

PACE OWNER CONTRACT

THIS PROPERTY ASSESSED CLEAN ENERGY (“PACE”) OWNER CONTRACT (“Owner Contract”) is made as of the [REDACTED] day of [REDACTED], 20[REDACTED], by and between [REDACTED], Alaska (“Local Government”), and [REDACTED] (“Property Owner”).

RECITALS

A. The Municipal Property Assessed Clean Energy Act, Alaska Statutes 29.55, as amended from time to time (the “PACE Act”), authorizes the governing body of a local government to establish an energy improvement assessment program and designate a region within the local government’s jurisdiction within which the local government may enter into written contracts with record owners of existing privately owned commercial or industrial property to impose assessments on the property to finance the installation or modification of permanent improvements fixed to the property to achieve reduced energy consumption or demand, energy costs, or emissions affecting local air quality, including a product, device, or interacting group of products or devices that use energy technology to generate electricity, provide thermal energy, or regulate temperature.

B. Local Government has established a program under the PACE Act (the “PACE Program”) pursuant to an ordinance dated [REDACTED], adopted by the [REDACTED] (the “Ordinance”), and a resolution dated, [REDACTED], (the “Resolution”), collectively “the [REDACTED] PACE Legislation”). The Local Government is authorized to enter into the Assessment, Owner Contract and Capital Provider Contract described herein, and has designated the entire territory within the [MUNICIPALITY/BOROUGH] as a region (“Region”) within which the Local Government 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.

C. Property Owner is the legal and record owner of the qualified real property, located within the Region at [PROPERTY ADDRESS], [CITY], Alaska and more particularly described in Exhibit A, attached hereto and incorporated herein (the “Property”).

D. Property Owner applied to participate in the PACE Program by installing or modifying on the Property certain permanent improvements which are intended to reduce energy consumption or demand, and which are or will be fixed to the Property as qualified improvements, as set forth in the PACE Act and PACE Program (the “Qualified Improvements”). The cost of installation or modification of such Qualified Improvements and all related eligible costs pursuant to the PACE Act and otherwise described in the PACE Program have been determined to be a qualified energy improvement project and collectively referred to herein as the “Project”. 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 to be filed in the property records of the recording district of [MUNICIPALITY/BOROUGH], Alaska (the “Notice of Contractual Assessment Lien”), a copy of which is attached hereto as Exhibit B and made a part hereof, to repay the financing of such Project.

E. The financing of such Project will be provided to Property Owner by [CAPITAL PROVIDER] (“Capital Provider”), a qualified Capital Provider selected by Property Owner, pursuant to a written contract executed by Capital Provider and Local Government as required by Section 29.55.105 of the PACE Act and by the PACE Program (the “Capital Provider Contract”). The financing for the Project

will include only those costs and fees for which an assessment may be imposed under the PACE Act and PACE Program. Local Government has agreed to maintain and continue the Assessment for the benefit of Capital Provider until such financing is repaid in full and to release the Assessment upon notice from Capital Provider of such payment, or enforce the lien securing the Assessment.

F. Pursuant to Section 29.55.105(a)(2) of the PACE Act, Local Government may contract with the governing body of another taxing unit to perform the duties of the Local Government relating to collection of assessments imposed by the Local Government under this section (the "Agent").

AGREEMENT

The parties hereby agree as follows:

1. Imposition of Assessment. In consideration for the financing advanced or to be advanced to Property Owner by Capital Provider for the Project under the PACE Program pursuant to the Capital Provider Contract, Property Owner hereby requests and agrees to the imposition by Local Government of the Assessment in the amount of \$ [REDACTED] plus 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 Capital Provider (the "Financing Documents") which are described on Exhibit C attached hereto and made a part hereof by reference. Property Owner promises and agrees to pay such amount and interest to Local Government, in care of or as directed by Capital Provider, in satisfaction of the Assessment imposed pursuant to the Owner Contract and the PACE Act. Accordingly, Local Government hereby imposes the Assessment on the Property to secure the payment of such amounts, in accordance with the requirements of the PACE Program and the provisions of the PACE Act.

2. Maintenance and Enforcement of Assessment. In consideration for Capital Provider's agreement to advance financing to Property Owner for the Project pursuant to the Financing Documents, Local Government agrees to maintain and continue the Assessment on the Property for the benefit of Capital Provider until the Assessment, including all interest, fees, penalties, costs, and other sums due under and authorized by the PACE Act, PACE Program and the Financing Documents are paid in full, and to release the Assessment upon notice from Capital Provider of such final payment. Local Government agrees to collect Assessment Installments, as defined here, and to enforce the Assessment against the Property for the benefit of Capital Provider in the event of a payment default by Property Owner. When the Assessment amount together with any prepayment premium, and/or default penalties and interest, if any, has been paid in full, upon notice from Capital Provider that all amounts owing have been paid in full, Local Government will execute a release of the Assessment and this Owner Contract. Thereafter, the Local Government will record the release.

3. Installments. The Assessment, including the amount financed and interest, is due and payable in installments ("Assessment Installments") as set forth in the Notice of Contractual Assessment Lien and the Financing Documents. As of the effective year [#] and each year thereafter for the term identified in the Notice of Contractual Assessment Lien, the Assessment shall be placed on the Property's tax bill or a stand-alone bill for account # [ENTER PROPERTY ID] by the Local Government or its Agent. Property Owner agrees that the Assessment will be included on the Property's tax bill or stand-alone bill and agrees to repay all Assessment obligations which are due and payable to the Local Government on the date designated on the Property's tax bill or stand-alone bill for payment of the Assessment Installment.

[The Assessment shall include: (1) an application fee paid by Property Owner to Local Government at loan closing, and (2) a recurring administration fee paid by Property Owner to the Local Government.]

4. Assignment of Right to Receive Installments. Capital Provider will have the right to assign or transfer the right to receive the Assessment Installments of the financing secured by the Assessment, provided all of the following conditions are met:

(a) Local Government [and Agent] are notified in writing of the assignment or transfer and the address to which payment of the future Assessment Installments should be mailed at least 30 days before the next Assessment Installment is due according to the payment schedule included in the Notice of Contractual Assessment Lien and the Financing Documents; and

(b) The assignee or transferee of the right to receive the payments executes an explicit written assumption of all of Capital Provider's obligations under Capital Provider Contract.

(c) Upon written notice to Property Owner, Local Government, [and Agent] of an assignment or transfer of the right to receive payments under the Capital Provider Contract that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under such Capital Provider Contract accruing after the date of the assignment assumed by and transferred to such assignee or transferee and all of such obligations shall be assumed by and transferred to the assignee. Any attempt to assign or transfer the right to receive the payments under the Capital Provider Contract that does not meet all of these conditions is void.

4. Lien Priority and Enforcement. Pursuant to Section 29.55.135 of the PACE Act,

(a) Delinquent Assessment Installments will incur interest and penalties in the same manner and in the same amount as delinquent [taxes ; OR assessments] as provided in [AS 29.45.250 ; OR INSERT MUNICIPAL CODE; OR INSERT "the Ordinance"']. In addition to penalties and interest as described herein, which shall be retained by the Capital Provider, Local Government will recover costs and expenses, including attorney fees, in suit to collect a delinquent Assessment Installment in the same manner as in a suit to collect a delinquent property tax.

(b) The Assessment, together with all authorized fees, penalties and interest thereon,

(1) is a lien against the Property from the date on which the Notice of Contractual Assessment Lien is filed in the of the property records of [MUNICIPALITY/BOROUGH], until the financing secured by the Assessment and all authorized fees, penalties and interest are paid in full; and

(2) such lien is prior and paramount to all liens except municipal tax liens and special assessments, pursuant to Section 29.55.135 of the PACE Act.

(c) The lien created by the Assessment runs with the land, and pursuant to Section 29.55.135 of the PACE Act, any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien. In the event of a sale or transfer of the Property, the obligation for the Assessment and the Property Owner's obligations under the Financing Documents will without further action by Local Government, be transferred to, and assumed by, the succeeding property owner.

(d) In the event of a default by Property Owner in payment of the Assessment Installments called for by the Financing Documents, the lien created by the Assessment will be enforced by Local Government in the same manner according to AS 29.45.320 – 29.45.470 that a property tax lien against real property may be enforced by a local government.

(e) In a suit to collect a delinquent Assessment Installment, Local Government will be entitled to recover costs and expenses, including attorney's fees in the amount consistent with a suit to collect a delinquent property tax. Capital Provider shall be entitled to any additional sums due to it under the Financing Documents in connection with a suit to collect a delinquent Assessment Installment.

(f) After the Notice of Contractual Assessment Lien is recorded in the real property records of [MUNICIPALITY/BOROUGH], 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 "Project" under the terms of the PACE Act or PACE Program.

5. Written Contract Required by PACE Act. This Owner Contract constitutes a written contract for the Assessment between the Property Owner and Local Government as required by Section 29.55.110 of the PACE Act. The Notice of Contractual Assessment Lien will be recorded in the property records of [MUNICIPALITY/BOROUGH] as notice of the contractual Assessment, in accordance with the requirements of Section 29.55.130 of the PACE Act.

6. Qualified Improvements. Property Owner agrees that all improvements purchased, constructed and/or installed through financing obtained pursuant to this Owner Contract shall be permanently affixed to the Property and will transfer with the Property to a transferee in the event of and sale or assignment of the Property.

7. Construction and Definitions. This Owner 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 PACE Program, and/or (2) the PACE Act.

8. As required by Section 29.55.155 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.

9. Binding Effect. This Owner Contract inures to the benefit of Local Government and is binding upon Property Owner, its heirs, successors, and assigns.

10. Notices. All notices and other communications required or permitted by this Owner Contract shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at its address shown 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.

11. Governing Law. This Owner Contract shall in all respects be governed by and construed in accordance with the laws of the State of Alaska.

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

13. 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.

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

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

16. Costs. No provisions 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. Notwithstanding the foregoing, if Local Government takes title to the Property, Local Government will be subject to payment of future Assessment Installments due.

17. No Personal Liability. The Property Owner acknowledges that the members of the governing body and employees of the Local Government, and board members, executives, employees, and contractors of any third-party who enters into a contract with the Local Government to provide administrative services for the PACE Program are not personally liable as a result of exercising any rights or responsibilities under the PACE Program or any agreement in furtherance of the PACE Program.

18. Recitals. The Recitals to this Owner Contract are incorporated into this Owner Contract by this reference as if set forth in their entirety in this Owner Contract.

SIGNATURE PAGE TO PACE OWNER CONTRACT [1 OF 2]

PROPERTY OWNER: _____

By:

Name:

Title:

Address:

Date:

SIGNATURE PAGE TO PACE OWNER CONTRACT [2 OF 2]

LOCAL GOVERNMENT: _____

By:

Name:

Title:

Address:

Date:

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

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

EXHIBIT C: DESCRIPTION OF FINANCING DOCUMENTS