional insured where permitted by law and policy form;
6. If the Property Owner's insurance policies have higher limits than the minimum coverage requirements stated in this document the higher limits shall apply and in no way shall limit the overall liability assumed by the Property Owner under contract.
7. The Property Owner shall require its Property Owners or sub-Property Owners, not protected under the Property Owner's insurance policies, to procure and maintain insurance with coverages, limits, provisions, and/or clauses equal to those required in this Contract;
8. Certificates of insurance must be provided prior to the County's execution of the Contract and must bear evidence of all required terms, conditions and endorsements; and provide thirty (30) days' written notice of cancellation/material change endorsement to the insurance coverages required by this Appendix.
9. All insurance carriers must be licensed and approved to do business in the State of Michigan along with the Property Owner's state of domicile and shall have and maintain a minimum A.M. Best's rating of A- unless otherwise approved by the County Risk Management Department.