

## FORM PACE LENDER/OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY ("PACE") LENDER/OWNER CONTRACT ~~(including the "Lender attached exhibits ("Owner Contract")~~ is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ ("Effective Date"), by and between Williamson County, Texas ("Local Government"), and \_\_\_\_\_ ("Lender" \_\_\_\_\_ ("Property Owner").

### RECITALS

A. The Property Assessed Clean Energy Act ("PACE Act"), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government's jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, ~~agricultural~~, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

B. Local Government has established a program under the PACE Act pursuant to a resolution dated April 5<sup>th</sup>, 2016, adopted by the Williamson County Commissioners Court ~~(the "PACE Program")~~, and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government ("Authorized Representative") ~~as the representative~~ authorized to enter into the Assessment, Owner Contract ~~written contracts with the owners of such property~~ and Lender Contract ~~the providers of such financing~~ described herein, and has designated the entire territory within ~~the County of~~ Williamson County, Texas' jurisdiction as a region ~~("the "Region")~~ within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the ~~owner's~~ owners' property pursuant to the PACE Program.

C. Property Owner is/are the sole legal and record owner of the qualified "real property," as defined in Section 399.002 of the PACE Act, within the Region located at \_\_\_\_\_, \_\_\_\_\_, Texas - \_\_\_\_\_ (the "Property").

~~C.~~ Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ ~~("\_\_\_\_\_ Property Owner")~~ has applied to Local Government to participate in the PACE Program ~~with respect to certain real property located at \_\_\_\_\_, \_\_\_\_\_, Texas, \_\_\_\_\_ (the "Property")~~ by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as "qualified improvements", as defined in Section 399.002 of the PACE Act ~~(the "Qualified Improvements")~~. The installation or modification of

such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. ~~Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “Owner Contract”), in which~~ Property Owner has requested that Local Government ~~enter into this Owner Contract pursuant to the PACE Act and the PACE Program and has requested Local Government to~~ impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the ~~in the Official Public Records~~ real property records of Williamson, County, Texas (the “**Notice of Contractual Assessment Lien**”), ~~a copy of which is attached to the Owner Contract as Exhibit A,~~ to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached hereto as Exhibit A and made a part hereof. The Property, Qualified Improvements and Assessment are more fully described in the Notice of Contractual Assessment Lien.

E. Financing for the Project ~~(the “Financing”)~~ will be provided to Property Owner by [REDACTED] ~~(“Lender in accordance with financing documents which are described or listed on Exhibit B attached hereto and made a part hereof (the “Financing Documents”). Such Financing includes”)~~, a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act (the “**Lender Contract**”). ~~The financing will include only those costs and fees for which an assessment may be imposed under the PACE Act. This Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing secured by the Assessment.~~ Section 399.006(e) of the PACE Act. Local Government has agreed to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest due to Lender (“Contractual Interest”), any prepayment penalty, and any penalties, interest, fees, and costs due under or authorized by the PACE Act are paid in full and to release the Assessment upon notice from Lender of such payment, or to foreclose the lien securing the Assessment for the benefit of Lender upon notice from Lender of a default in payment by Property Owner.

F. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of this Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the date of this Owner Contract, and is attached hereto as shown Exhibit B and made a part hereof.

## AGREEMENT

The parties agree as follows:

F.1. Imposition of Assessment. In consideration for the Financing advanced or to be advanced to Property Owner by Lender for the copy of such consent(s) Project under the PACE Program pursuant to the Lender Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the principal amount of \$ [REDACTED], as set forth in the Notice of Contractual Assessment Lien. In the event the

actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. The Assessment includes the application and administration fees authorized by the PACE Program and Section 399.006(e) of the PACE Act. Property Owner promises and agrees to pay the Assessment, Contractual Interest thereon, any prepayment penalty, and all penalties, interest, fees, and costs due under or authorized by the PACE Act and the financing documents executed between Property Owner and Lender (the “**Financing Documents**”) described in or copies of which are attached as Exhibit B to the Owner Contract. C attached hereto and made a part hereof by reference. Property Owner will pay such amount in care of or as directed by Lender, in satisfaction of the Assessment imposed pursuant to this Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to repay the Financing of the Project, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

## **AGREEMENT**

The parties agree as follows:

2. Maintenance and Enforcement of Assessment. ~~Lender agrees~~In consideration for Lender's agreement to provide the advance Financing to Property Owner for the Project ~~in the total amount of \$~~\_\_\_\_\_, ~~according to the terms set out in pursuant to the Financing Documents attached hereto as Exhibit B.~~ In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Lender until the Financing, all contractual interest, Assessment, Contractual Interest, any prepayment premium, additional penalties~~penalty,~~ and any penalties, interest, fees, and costs, due under or authorized by the PACE Act and ~~interest imposed by the Lender under the Financing Documents according to the Financing Documents, and any statutory penalties, interest, attorney's fees, or costs accrued in the event of default~~ are paid in full. ~~Local Government will not, and to release the Assessment upon notice from Lender of such payment.~~ Local Government agrees to enforce the assessment lien against the Property at the request of Lender in the event of a default in payment by Property Owner, in accordance with the provisions set forth in paragraph 5. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until which time Lender notifies Local Government that all amounts owing have been paid in full the Assessment is released. If requested by Property Owner by marking the box below, Local Government agrees to also deliver an annual notice of assessment to Property Owner by first-class mail in the envelope with the tax bill of the Property each year until the Assessment is released.

☐ Property Owner requests an annual notice of assessment from Local Government ~~shall not sell, assign or transfer the Assessment or the assessment lien against the Property to any third party without the prior written consent of the Lender. Promptly following written notice to.~~

Any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property's Owner's obligations under this Owner Contract.

~~1. — Installments. from Lender, Local Government agrees to enforce the assessment lien against the Property for the benefit of Lender in the event of a default by Property Owner. Local Government shall have no obligation to repurchase the assessment The Assessment and no liability to Lender should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.~~

~~2.3. Installments. The Assessment, including the amount financed and contractual interest, is Contractual Interest thereon are due and payable to Lender in installments as ("Installments"), according to the payment schedule set forth in the Notice of Contractual Assessment Lien and the Financing Documents, attached hereto as Exhibit C. The Assessment ~~shall include:~~includes (1) an application fee paid by Property Owner to Authorized Representative at ~~loan~~closing of the Financing, and (2) a recurring administration fee paid by Property Owner to ~~the~~ Authorized Representative, until the Assessment is released. The recurring administration fee amount ~~shall~~will be collected by Lender and paid to ~~the~~ Authorized Representative within thirty (30) days of receipt by Lender. ~~The amounts due to the, unless otherwise agreed to in writing by~~ Authorized Representative. Notwithstanding the foregoing, in the event of a delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any administration fee due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of the administration fees included in the Assessment. The amounts due to Authorized Representative are identified in Exhibit ~~B hereto~~C hereto. When the Assessment, Contractual Interest, any prepayment penalty, and any penalties, interest, fees and costs due under or authorized by the PACE Act and the Financing Documents, have been paid in full, Local Government's rights under this Owner Contract will cease and terminate. Upon notice from Lender that all amounts due have been paid in full, Authorized Representative will execute a release of the Assessment and this Owner Contract and record the release. As required by Section 399.009(a)(8) of the PACE Act, the period during which such ~~installments~~Installments are payable does not exceed the useful life of the Project. ~~When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government's rights under this Lender Contract will cease and terminate. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Lender Contract. Thereafter, the Authorized Representative will record the release.~~~~

~~3.4. Assignment of Right to Receive Installments; or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the ~~installments of the Assessment, provided all~~ Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with all corresponding obligations, provided that all of the following conditions are met:~~

~~(a) — The assignment or transfer is made to a qualified lender, which may be one of the following:~~

~~(1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;~~

~~(2) Any insurance company authorized to conduct business in one or more states;~~

~~(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;~~

~~(4) Any publicly traded entity; or~~

~~(5) Any private entity that:~~

~~(i) Has a minimum net worth of \$5 million;~~

~~(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;~~

~~(a) (iii) Can provide independent certification as to availability of funds; and defined in the Lender Contract;~~

~~(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts~~

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future ~~installments~~Installments should be mailed at least 30 days before the next ~~installment~~Installment is due according to the payment schedule included in the Financing Documents; and

(c) The assignee or transferee ~~of the right to receive the installments~~ executes ~~an explicit~~a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under ~~this~~the Lender Contract; related to the receipt of the Installments or the enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement.

Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer ~~of the right to receive the installments~~ that meets all of these conditions, the assignor ~~shall~~will be released of all of the rights and obligations of the Lender under ~~this~~such Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of



such rights and obligations ~~shall~~will be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the ~~installments~~Installments or require enforcement of the ~~Assessment~~assessment lien that does not meet all of these conditions is void.

4. Financing Responsibility. ~~Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's~~ Lender will retain all of the rights and obligations ~~and responsibilities thereunder of~~ Lender under the Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

5. Lien Priority and Enforcement. ~~As provided in the Owner Contract and~~Pursuant to Section 399.014 of the PACE Act:

(a) Delinquent ~~installments of the Assessment~~Installments will incur ~~interest and~~ penalties and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, ~~viz., that is,~~ a delinquent ~~installment~~Installment incurs a penalty of 6% of the principal amount of the ~~installment~~Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the ~~installment~~Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an ~~installment~~Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent ~~installment~~Installment without regard to the number of months it has been delinquent. A delinquent ~~installment~~Installment will also ~~accrues~~accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the installment remains unpaid. ~~Statutory~~Subject to paragraph 16 below, penalties ~~and statutory,~~ interest, ~~fees, and costs~~ payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. ~~Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents,~~ may be ~~assessed by Lender~~imposed and retained by Lender.

(b) The Assessment, ~~together with~~ and any interest or penalties ~~and interest~~ thereon,

(1) ~~is~~are a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is ~~filed~~recorded in the ~~Official Public Records~~real property records of Williamson County, Texas as provided by Section 399.014013 of the PACE Act, until the Assessment ~~and any penalties and,~~ interest ~~are, or penalty is~~ paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, ~~pursuant to Section 399.014(a)(2) of the PACE Act.~~

(c) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of ~~the Assessment that has not yet become due~~ is~~will~~ not be eliminated by foreclosure of (i) a property tax lien, ~~according to Section 399.014(b) of the PACE Act~~ or (ii) the lien for a delinquent installment of the

Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse ~~onto Lender, Local Government, or the Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.~~

(d) In the event of a default by Property Owner in payment of ~~the installments an~~ Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender, in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent ~~installment~~ Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent ~~installment~~ Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender ~~shall~~ will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent ~~installment~~ Installment of the Assessment.

(f) ~~After written notice of the~~ As provided in Section 399.014 (a-1) of the PACE Act, after the Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located ~~as provided under Section 399.013 of the PACE Act~~, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

#### 6. ~~Service and Enforcement of Assessment.~~

~~(a) Service. The Assessment payments will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract. Local Government agrees to send an annual notice of assessment to the property owner with the annual property tax notice each year there is a PACE lien balance. This notification can be listed on page one of said tax notice or as a separate page two (2) notification.~~

~~(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this Lender Contract.~~

6. ~~Default and Enforcement.~~ In the event of a default in payment of any installment of the Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between Property Owner and Local Government as required by Section

399.005 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the real property records of Williamson County, Texas as public notice of the contractual Assessment, in accordance with the requirements of Section 399.013 of the PACE Act.

7. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed, or installed through the Financing obtained pursuant to this Owner Contract will be permanently affixed to the Property and will transfer with the Property to the transferee in the event of a sale or transfer of the Property. Property Owner agrees to provide to Authorized Representative within 30 days after the completion of the Project a verification by an independent third party reviewer ("ITPR") that the project was properly completed and is operating as intended. Property Owner agrees that Lender may retain the final advance of Financing until such verification is submitted or require Property Owner to pay liquidated damages for a failure to do so, according to paragraph 19 below.

~~(e) — Water or Energy Savings. For so long as the Assessment as specified in the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent installment:~~

~~(1) — Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and~~

~~(2) — Mail a second notice of delinquency encumbers the Property. Property Owner agrees, on or before January 31<sup>st</sup> of each year, to the Property Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.~~

~~If the Property Owner fails report to cure the delinquency within 30 days after the mailing of the second notice of delinquency, the Lender or its designated servicer may notify the Authorized Representative who will certify to the Local Government in writing of a default by the Property Owner, and upon receipt of such certification and after doing its own due diligence, Local Government will enforce the assessment lien for the benefit of Lender pursuant to Tex. Local Gov't Code Sec. 399.014(e), in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.~~

~~(d) — Final Payment and Release. When the Assessment has been satisfied and paid in full, together with all interest and prepayment premiums, if any, provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and the Owner Contract. Thereafter, the Authorized Representative will record the Release.~~

~~(e) — Limitations on Local Government's Actions. Without the prior written consent of Lender, Local Government will not enter into any amendment water or modification of or deviation from the Owner Contract. Local Government will not institute~~



any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

~~(f) 1. Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting energy savings realized through.~~

~~(g) Costs. No provisions of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.~~

~~7. Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:~~

~~(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;~~

~~(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and~~

~~(c) Lender has not relied upon any investigation or analysis conducted in accordance with the reporting requirements established by, advice or communication from, or any warranty or representation by Local Government or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.~~

~~8. Written Contract Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act. Authorized Representative.~~

~~9. Construction and Definitions. This LenderOwner Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, shall have the meanings ascribed to them in: (1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.~~

10. Binding Effect. This LenderOwner Contract is binding upon and ~~shall inure~~inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11. Notices. ~~All~~Unless otherwise specifically provided herein, all notices and other communications required or permitted ~~hereunder by this Owner Contract~~ shall be in writing and ~~mailed~~delivered by ~~certified~~first-class mail, ~~return receipt requested or by electronic mail~~, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12. Governing Law. This LenderOwner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13. Entire Agreement. This LenderOwner Contract constitutes the entire agreement between ~~the parties~~Local Government and Property Owner with respect to the subject matter hereof and ~~shall~~may not be amended or altered in any manner except by a document in writing executed by both parties.

14. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15. Counterparts. This LenderOwner Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together ~~shall~~will constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

16. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the "usury limit"). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, the interest payable to Local Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Owner Contract.

~~16. Costs. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a "qualified project" as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.~~

17. Construction Terms. If this Lender Contract includes requirements related to No provision of this Owner Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

18. Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Owner Contract as may be reasonably necessary or required.

17.19. Construction Terms. The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold [REDACTED] % of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer ("ITPR), or Property Owner will pay liquidated damages to Lender of \$ [REDACTED] per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If the Lender Contract includes requirements related to the construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit CD attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

**LENDER:**

**PROPERTY OWNER:**

[Redacted]

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

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email address: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF [Redacted] §

COUNTY OF [Redacted] §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was  
acknowledged before me on [Redacted], [Redacted] by [Redacted],  
[Redacted], on behalf of [Redacted].

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF





**LOCAL GOVERNMENT:**

WILLIAMSON COUNTY, TEXAS

By: TEXAS PROPERTY ASSESSED CLEAN  
ENERGY AUTHORITY  
AUTHORIZED REPRESENTATIVE

Pursuant to Tex. Local Gov't Code §399.006(b)

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

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368  
AUSTIN, TX 78720-0368

**EXHIBIT A**

Email Address: [charlene@texaspaceauthority.org](mailto:charlene@texaspaceauthority.org)

**ACKNOWLEDGEMENT**

STATE OF TEXAS \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This PACE Owner Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF TEXAS

**OWNER CONTRACT** **EXHIBIT A**

**NOTICE OF CONTRACTUAL ASSESSMENT LIEN**  
**PURSUANT TO**  
**PROPERTY ASSESSED CLEAN ENERGY ACT**

OWNER CONTRACT **EXHIBIT B**

MORTGAGE HOLDER(S) CONSENT



**OWNER CONTRACT EXHIBIT C**

**FINANCING DOCUMENTS**

Assessment Payment Schedule

Assessment Total:  
Payment ~~Schedule~~Frequency:  
~~Project Completion Date:~~

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

|

|

**OWNER CONTRACT EXHIBIT CD**

**CONSTRUCTION TERMS**

[if applicable]

**Retainage or Liquidated Damages:**

**Lender will retain \_\_\_\_\_ % of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.**

**OR**

**Property Owner will pay liquidated damages to Lender of \$ \_\_\_\_\_ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.**

**Additional Construction Terms**

Date	Draw down Amount	Purpose

## FORM PACE LENDER CONTRACT

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### RECITALS

G. The Property Assessed Clean Energy Act (“PACE Act”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, ~~agricultural~~, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand.

H. Local Government has established a program under the PACE Act pursuant to a resolution dated April 5<sup>th</sup> 5, 2016, adopted by the Williamson County Commissioners Court ~~(the~~ “(“PACE Program”), and has designated Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority as the representative of Local Government (“Authorized Representative”) ~~as the representative~~ authorized to enter into the Assessment, Owner Contract ~~written contracts with the owners of such property~~ and Lender Contract ~~the providers of such financing~~ described herein, and has designated the entire territory within ~~the County of Williamson County, Texas’~~ jurisdiction as a region ~~(“the~~ “(“Region”) within which the Authorized Representative and the record owners of such real property may enter into written contracts to impose assessments to repay the financing by owners of qualified improvements on the owner’s property pursuant to the PACE Program.

I. Pursuant to Application number \_\_\_\_\_, \_\_\_\_\_ (“Property Owner”), the sole legal and record owner of the following qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region has/have applied to Local Government to participate in the PACE Program with respect to certain real property located at \_\_\_\_\_, \_\_\_\_\_, Texas, \_\_\_\_\_ - \_\_\_\_\_ (the “Property”) by installing or modifying on the Property certain permanent improvements which are intended to decrease water or energy consumption or demand, and which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act ~~(the~~ “(“Qualified Improvements”). The installation or modification of such Qualified Improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “Project”).

J. Property Owner and Local Government have entered into a written contract as required by Section 399.005 of the PACE Act, a copy of which is attached hereto as Exhibit A and made a part hereof (the “**Owner Contract**”), in which Property Owner has requested that Local Government impose an assessment (the “**Assessment**”) on the Property as set forth in the Notice Of Contractual Assessment Lien Pursuant To Property Assessed Clean Energy Act to be filed in the ~~in the Official Public Records~~ real property records of Williamson County, Texas (the “**Notice of Contractual Assessment Lien**”), ~~a copy of which is attached to the Owner Contract as Exhibit A,~~ to repay the financing of such Qualified Improvements. A copy of the Notice of Contractual Assessment Lien is attached as Exhibit A to the Owner Contract and made a part hereof. The Property, Qualified Improvements, and Assessment are more fully described in the Notice of Contractual Assessment Lien.

K. Financing for the Project ~~(the “~~**Financing**~~”)~~ will be provided to Property Owner by Lender in accordance with financing documents which are described in or ~~listed on copies of which are attached as~~ Exhibit B attached hereto and made a part hereof (the “**Financing Documents**”). ~~Such Financing includes~~ will include only those costs and fees for which an assessment may be imposed under Section 399.006 (e) of the PACE Act. This Lender Contract is entered into between Local Government and Lender as required by Section 399.006(c) of the PACE Act to provide for repayment of the Financing ~~secured by~~ through the Assessment.

L. As required by Section 399.010 of the PACE Act, Property Owner has notified the holder(s) of any mortgage liens on the Property at least thirty (30) days prior to the date of the Owner Contract of Property Owner’s intention to participate in the PACE Program. The written consent of each mortgage lien holder to the Assessment was obtained on or prior to the date of the Owner Contract, as shown by the copy of such consent(s) attached as Exhibit B to the Owner Contract.

## **AGREEMENT**

The parties agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide ~~the~~ Financing for the Project in the total principal amount of \$                     , according to the terms set out in the Financing Documents attached hereto as Exhibit B. In the event the actual total of costs and fees for which an assessment may be imposed under the PACE Act is different from the stated amount or any other term requires correction, Local Government, Property Owner, and Lender agree to execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Lender Contract, Local Government agrees to maintain and continue the Assessment for the benefit of Lender until the ~~Financing Assessment~~, all contractual interest, ~~any prepayment premium, additional penalties and interest imposed by the~~ due to Lender ~~under the Financing Documents~~ according to the Financing Documents (“Contractual Interest”), any prepayment penalty, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default due under or authorized by the PACE Act and the Financing Documents are paid in full, and to release the Assessment upon notice from Lender of such payment. Local Government will not release ~~the Assessment until which time Lender notifies Local Government~~



~~that all amounts owing have been paid in full. Local Government shall not,~~ sell, assign or transfer the Assessment or the ~~assessment~~ lien ~~against the Property to any third party~~ securing it without the prior written consent of ~~the~~ Lender. ~~Promptly following written notice to Local Government from Lender,~~ Local Government agrees to enforce the assessment lien against the Property ~~forat~~ the benefit ~~request~~ of Lender in the event of a default in payment by Property Owner. in accordance with the provisions set forth in paragraph 6. Local Government shall have no obligation to repurchase the ~~assessment~~ Assessment and no liability to Lender should there be a ~~default or an event of~~ default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment, ~~including the amount financed and contractual interest, is~~ Contractual Interest thereon are due and payable to Lender in installments as ~~(“Installments”)~~ according to the payment schedule set forth in the ~~Notice of Contractual Assessment Lien and the~~ Financing Documents, attached hereto as Exhibit B. The Assessment ~~shall include:~~ includes (1) an application fee paid by Property Owner to Authorized Representative at ~~loan~~ closing, of the Financing and (2) a recurring administration fee paid by Property Owner to ~~the~~ Authorized Representative, until the Assessment is released. The recurring administration fee amount ~~shall~~ will be collected by Lender and paid to ~~the~~ Authorized Representative within thirty (30) days of receipt by Lender, unless otherwise agreed to in writing by Authorized Representative. Notwithstanding the foregoing, in the event of delinquency in the payment of any Installment, Lender will, upon notice to Authorized Representative, withhold payment of any amounts due to Authorized Representative in connection with such Installment until the Installment is paid. Any such temporary withholding will not reduce the amount of administration fees included in the Assessment. The amounts due to ~~the~~ Authorized Representative are identified in Exhibit B hereto. As required by Section 399.009(a)(8) of the PACE Act, the period during which such ~~installments~~ Installments are payable does not exceed the useful life of the Project. ~~When the Assessment together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, Local Government’s rights under this Lender Contract will cease and terminate. Upon notice from Lender that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Lender Contract. Thereafter, the Authorized Representative will record the release.~~

3. Assignment of Right to Receive Installments; or Require Enforcement of Lien. Lender will have the right, with or without the consent of Property Owner, to assign or transfer the right to receive the ~~installments of the Assessment~~ Installments or require Local Government to enforce the assessment lien in the event of a default in payment, together with the corresponding obligations, provided that all of the following conditions are met:

(a) The assignment or transfer is made to a qualified lender, which may be one of the following:

- (1) Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- (2) Any insurance company authorized to conduct business in one or more states;

(3) Any registered investment company, registered business development company, or a Small Business Administration small business investment company;

(4) Any publicly traded entity; or

(5) Any private entity that:

(i) Has a minimum net worth of \$5 million;

(ii) Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;

(iii) Can provide independent certification as to availability of funds; and

(iv) Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts

(6) A financially stable entity, whether or not from the list above, with the ability to carry out, either directly or through a servicer, the obligations of this Lender Contract related to the receipt and accounting of the Installments or the enforcement of the assessment lien.

(b) Property Owner and Authorized Representative are notified in writing of the assignment or transfer and the address to which payment of the future ~~installments~~Installments should be mailed at least 30 days before the next ~~installment~~Installment is due according to the payment schedule included in the Financing Documents; and

~~(c)~~—The assignee or transferee ~~of the right to receive the installments~~ executes ~~an explicit~~a written assumption agreement according to the Financing Documents of all of Lender's rights and obligations under this Lender Contract:

~~1.(c)~~ related to the receipt of the Installments or enforcement of the assessment lien and provides a copy of such assumption to Property Owner and Authorized Representative within 10 days after execution of the agreement. Lender may assign or transfer the right to receive the Installments or the right to require enforcement of the assessment lien separately. Upon written notice to Property Owner and Authorized Representative of an assignment or transfer ~~of the right to receive the installments~~ that meets all of these conditions, the assignor ~~shall~~will be released of all of the rights and obligations of the Lender under this Lender Contract accruing after the date of the assignment that are specified in the assignment or transfer document, and all of such rights and obligations ~~shall~~will be assumed by and transferred to the assignee. Any attempt to

assign or transfer the right to receive the ~~installments of the Assessment~~Installments or to require enforcement of the assessment lien that does not meet all of these conditions is void. Lender will retain all of the rights and obligations of Lender under this Lender Contract until such rights and obligations are assigned or transferred according to this paragraph.

4. 4. Financing Responsibility.— Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder. In the event the assessment lien on the Property is enforced by foreclosure as provided below, Lender will have no further obligations to Property Owner with respect to the Installments that were the subject of the foreclosure, but Lender will retain the rights to enforcement of the lien for any Installments that are not eliminated by the foreclosure, and the succeeding owner of the Property will be subject to such lien.

5.7. Lien Priority and Enforcement. As provided in the Owner Contract and Section 399.014 of the PACE Act:

~~(a)~~(d) Delinquent ~~installments of the Assessment~~Installments will incur ~~interest and penalties~~ and interest on the principal of the Installment in the same manner and in the same amount as delinquent property taxes, ~~viz., that is,~~ a delinquent ~~installment~~Installment incurs a penalty of 6% of the principal amount of the ~~installment~~Installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the ~~installment~~Installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an ~~installment~~Installment delinquent on July 1 incurs a total penalty of 12% of the principal amount of the delinquent ~~installment~~Installment without regard to the number of months it has been delinquent. A delinquent ~~installment~~Installment will also ~~accrues~~accrue interest on the principal of the Installment at the rate of 1% for each month or portion of a month that the installment remains unpaid. ~~Statutory~~Subject to paragraph 16 below, penalties ~~and statutory,~~ interest, fees, and costs payable under this paragraph will be retained by Local Government to compensate it for the cost of enforcing the Assessment. Additional interest at any default rate imposed by Lender pursuant to the Financing Documents, along with any other fees and charges that become due pursuant to the Financing Documents may be assessed by Lender imposed and retained by Lender.

~~(b)~~(e) The Assessment, ~~together with and~~ any interest or penalties ~~and interest~~ thereon,

(1) is~~are~~ a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed~~recorded~~ in the Official Public Records~~real property records~~ of Williamson County, Texas, as provided by Section 399.~~014~~013 of the PACE Act, until the Assessment ~~and any penalties and, interest are, or penalty is~~ paid; and

(2) such lien has the same priority status as a lien for any other ad valorem tax, ~~pursuant to Section 399.014(a)(2) of the PACE Act.~~

~~(e)(f)~~ (f) The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of ~~the~~ Assessment that has not yet become due ~~is will~~ not ~~be~~ eliminated by foreclosure of (i) a property tax lien, according to Section 399.014(b) of the PACE Act or (ii) the lien for a delinquent Installment of the Assessment. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will be transferred to the succeeding owner without recourse ~~onto Lender, Local Government or the Authorized Representative and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.~~

~~(d)~~ (d) In the event of a default by Property Owner in payment of ~~the installments an~~ Installment called for by the Financing Documents or the filing of a case under the U.S. Bankruptcy Code by or against Property Owner, the lien created by the Assessment will be enforced by Local Government for the benefit of Lender according to paragraph 6(c) below in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

~~(e)~~ (e) In a suit to collect a delinquent ~~installment~~ Installment of the Assessment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total principal amount of the delinquent ~~installment~~ Installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax. Lender ~~shall~~ will be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent ~~installment~~ Installment of the Assessment.

~~(f)~~ (f) After(f) As provided in Section 399.014(a-1) of the PACE Act, after written notice of the Assessment is recorded in the real property records of the county in which the Property is located ~~as provided under Section 399.013 of the PACE Act~~, the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

#### 6.4. Servicing and Enforcement of Assessment.

(a) Servicing. ~~The Assessment payments~~ The Installments and other amounts due under the Financing Documents will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents. Lender or its designee will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Lender Contract. ~~Local Government agrees to send an annual notice of assessment to the property owner with the annual property tax notice each year there is a PACE lien balance. This notification can be listed on page one of said tax notice or as a separate page two (2) notification. Authorized Representative will deliver an annual notice of assessment to Property Owner by electronic mail each year until the Assessment is released. If requested by Property Owner in the Owner Contract, Local Government agrees~~

to also send an annual notice of assessment to Property Owner by first class mail in the envelope with the tax bill of the Property each year until the Assessment is released. However, any failure of Local Government or Authorized Representative to deliver an annual notice of assessment to Property Owner will not affect the Assessment or Property Owner's obligations under the Owner Contract.

(b) Remittances. Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Assessment after the execution of this Lender Contract.

(c) Default and Enforcement. In the event of a default in payment of any ~~installment of the Assessment as specified in~~ Installment according to the Financing Documents, Lender agrees to take at least the following steps to collect the delinquent ~~installment~~ Installment:

(1) Mail a written notice of delinquency and demand for payment to the Property Owner by both certified mail, return receipt requested, and first class mail; and

(2) Mail a second notice of delinquency to the Property Owner and the holder of any mortgage lien on the property by both certified mail, return receipt requested, and first-class mail at least 30 days after the date of the first notice if the delinquency is continuing.

The holder of any mortgage lien on the property will have not less than a 30-day right to cure the delinquency by paying the amount of the delinquent installment. If the Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, the Lender or its ~~designated service~~ designee may notify ~~the~~ Authorized Representative ~~who will certify to the Local Government~~ in writing of a default in payment by ~~the~~ Property Owner, ~~and upon~~. Upon receipt of such ~~certification~~ notice and after doing its own due diligence, ~~Local Government will including delivering a notice of foreclosure to Freddie Mac not less than 30 days prior to the foreclosure if the mortgage lien is held by Freddie Mac, Authorized Representative will certify the default to Local Government, which will~~ enforce the assessment lien for the benefit of Lender pursuant to ~~Tex. Local Gov't Code~~ Sec. 399.014(c), of the PACE Act, in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution. However, if a case under the U.S. Bankruptcy Code is filed by or against Property Owner or if the enforcement of the assessment lien is prevented by the order of a court, Local Government will notify Authorized Representative and will file a proof of claim for the balance of the assessment, accrued interest and penalties, and all costs and expenses, including attorney's fees, as authorized by Section 399.014 of the PACE Act. Authorized Representative will notify Lender of the filing of the proof of claim. Lender will not be required to mail a notice of delinquency to Property Owner or a notice of default to Local Government. Lender will reimburse Local Government for any costs and expenses, including attorney's fees, required to file and present the claim.

(d) Priority. If the assessment lien is enforced by foreclosure or collected through a bankruptcy or similar proceeding, the assessment balance and any interest or



penalties on the assessment will have the same priority status as a lien for any other ad valorem tax, pursuant to Sec. 399.014(a)(2) of the PACE Act.

~~(d)~~ (e) Final Payment and Release. When the Assessment ~~has been satisfied and paid in full, together with all interest and~~, Contractual Interest, any prepayment premiums, if penalty, and any, provided penalties, interest, fees, or costs due under or authorized by the PACE Act or the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Local Government, have been paid in full, Local Government's rights under the Owner Contract will cease and terminate. Upon notice from Lender that all amounts owing due have been paid in full, Local Government Authorized Representative will execute a release of the Assessment and the Owner Contract. ~~Thereafter, the Authorized Representative will and~~ record the Release release.

~~(e)(d)~~ Limitations on Local Government's Actions. Without the prior written consent of Lender, Local Government will not enter into any amendment or modification of or deviation from the Owner Contract. Local Government or Authorized Representative will not institute any legal action with respect to the Owner Contract, the Assessment, or the assessment lien without the prior written request of Lender.

~~(f)(d)~~ Limitations of Local Government's Obligations. Local Government undertakes to perform only such duties as are specifically set forth in this Lender Contract, and no implied duties on the part of Local Government are to be read into this Lender Contract. Local Government will not be deemed to have a fiduciary or other similar relationship with Lender. Local Government may request written instructions for action from Lender and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

~~(g)(e)~~ Costs. No provisions of this Lender Contract will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

7.5. Lender's Warranties and Representations. With respect to this Lender Contract, Lender hereby warrants and represents that on the date on which Lender executes this Lender Contract:

(a) Lender is a qualified lender under the PACE Program, as defined in paragraph 3(a) above, and is fully qualified under the PACE Program to enter into this Lender Contract and the Financing Documents;

(b) Lender has independently and without reliance upon Local Government conducted its own credit evaluation, reviewed such information as it has deemed adequate and appropriate, and made its own analysis of the Owner Contract, the Project, and Property Owner's financial ability to perform the financial obligations set out in the Financing Documents; and

(c) Lender has not relied upon any investigation or analysis conducted by, advice or communication from, or any warranty or representation by Local Government, Authorized Representative, or any agent or employee of Local Government, express or implied, concerning the financial condition of the Property Owner or the tax or economic benefits of an investment in the Assessment.

8.6. Written Contract Required by the PACE Act. This Lender Contract constitutes a written contract between Local Government and Lender, as required under Section 399.006 (c) of the PACE Act.

9.7. Construction and Definitions. This Lender Contract is to be construed in accordance with and with reference to the PACE Program and PACE Act. Terms used herein, and not otherwise defined herein, ~~shall~~ have the meanings ascribed to them in: ~~(1) the Notice of Contractual Assessment Lien, (2) the Owner Contract, (3) the PACE Program, and/or (4) the PACE Act.~~

10.8. Binding Effect. This Lender Contract is binding upon and ~~shall inure~~ inures to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

11.9. Notices. ~~Unless otherwise specifically provided herein, all~~ notices and other communications required or permitted hereunder shall be in writing and ~~mailed~~ delivered by ~~certified first-class mail, return receipt requested or by electronic mail~~, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

12.10. Governing Law. This Lender Contract shall in all respects be governed by and construed in accordance with the laws of the State of Texas.

13.11. Entire Agreement. This Lender Contract constitutes the entire agreement between ~~the parties~~ Local Government and Lender with respect to the subject matter hereof and shall not be amended or altered in any manner except by a document in writing executed by both parties.

14.12. Captions. Paragraph and section titles are for convenience of reference only and shall not be of any legal effect.

15.13. Counterparts. —This Lender Contract may be executed in any number of counterparts, and each counterpart may be delivered on paper or by electronic transmission, all of which when taken together ~~shall will~~ constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

14. Interest. Interest and penalties in the event of default, as provided above, are explicitly authorized by Section 399.014(d) of the PACE Act. However, in no event will the total amount of interest on the Assessment, including statutory interest payable to Local Government and Contractual Interest payable to Lender under the Financing Documents, exceed the maximum amount or rate of nonusurious interest that may be contracted for, charged, or collected under Texas law (the “usury limit”). If the total amount of interest payable to Local Government and Contractual Interest payable to Lender exceeds the usury limit, interest payable to Local

Government will be reduced and any interest in excess of the usury limit will be credited to the amount payable to Local Government or refunded. This provision overrides any conflicting provisions in this Lender Contract.

16.15. Certification. Local Government certifies that the PACE Program has been duly adopted and is in full force and effect on the date of this Lender Contract. Property Owner has represented to Lender and Local Government that the Project is a “qualified project” as defined in the PACE Program and Section 399.002 of the PACE Act. The Assessment has been imposed on the Property as a lien in accordance with the PACE Owner Contract and the PACE Act. Local Government has not assigned or transferred any interest in the Assessment or the PACE Owner Contract.

17.16. Construction Terms. ~~If this Lender Contract includes~~The Financing Documents executed by Lender and Property Owner must include a requirement that Lender will withhold % of the Financing until verification that the Project was properly completed and is operating as intended is provided to Authorized Representative by an Independent Third Party Reviewer (“ITPR), or Property Owner will pay liquidated damages to Lender of \$ per day for every day after 30 days following completion of the Project that such verification of completion is not provided. If verification of completion is not provided by Property Owner within 30 days after completion of the Project, such verification shall be submitted by Lender. If this Lender Contract includes any additional requirements related to construction of the Project and disbursement of Financing, such requirements are set forth in Exhibit C attached hereto and incorporated herein by reference. Such requirements may include, among other things, (1) the disbursement schedule and (2) any holdback amount to be funded following verification of final project completion.

|

|

**LENDER:**

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

Name:		
Title:		
Address:		

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

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was  
acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_,  
\_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF \_\_\_\_\_



**LOCAL GOVERNMENT:**

WILLIAMSON COUNTY, TEXAS

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

\_\_\_\_\_  
By: TEXAS PROPERTY ASSESSED CLEAN ENERGY AUTHORITY  
AUTHORIZED REPRESENTATIVE

Pursuant to Tex. Local Gov't Code §399.006(b)

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

Name:	<u>CHARLENE HEYDINGER</u>
Title:	<u>PRESIDENT, TEXAS PACE AUTHORITY</u>
Address:	<u>PO BOX 200368</u> <u>AUSTIN, TX 78720-0368</u>

Email Address: [charlene@texaspaceauthority.org](mailto:charlene@texaspaceauthority.org)

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF            §

This PACE Lender Contract pursuant to Property Assessed Clean Energy Act was acknowledged before me on                     , 20     by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

\_\_\_\_\_  
\_\_\_\_\_  
(print name)

NOTARY PUBLIC, STATE OF TEXAS



**LENDER CONTRACT EXHIBIT A**

**OWNER CONTRACT**

**LENDER CONTRACT EXHIBIT B**  
**FINANCING DOCUMENTS**

Assessment Payment Schedule

Assessment Total:  
Payment ~~Schedule~~Frequency:  
~~Project Completion Date~~:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

Document Title	Parties	Date Executed

**LENDER CONTRACT EXHIBIT C**

**CONSTRUCTION TERMS**

[if applicable]

**Retainage or Liquidated Damages:**

**Lender will retain \_\_\_\_\_ % of the Financing until a report of completion by a qualified Independent Third Party Reviewer (“ITPR”) is provided to Authorized Representative.**

**OR**

**Property Owner will pay liquidated damages to Lender of \$ \_\_\_\_\_ per day for every day after 30 days following completion of the Project that such a report of completion is not provided. Lender will then provide the report of completion to Authorized Representative.**

Date	Draw down Amount	Purpose

STATE OF TEXAS                       §  
COUNTY OF WILLIAMSON          §

M.A. The Property Assessed Clean Energy Act (“**PACE Act**”), Texas Local Government Code Chapter 399, authorizes the governing body of a local government to establish a program and designate a region within the local government’s jurisdiction within which an authorized representative of the local government may enter into written contracts with the record owners of privately owned commercial, industrial, ~~agricultural~~, and large multifamily residential (5 or more dwelling units) real property to impose assessments on the property to finance the cost of permanent improvements fixed to the property intended to decrease water or energy consumption or demand. Unless otherwise expressly provided herein, all terms used herein have the same meanings ascribed to them in the PACE Act.

O.C. [REDACTED] (“Property Owner”) is/are the sole legal and record owner of the qualified “real property,” as defined in Section 399.002 of the PACE Act, within the Region located at [REDACTED], [REDACTED], Texas; [REDACTED] - [REDACTED] and more fully described in Exhibit A attached hereto and made a part hereof (the “Property”).

4

Property will be a “qualified project” as defined in Section 399.002 of the PACE Act- (the “Project”). Property Owner has entered into a written contract (the “Owner Contract”) with Local Government pursuant to the PACE Act and the PACE Program and has requested Local Government to impose an assessment on the Property to repay the financing of such Qualified Improvements.

Q.E. The financing of such Qualified Improvements will be provided to Property Owner by [REDACTED] (“Lender”), a qualified lender selected by Property Owner, pursuant to a written contract executed by Lender and Local Government as required by Section 399.006(c) of the PACE Act and by the PACE Program (the “Lender Contract”). Lender will be responsible for all servicing duties other than those specifically undertaken by Local Government in the Lender Contract.

THEREFORE, Local Government hereby gives notice to the public pursuant to Section 399.013 of the PACE Act that it has imposed an assessment on the Property in the amount of \$ [REDACTED], as set forth on Exhibit C attached hereto, which together with all interest, fees, penalties, costs and other sums due under and/or authorized by the PACE Act, PACE Program and the financing documents between Property Owner and Lender (the “Financing Documents”) is herein referred to as the “Assessment”. principal amount of \$ [REDACTED] (the “Assessment”). The Assessment includes only those costs and fees for which an assessment may be imposed under Section 399.006(e) of the PACE Act. In the event that the actual total of costs and fees for which an assessment may be imposed is different from the amount stated or any other term requires correction, Local Government, Property Owner, and Lender will execute an amended Owner Contract and Lender Contract, and Authorized Representative will record an amended Notice of Contractual Assessment Lien.

The Assessment and contractual interest thereon due to the Lender (the “Contractual Interest”) are due and payable in installments (“Installments”) in accordance with the terms and payment schedule included in the financing documents executed between Property Owner and Lender that are described in or copies of which are attached hereto as Exhibit C (the “Financing Documents”).

Pursuant to Section 399.014 of the PACE Act,

The Assessment, including interest and any interest or penalties, costs, or fees accrued thereon,

- (i) isare a first and prior lien onagainst the Property from the date thaton which this Notice of Contractual Assessment Lien is recorded in the Official Public Records ofreal property records Williamson County, Texas, until suchthe Assessment, interest, penalties, costs, and fees areor penalty is paid in full; and
- (ii) such lien has the same priority status as a lien for any other ad valorem tax, pursuant to Section 399.014(a)(2) of the PACE Act.

2. The lien created by the Assessment runs with the land, and according to Section 399.014(b) of the PACE Act, any portion of the Assessment that has not yet become due iswill not be eliminated by foreclosure of: (i) a property tax lien, or (ii) the lien for any past due portiona delinquent Installment of the Assessment. In the event of a

sale or transfer of the Property by Property Owner ~~(including, without limitation, a foreclosure sale, the obligation for a past due portion of the Assessment), and the Property Owner's obligations under the Financing Documents (including, without limitation, the portion of the Assessment that has not yet become due)~~ will be transferred to the succeeding owner without recourse ~~onto~~ Local Government, or ~~Texas PACE Authority (the "Program Administrator") and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.~~ Authorized Representative.

3. ~~After~~As provided in Section 399.014(a-1) of the PACE Act, after this Notice of Contractual Assessment Lien is recorded in the real property records of the county in which the Property is located ~~as provided under Section 399.013 of the PACE Act,~~ the lien created by the Assessment may not be contested on the basis that the improvement is not a "qualified improvement" or the project is not a "qualified project", as such terms are defined in Section 399.002 of the PACE Act.

EXECUTED on                     ,           .

LOCAL GOVERNMENT:

WILLIAMSON COUNTY, TEXAS

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

Texas Property Assessed Clean Energy Authority

AUTHORIZED REPRESENTATIVE

Pursuant to Tex. Local Gov't Code §399.006(b)

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

Name: CHARLENE HEYDINGER

Title: PRESIDENT, TEXAS PACE AUTHORITY

Address: PO BOX 200368  
AUSTIN, TX 78720-0368

E-mail: [charlene@texaspaceauthority.org](mailto:charlene@texaspaceauthority.org)

~~AUTHORIZED REPRESENTATIVE~~  
~~Pursuant to Tex. Local Gov't Code §399.006(b)~~

**ACKNOWLEDGEMENT**

STATE OF TEXAS                      \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This Notice of Contractual Assessment Lien pursuant to Property Assessed Clean Energy Act was acknowledged before me on \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, \_\_\_\_\_, on behalf of \_\_\_\_\_, Texas20 \_\_\_\_\_ by Charlene Heydinger, President, Texas Property Assessed Clean Energy Authority, dba Texas PACE Authority, a Texas nonprofit corporation, on behalf of said corporation as Authorized Representative for the Local Government.

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\_\_\_\_\_ (print name)

NOTARY PUBLIC, STATE OF TEXAS

**NOTICE OF LIEN EXHIBIT A**  
**PROPERTY DESCRIPTION**



**NOTICE OF LIEN EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**

NOTICE OF LIEN **EXHIBIT C**

ASSESSMENT

FINANCING DOCUMENTS

Assessment Payment Schedule

Assessment Total:

Payment Frequency:

Interest Rate:

Payment Date	Total Payment	Principal Paid	Interest Paid	Administration Fee	Remaining Balance

Financing Documents

<u>Document Title</u>	<u>Parties</u>	<u>Date Executed</u>

INDEXING INSTRUCTION:

Grantor: \_\_\_\_\_, Property Owner  
Grantees: \_\_\_\_\_, Local Government  
\_\_\_\_\_, Lender

After recording, return to- Texas PACE Authority  
\_\_\_\_\_Charlene Heydinger  
\_\_\_\_\_PO Box 200368  
\_\_\_\_\_Austin, TX 78720-0368