

Assessment Agreement for C-PACER Financing

[_____], NEW HAMPSHIRE

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY OR RESILIENCY

(C-PACER) PROGRAM

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ASSESSMENT AGREEMENT FOR C-PACER FINANCING

[_____], New Hampshire

This ASSESSMENT AGREEMENT FOR C-PACER FINANCING (this “**Agreement**”) is made and entered into as of this [____] day of [_____], 20[__] (the “**Effective Date**”), by and between [_____]”, a [_____] and political subdivision of the state of New Hampshire (the “ _____ ”), and [_____], a [_____], the record owner of the fee title or holder of a leasehold estate (the “**Property Owner**”) to the real property identified on **Exhibit A** (the “**Property**”) (individually, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, the [_____] has established the [_____] C-PACER Program (the “**Program**”) through the adoption of the Commercial Property Assessed Clean Energy and Resiliency (C-PACER) District (“[_____] [_____]”) to allow the financing of certain renewable energy, energy and water efficiency, or resiliency improvements (“**Qualifying Improvements**”), through the levy of a special assessment pursuant to N.H. RSA Chapter 53-F (as may be amended from time to time, the “**C-PACER Act**”); and

WHEREAS, the purpose and method of approval of C-PACER financing under the Program are described in the [_____] [_____] and in the Program Guidebook prepared by C-PACER Program Administrator, the N.H. Business Finance Authority (the “**NHBFA**”), 135 N State St, Concord, NH 03301, as the same may be amended from time to time (the “**Program Guidebook**”); and

WHEREAS, the Property is located in the boundaries of the [_____] and the [_____] has consented to allow owners of eligible properties with qualifying improvements within its jurisdiction to apply for this Program; and

WHEREAS, the Property Owner has submitted a completed application to the NHBFA including a description of the Qualifying Improvements that have been, or will be, acquired, constructed on, and/or installed on the Property; and

WHEREAS, the NHBFA has reviewed such application to assess compliance with the C-PACER Act, the [_____] [_____], and the Program Guidebook, and the NHBFA has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the “**Approved Project**”); and

WHEREAS, the Approved Project is to be financed solely by private lenders pursuant to a financing agreement between the Property Owner (the “**Financing Agreement**”) and a capital provider (together with its designees or assigns, the “**Capital Provider**”) and under which the Property Owner agrees to repay such Capital Provider; and

WHEREAS, said financing is secured by a special assessment lien on the Property;

WHEREAS, pursuant to the C-PACER Act, the [_____] and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment levied and a lien placed on the Property in exchange for receiving and repaying C-PACER financing; and

WHEREAS, it is a condition to closing of the Financing Agreement that the Property Owner and the [_____] enter into this Agreement and that this Agreement then immediately be assigned to the Capital Provider; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment lien on the Property and to enter into this Agreement in order to finance or refinance the installation on the Property of the Qualifying Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Property Owner and the [_____] formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. Purpose. The Property Owner and the [_____] are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction on the Property of the Qualifying Improvements identified on **Exhibit B**, attached hereto and hereby incorporated by reference.

Section 2. The Property. This Agreement relates to the real property described in **Exhibit A**, attached hereto and hereby incorporated by reference. The Property Owner possesses all legal authority necessary to execute and deliver this Agreement. If the Property Owner is the holder of a leasehold estate on the Property, then that party has supplied to the NHBFA and the [_____] a copy of the recorded lease or lease term sheet, and a signed and notarized consent of the fee title owner(s) or some other recorded document sufficient to show the leaseholder's right to bind the property to a C-PACER assessment and lien.

Section 3. Assessment and Lien; Assignment.

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the Parties, the Property Owner voluntarily and willingly requests and consents to an assessment and the placement of a lien against the Property by the [_____] pursuant to this Agreement and applicable law in the principal amount of \$[_____], together with all interest, penalties, and fees as described in the Financing Agreement (the "**Assessment**"). Upon execution and delivery of this

Agreement, the [] will execute and cause to be recorded in the Registry of Deeds the Notice of Assessment and C PACER Lien (the “**Notice of Assessment**”), substantially in the form of **Exhibit C** attached hereto, together with a copy of this Agreement. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the [] (the “**C PACER Lien**”) and provide record notice to third parties of the existence of the C PACER Lien.

(b) The execution and delivery of this Agreement by the Parties authorizes and effectuates the assessment and lien by the [] against the Property without any further action required by the Parties.

(c) The Property Owner hereby promises to pay the Assessment for a period of [] years in the amounts, and on the due dates, as set forth in **Exhibit D**, attached hereto and hereby incorporated by reference (the “**Payment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Payment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C PACER Lien until paid in full. Failure to timely pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C PACER Lien may be foreclosed in the manner specified in Section 4, below.

(e) The Property Owner agrees and acknowledges that the [] shall assign the Assessment and the C PACER Lien, pursuant to the Assignment of Notice of Assessment and C PACER Lien and Assignment of Assessment Agreement (the “**Assignment**”), to the Capital Provider, its designee or assigns, as set forth in the Financing Agreement. The Assignment shall be executed and delivered contemporaneously with this Agreement and recorded immediately following the Notice of Assessment. The Property Owner expressly authorizes the [] to delegate all duties and to assign all rights under this Agreement to the Capital Provider.

(f) The Property Owner and Capital Provider acknowledge that the NHBFA’s approval of the C PACER application, the []’s initial placement of the Assessment, and the []’s recording of the C PACER Lien do not constitute and shall not be construed to be the NHBFA’s or []’s endorsement of the Qualifying Improvements, the Approved Project, or the Financing Agreement.

Section 4. Assignment, Billing, and Collection of Assessment; Foreclosure.

(a) The [] shall assign the Assessment and C PACER Lien to the Capital Provider as provided in N.H. RSA 53-F:4, III and RSA 53-F:6, III(b) as now or hereinafter amended or recodified. The [], shall be responsible for all billing and collection of the special assessment and lien, provided responsible for all billing

and collection of the special assessment and lien, provided however that the [] may delegate such responsibilities to any outside third party approved by the NHBFA, which delegation shall be indicated in the Assignment. The [] is not required to enforce, or foreclose the debt created and financed by this Agreement, the Assessment, the C-PACER Lien, and any related documents. The Property Owner acknowledges and agrees that the Capital Provider may enforce and foreclose upon the Assessment Installments in the manner specified in the Financing Agreement.

(b) The Property Owner acknowledges that if any Assessment Installment is not paid when due, the C-PACER Lien may be enforced by the Capital Provider through the procedures under N.H. RSA chapter 479, including the power of sale, or as set forth in the Deed of Trust, if applicable, except that no sale of the Property shall discharge or in any manner affect the priority of the C-PACER Lien with respect to installments not yet due and payable at the time of sale, and assessments not yet due may not be accelerated or eliminated by foreclosure of the past due amounts of the lien, and no deficiency judgment may be sought by the Capital Provider with respect to any unpaid assessment at the time of sale.

(c) The Property Owner acknowledges that the [] will assign the Assessment and the C-PACER Lien to the Capital Provider and further expressly consents to the Capital Provider's prosecution of said foreclosure action in accordance with the terms of the Financing Agreement. The Property Owner acknowledges and agrees that the [] shall have no involvement in or obligation to prosecute such foreclosure on its own or on behalf of the Capital Provider, except to the extent that any action on the part of the [] or any [] official is required in order to allow the Capital Provider to prosecute or effectuate the foreclosure under N.H. RSA chapter 479, or as set forth in the Deed of Trust, if applicable, or to ratify or confirm any action of the Capital Provider taken in furtherance of the foregoing.

(d) If the Property subject to this Agreement includes multiple parcels, an action of foreclosure on a parcel or parcels pursuant to this Section 4 shall be brought in accordance with the terms specified in the Financing Agreement, to the extent consistent with the requirements of N.H. RSA chapter 479, or as set forth in the Deed of Trust, if applicable.

(e) The remedies set forth in this Section 4 are not intended to be the exclusive remedies of the Capital Provider, and the Capital Provider reserves any and all right and remedies now or hereinafter available, in law or in equity, for the enforcement of the C-PACER Lien, including any additional or alternative enforcement method now or hereafter permitted under the C-PACER Act.

Section 5. Term; Agreement Runs with the Property.

(a) Except as otherwise set forth in this Agreement, this Agreement shall

terminate upon the final payment or prepayment of the Assessment. Upon final payment of the Assessment, including all outstanding interest and charges and any penalties that may become due, the [] shall provide to the Property Owner a Certification of Full Payment of the C-PACER Lien. The Property Owner is then responsible for obtaining a signed lien discharge from the C-PACER Lien holder and recording the discharge at the Registry.

(b) The C-PACER Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the property.

(c) The balance of the C-PACER Lien that has not yet become due is not accelerated or eliminated by bankruptcy, or by foreclosure of the C-PACER Lien or any lien for taxes imposed by the state, a local government, or junior taxing district against the Property.

(d) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of relative valuation at the time of the subdivision, unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner. The Property Owner and Capital Provider agree to execute such further documents and instruments, and to take such further action as may be necessary, to carry out the purposes and intents of this subparagraph 5(c).

Section 6. Confidentiality of Information. Any personal, or business, financial information provided to the [] under the C-PACER Program by a participating Property Owner or a potential participating Property Owner shall be considered confidential, commercial, or financial information under RSA 91-A:5.

Section 7. Recordation of Documents. The [] either shall cause to be recorded or provide to an escrow agent for recording at the Registry of Deeds the Notice of Assessment, which includes this Agreement as an attachment, such other documents that are attached as exhibits to this Agreement, and the Assignment to the Capital Provider.

Section 8. Amendment.

(a) After the [] assigns its interest to the Capital Provider, this Agreement may be modified only by the written agreement of the [], the Capital Provider (or its assignee), and the Property Owner.

(b) The Property Owner agrees that it will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

Section 9. Binding Effect; Assignment.

(a) This Agreement inures to the benefit of and is binding upon the [_____] , the Property Owner and their respective successors and assigns. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue foreclosure of the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. If the Property is sold, or transferred by any other means, the new owner shall automatically assume the obligations of this Agreement, the Financing Agreement with the Capital Provider, and shall be subject to the special assessment and lien and shall be subject to all liability related to such obligations.

(b) With the exception of Section 10 below, any assignee shall be a party to this Agreement and shall have all of the rights and obligations of the [_____] hereunder to the extent that such rights and obligations have been assigned by the [_____] pursuant to the assignment documentation between the [_____] and the assignee. The Property Owner agrees that the [_____] may furnish any information concerning the Property Owner in its possession from time to time to prospective assignees.

Section 10. No Liability of the [_____]. Pursuant to the [_____] [_____] , the [_____] , as well as the NHBFA and the State of New Hampshire, shall incur no liability as a result of any provision of this Agreement or the Program, or for the private debt created or evidenced by this Agreement, the Assessment and C-PACER Lien, the Financing Agreement, or any related document, nor shall any members of the governing body, employees, board members or officers of the [_____] be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement or the Program. Neither this Agreement nor the [_____]’s participation in the Program shall be interpreted to pledge, offer, or encumber the [_____]’s full faith and credit. This Section 10 shall not apply to or for the benefit of the [_____]’s successors to, or assigns of, this Agreement.

Section 11. Release. The Property Owner agrees to hereby release, indemnify and hold NHBFA, the State of New Hampshire, [_____] , and all their respective appointed and elected officers, board members, and employees, harmless from and against any and all claims, demands, suits, liability and injury, however caused, arising out of or in any way related to my participation in the C-PACER program, including any and all claims, demands, suits, liability and injury caused or contributed to by the negligence of the NHBFA, the State of New Hampshire, [_____] , or their respective appointed and elected officers, board members, and employees. I agree and understand that

“injury” includes, but is not limited to, personal injury and death, any financial loss – including business losses, and any property damage, loss or destruction. **The obligations of the Property Owner in this section to and for the benefit of the NHBFA, the State of New Hampshire, [_____], and all their respective appointed and elected officers, board members, and employees shall survive any assignment, completion, expiration, or termination of the C-PACER project, C-PACER Assessment and Lien, and any Agreement signed that is necessary to the applicant’s C-PACER project. This Section 11 shall not apply to or for the benefit of the [_____]’s successors to, or assigns of, this Agreement.**

With respect to the performance of this Agreement and as to claims against the [_____], the NHBFA, and the State of New Hampshire, their respective officers, agents and employees for injuries to Property Owner’s employees, Property Owner agrees that the obligations to release, indemnify, defend and hold harmless [_____], the NHBFA, and the State of New Hampshire, and their respective officers, agents and employees, as provided in this Agreement extend to any claim brought by or on behalf of any employee of the Property Owner and that, to the extent necessary to effectuate these obligations, the Property Owner expressly waives any immunities under N.H. RSA 281-A:8 of the Workers' Compensation Law. This waiver is mutually negotiated by the Parties to this Agreement.

Section 12. Governing Law; Venue; Attorney Fees and Dispute Costs. This Agreement is governed by and construed in accordance with the laws of the State of New Hampshire. Any legal action brought under this Agreement must be instituted in a [_____] Superior Court. In the event of any dispute related to this Agreement, whether pursued in court or otherwise, each Party shall be responsible for its own actual attorney fees and litigation or dispute costs.

Section 13. Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 14. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 15. Terms. Capitalized, bolded, or other specially used terms not defined herein have the same meaning as provided in the [_____] [_____], and N.H. RSA chapter 53-F, as now or hereinafter amended.

[Remainder of Page Intentionally Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the [_____] has caused this Agreement to be executed in its name by its duly authorized representative as of the date first above written.

MUNICIPALITY/DISTRICT/COUNTY:

[_____] , NEW HAMPSHIRE

By: _____
Printed Name: _____
Title: _____
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this _____ day of 20[___], the above-named _____, duly authorized as [_____] of the [_____], New Hampshire, known to me or proven to be the person subscribed herein and being authorized to do so, executed the foregoing instrument in the capacity therein stated and for the purposes contained herein.

Seal

Notary Public/Justice of the Peace
Print Name: _____
Expiration Date: _____

IN WITNESS WHEREOF, the Property Owner has caused this Agreement to be executed in its name by its duly authorized representative as of the date first above written.

PROPERTY OWNER:

[_____],
a [_____]

By: _____
Name: _____
Title: _____

(If a Corporation):

STATE OF _____
COUNTY OF _____

On this, the _____ day of _____, 202__, before me, the undersigned Officer, personally appeared _____, as _____ of _____, known to me, or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes contained therein.

[Seal]

Notary Public/Justice of the Peace
Print Name: _____
Expiration Date: _____

(If an individual):

STATE OF _____
COUNTY OF _____

On this, the _____ day of _____, 202__, before me, the undersigned Officer, personally appeared _____, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes set forth therein.

[Seal]

Notary Public/Justice of the Peace
Print Name: _____
Expiration Date: _____

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

[To be inserted]

EXHIBIT B

CERTIFICATE OF ELIGIBLE IMPROVEMENTS

[To be attached]

EXHIBIT C

FORM OF NOTICE OF ASSESSMENT

[To be attached]

EXHIBIT D

PAYMENT SCHEDULE

[To be inserted, must contain:

- The amount of each payment over the full term over;
- the date on which payments are due
- the annual total amount due on the assessment.]