

CITY OF KENTWOOD, MICHIGAN
PACE PROGRAM SUPPLEMENT REPORT
June 19, 2018

INTRODUCTION

This “PACE Program” is a property assessed clean energy loan program established pursuant to the Property Assessed Clean Energy Act, 2010 PA 270, MCL 460.931 *et seq.* (“Act 270”). It expressly allows participation by various lenders, borrowers and administrators. However, it does not authorize City funding or City borrowing. Instead it relies on funding through loans from private lenders arranged by property owners and developers.

This PACE Program also does not establish any district but provides for the establishment of districts and the appointment of program administrators following an application for use of the PACE Program to fund energy projects on specific property. This PACE Program recognizes Lean & Green Michigan program as described in its LAGM PACE Program Report, including its arrangement with Levin Energy Partners, LLC and its form documents, as a provider of PACE Program administration services that is acceptable under the City’s PACE Program, though it is not an exclusive provider of the City’s PACE Program, or its documents or services.

This City’s PACE Program may be used in the funding of any energy project as defined in this PACE Program Report.

PROGRAM DETAILS

All the program details provided below may be amended from time to time by resolution of the City Commission of the City without a public hearing.

1. **Definitions.** The following definitions apply to words used in this report.
 - A. “City” means the City of Kentwood, Kent County, Michigan.
 - B. “City Mayor” means the individual serving as the City Mayor of the City or that individual’s designee.
 - C. “City Commission” means the City Commission of the City.
 - D. “County” means Kent County, Michigan.
 - E. "District" means a district created within the City following an application from a property owner for use of the PACE Program to fund an energy project on specific property. It is generally anticipated the district will be described to include only the property subject to and benefiting from the application.
 - F. "Energy efficiency improvement" means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:
 - i. Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.
 - ii. Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
 - iii. Automated energy control systems.

- iv. Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- v. Caulking, weather-stripping, and air sealing.
- vi. Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.
- vii. Energy recovery systems.
- viii. Day lighting systems.
- ix. Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- x. Measures to reduce the usage of water or increases the efficiency of water usage.
- xi. Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

G. "Energy project" means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system.

H. "LAGM Program Report" means the Lean & Green Michigan PACE Program Report for the City attached as Schedule I as it may be amended from time to time by resolution of the City Commission and as the City Commission may from time to time by resolution make it applicable to specific energy projects on specific parcels in districts to be established by that City Commission resolution and by contracts with the records owners also to be approved by City Commission resolution.

I. "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof. However, person does not include the City, the County or any other local unit of government.

J. "Property" means privately owned commercial or industrial real property located in the City.

K. "Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the Kent County Register of Deeds.

L. "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

- i. Biomass.
- ii. Solar and solar thermal energy.
- iii. Wind energy.
- iv. Geothermal energy.
- v. Methane gas captured from a landfill.

M. "Renewable energy system" means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use 1 or more

renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

2. Contract Form.

The form of contract between the City and record owner governing the terms and conditions of financing and assessment under the LAGM Program Report or such other contract form as may be approved by an amendment to this PACE Program.

3. Authorized Official.

The City Mayor is authorized to enter into a program contract on behalf of the City following approval of the contract and energy project by resolution of the City Commission.

4. No City Financing.

The City shall not provide any financing for any energy project under the PACE Program. All financing shall be by commercial lenders as arranged by the record owner of the property to benefit from the energy project.

5. Application and Eligibility.

A. Application can be made on a form approved by the City Mayor or on the form provided and using the process as describe in the LAGM Program Report.

B. Applications shall include payment to the City of a fee in the amount of \$250 plus any costs incurred by the City to process the application, review related documents and complete all transactions.

C. Eligibility requirements include the following:

i. The property benefitting from the energy project must be commercial or industrial real property within the City. Multi-family residential property is commercial property.

ii. There are no delinquent real property taxes or special assessments levied against the real property benefitting from the energy project or to be assessed under the PACE Program, no delinquent or water or sanitary sewer rates, fees or charges for services to that real property, and not delinquent personal property taxes for personal property located on that real property. This includes ad valorem taxes, industrial facilities taxes, commercial facilities taxes or any other taxes levied due to an abatement of or exemption from ad valorem taxes.

iii. The record owner or other proposed PACE Program participant has not failed to pay any assessment under a PACE Program and there are no delinquent PACE Program assessments levied against the real property benefitting from the energy project or to be assessed under the application.

iv. The record owner or other proposed PACE Program participant (or any affiliated person) does not own or occupy any other real property in the City which has delinquent real property taxes or special assessments, delinquent or water or sanitary sewer rates, fees or charges for services to that real property, or

- delinquent personal property taxes for personal property located on that real property.
- v. If the property to be assessed under the PACE Program is subject to a mortgage, the mortgage holder has consented in writing to the PACE Program assessment.
 - vi. The proposed term of the assessment shall not exceed the shorter of 25 years or the useful life of the energy project.
 - vii. The proposed PACE Program assessment may not exceed 50% the assessed value of the property. The City Commission may consider a higher assessment portion if the applicant and property to be assessed have limited or no debt, or other circumstances justify such consideration.
 - viii. A baseline energy audit acceptable to the City Mayor, the lender and the PACE Program administrator to the energy project on the property shall be provided. After the energy project is completed, the contract shall provide for verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.
 - ix. For projects to be financed in an amount exceeding \$250,000:
 - a. A performance guarantee from the contractor to guarantee a savings to investment ratio greater than one.
 - b. Financial and other arrangements for ongoing measurements and verification of energy savings that meet standards approved in the resolution approving the contract.
 - x. The development for which the energy project is a part must be one the City Commission determines is appropriate for City involvement through the PACE Program.

6. Financing Terms.

Financing terms will be determined on contract and project specific basis. Interest rates on assessment installments, repayment periods, and the maximum amount of the PACE assessment shall be established by the resolution approving the contract in accordance with the limitations set by the commercial lender, the PACE Program administrator for the energy project and the property, and by any consent from the holder of any mortgage on the property.

7. Assessment Process.

The City Assessor shall complete the PACE Program assessment roll for the energy project and property, which roll shall be confirmed by the City Mayor as when he approves the contract. The PACE Program assessment will be billed to the record owner on the July and/or December tax bills. Payments of the amounts collected shall be made by City Treasurer to the commercial lender as specified in the contract approved by the City Commission. Alternatively, as permitted by subsection 9(g)(iii) of Act 270, if provided in the contract, the owner may directly pay the commercial lender and collection for unpaid amount shall be made as provided in the contract.

If not paid when due, the City shall have the rights provided under and may collect the delinquent amounts in the same manner it collects other delinquent special assessments and as

provided in section 13 of Act 270. Any amounts collected, except such penalties and interest as are paid to the County or the County Treasurer under state law applicable to delinquent special assessments, shall be paid to the commercial lender as provided in the contract. If for any reason the special assessment is found to be invalid, the City may require the property owner to consent to and cooperate in the establishment of a new special assessment.

8. Raising Capital.

The City shall not raise any capital. All financing shall be owner-arranged financing from a commercial lender. There shall be no bonds issued under the PACE Program.

9. Administration and Other Fees.

Record owners participating in the PACE Program shall pay the application fees provided above and shall pay administration and other program fees as negotiated and provided on a contract by contract basis. Administration fees may be charged as provided in the LAGM Program Report or by other administrators who may provide services pursuant to an amendment to this PACE Program.

In addition, the City shall be reimbursed for all costs it incurs due to the PACE Program.

10. Marketing and Participant Education.

Marketing and participant education will be undertaken by the City Mayor after contacts from interested persons who may learn of the PACE Program through the City's website or by other means, or by a PACE Program administrator such as Levin Energy Partners under the LAGM PACE Program. In addition the City may market the program through its economic development partners such as The Right Place.

11. Debt Service Reserve Fund.

No debt service reserve fund will be needed because the City will not issue debt under the PACE Program.

12. Quality Assurance and Antifraud Measures.

Quality assurance and antifraud measure will be provided on a contract by contract basis in cooperation with the commercial lender, the energy project contractor(s), the PACE Program administrator, the record owner, and the City's legal counsel.

13. Intergovernmental Cooperation.

The City may join with other area local governments in the implementation of this PACE Program. This PACE Program may be amended to include the jurisdictions of other local governments, the City may join the PACE Programs established by other local governments, the

City may administer PACE Programs established by other local governments, or the City may engage other local governments to administer this PACE Program.



CITY OF KENTWOOD, MICHIGAN PACE PROGRAM

June 19, 2018



LEVIN
ENERGY
PARTNERS

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Lean & Green Michigan™ PACE Program

Executive Summary

Public Act No. 270 of 2010 (“Act 270”) authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of energy efficiency improvements and renewable energy systems by owners of commercial or industrial property within a district designated by the local unit of government. Act 270 allows private commercial lenders to finance energy projects; authorizes local units of government to issue bonds, notes and other indebtedness; and authorizes the assessment of properties for the cost of the energy projects. Act 270 provides for repayment to the local unit of government or the private lender through a voluntary property assessment. The property assessment remains with the property and has the same priority as other property tax and assessment liens in the event of foreclosure.

Lean & Green Michigan (“LAGM”) has developed a collaborative approach to PACE programs for local units of government by standardizing the administrative and legal process under which PACE programs are created and managed. Many local units of government throughout the state have or are in the process of joining LAGM utilizing a “shared services” approach to eliminate upfront and ongoing program costs and duplication. Further, this approach creates one efficient statewide market, allowing property owners, lenders and clean energy contractors to utilize a standardized process as they employ PACE financing in multiple jurisdictions throughout the state.

This documentation package includes the report required by Section 9 of Act 270 and provides model forms of documents for the PACE program. As many of the details of a PACE transaction are determined on a project-specific basis, adjustments to the model documents may be required to fit a particular transaction. Additionally, there are several blanks left in the documents that should be filled in when the corresponding information is known.



CITY OF KENTWOOD, MICHIGAN

PACE PROGRAM REPORT

This Lean & Green Michigan™ PACE Program Report contains the information required by Section 9 of Act 270. Additional information is available from the City of Kentwood (“City of Kentwood”). The PACE Program and Report were approved by the Kentwood City Commission on June 19, 2018, subsequent to a public hearing held on June 19, 2018. This Lean & Green Michigan™ (“LAGM”) portion of the City’s PACE Program is subject to all provisions of the City’s PACE Program Supplement Report. Whenever the City’s PACE Program Supplement Report and this Report differ, the City’s PACE Program Supplement Report shall control.

INTRODUCTION

In order to encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to the public health and welfare in the City of Kentwood, the City Commission established the City of Kentwood Property Assessed Clean Energy Program pursuant to Public Act No. 270 of 2010 (“Act 270”). The PACE Program has identified specific sources of commercial funding to finance the implementation of energy efficiency improvements, renewable energy systems and energy projects within the City of Kentwood PACE district (which is coterminous with the City of Kentwood jurisdictional boundaries).

The Kentwood City Commission passed a Resolution of Intent to establish a PACE program on June 5, 2018. The Commission published its first version of this PACE Report thereafter, and held a public hearing on June 19, 2018. The Commission passed a Final Resolution adopting this PACE program on June 19, 2018.

The purpose of this PACE Report (hereinafter the “Report”) is to fulfill the requirements of Act 270. Section 9 of Act 270 requires a Report that includes: a form of contract between the City of Kentwood and the record owner; identification of an official authorized to enter into program contracts on behalf of the City of Kentwood; a maximum aggregate amount for financing provided by the City under the program; an application process and eligibility requirements; a method for determining interest rates, repayment periods and the maximum amount of assessment; explanation of how assessments will be made and collected; a plan for raising capital; information regarding reserve funds and fees of the program; a requirement that the term of the assessment not exceed the useful life of the energy project; a requirement of an appropriate ratio of the amount of assessment to the assessed value of the property; requirement of consent from the mortgage holder; provisions for marketing and participant education; provisions for adequate debt service reserve fund; quality assurance and antifraud measures; and a requirement for baseline energy audits, ongoing savings measurements and performance guarantees for projects over \$250,000 in assessments.

1. Form of PACE Contract

A form of model PACE Special Assessment Agreement is attached as **Appendix A**. Individual property owners may negotiate project-specific terms to be included in an actual agreement based upon the specific energy efficiency and renewable energy improvements to be financed through the individual agreement, subject to the limitations set forth herein.

2. Authorized Official/PACE Administrator

The City of Kentwood Mayor or his designee (the “Authorized Official”) is authorized to enter into PACE Program contracts on behalf of the City of Kentwood in consultation with Levin Energy Partners, LLC (“LEP”). The Authorized Official is further authorized to sign any

agreement, documents or certificates necessary to facilitate the participation of property owners and to facilitate the purposes hereunder.

As part of Lean & Green Michigan™, LEP may act as PACE administrator to manage the City of Kentwood's PACE Program. LEP is authorized to negotiate with credit providers and PACE project participants to facilitate the use of the PACE Program and to assist PACE project applicants in obtaining owner-arranged financing.

3. Financing Parameters

In establishing its PACE district, the City of Kentwood intends for PACE projects to be funded through owner-arranged private financing. The maximum aggregate annual amount of financing provided by the City of Kentwood in 2018 shall be zero dollars. The maximum aggregate dollar amount for financing provided by the City may be adjusted and/or amended on an annual basis or more frequently by the City Commission and will remain at zero dollars unless and until it is changed.

Owner-arranged financing from commercial lenders, as allowed under Act 270, Section 9(1)(g)(iii), involve separate sources of financing from financing provided by the City of Kentwood. Owner-arranged financing from commercial lenders is not included under the maximum aggregate annual dollar amount for financing provided by the City of Kentwood under the Program. There is no limit on the maximum aggregate annual amount of financing provided by private commercial lenders under the program. The dollar amount for financing of a particular project will be established by the property owner seeking to make the property improvement and the commercial lender seeking to finance the energy improvements, as approved by LEP and the Authorized Official.

4. Application Process/Eligibility Requirements

Application Process:

The application process for financing projects under the LAGM part of the City's PACE Program shall be that of LAGM. The current application form is attached as **Appendix B**. This form may be changed or amended as necessary by LEP following approval by the Authorized Official.

Eligibility Requirements:

The eligibility requirements for financing projects under the LAGM part of the City's PACE Program shall be those of LAGM. Eligibility requirements may be changed or amended as necessary by LEP. The current list of eligibility requirements is attached as **Appendix C**.

5. Financing Terms of Assessments

For funds supplied by commercial lenders, the interest rate for PACE special assessment installments shall be negotiated by the parties based on current market conditions.

The maximum allowable repayment period of a PACE special assessment must be included in the PACE Special Assessment Agreement and will be determined on a project-specific basis and shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years.

The maximum dollar amount of a PACE special assessment shall be negotiated on a project-specific basis between the property owner and the entity providing the financing based upon the specific energy efficiency improvement(s), water efficiency improvement(s) and/or renewable energy system(s) included in the individual PACE Special Assessment Agreement.

6. Assessment Collection Process

Within the parameters set forth herein, the Authorized Official will determine to authorize one or more commercial lenders to provide financing to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the energy improvements.

The Special Assessment Roll, attached as **Appendix E**, will be spread by the Authorized Official on behalf of the City of Kentwood and without objection by the property owner to allocate one hundred percent (100%) of the PACE special assessment levy created hereby to the Special Assessment Parcel. As a condition to participation, the property owner will waive any claims relating to the formation, amount, or validity of the special assessment.

The PACE special assessment, as allocated by the Authorized Official on behalf of the City of Kentwood without objection by the property owner, will be finally established against the property and the energy projects to be constructed on the Special Assessment Parcel. The PACE special assessment will be effective immediately upon the execution of the PACE Special Assessment Agreement by the property owner. The PACE special assessment may be paid in semi-annual installments pursuant to Section 13(2) of Act 270. The Authorized Official, on behalf of the City of Kentwood, will confirm the Special Assessment Roll.

7. Financing Program

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

8. Reserve Fund

No reserve funds will be needed because no City debt will be issued to fund any PACE Program elements.

By participating in LAGM, the City of Kentwood assists its constituent property owners in taking advantage of any and all appropriate loan loss reserve and gap financing programs of the Michigan Economic Development Corporation (“MEDC”) and other federal and state entities. Such financing mechanism can similarly be used to finance a reserve fund.

9. Fee Schedule

Application, administration and program fees for record owners shall be those of LAGM in addition to those of the City as provided in the City’s PACE Program Report. Administration and program fees will be determined on a project-specific basis and will depend on the size, nature and complexity of the energy project(s) and financing mechanism(s) involved.

10. Useful Life

The maximum length of time allowable for repayment of a PACE assessment shall not exceed the lesser of the useful life of the energy project paid for by the assessment or 25 years and will be determined on a project-specific basis by LEP. Projects involving multiple energy efficiency improvements and/or renewable energy systems may aggregate the useful life of each improvement to determine an overall useful life figure for financing purposes. In aggregating the improvements, the property owner must appropriately weigh each improvement’s dollar cost.

11. Property Eligibility Parameters

The ratio of the amount of the assessment to the market value of the property must be appropriate and shall be set forth in the PACE Special Assessment Agreement for each project. Additionally, the overall indebtedness on the property must be appropriate. In calculating the appropriate ratios, the property owner and the lender providing the financing may determine the market value of the property using either: 1) the market value of the property before the PACE project as agreed to by the property owner and the lender providing the financing using a proper measure such as a recent appraisal or two times the State Equalized Value; or 2) the market value of the property upon completion of the PACE project as agreed to by the property owner and the lender providing the financing using a proper measure such as an appraisal of the “as completed” value of the property or the current market value of the property plus 75% of the value of the PACE project.

In calculating the appropriate ratio of the amount of the assessment to the market value of the property, the cost of the energy project (excluding closing costs and interest) shall generally not exceed 25% of the market value of the property.

In calculating the appropriate ratio of total indebtedness on the property, if the property owner and the lender providing financing calculate an appropriate ratio using the market value of the property before the PACE project, prior debt secured by the building plus the PACE loan shall generally not exceed 95% of the market value of the property. If the property owner and the lender providing financing calculate an appropriate ratio using the market value upon completion of the PACE project, prior debt secured by the building plus the PACE loan shall generally not exceed 90% of the market value of the property.

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

12. Mortgage Consent Requirement

If a property is subject to a mortgage the record owner must obtain written consent from the mortgagee to participate in the Program. Proof of lender consent must be submitted before a Special Assessment Agreement may be executed.

13. Marketing Program

LAGM has developed an ongoing marketing and participant education program. LAGM will partner with the City in educating businesses in the City about opportunities to save energy, save money and improve their property value. More information regarding the Program can be obtained at LAGM's website: www.leanandgreenmi.com; or at the City of Kentwood's website at <http://www.kentwood.us/>.

14. Quality Assurance and Antifraud Measures

LAGM includes the following quality assurance and antifraud measures:

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

15. Audit Requirement

As set forth in the PACE Program Application, a baseline energy audit must be completed before an energy project is undertaken. Each contract will require and provide adequate funding for monitoring and verification of energy savings throughout the life of the special assessment.

16. Projects Over \$250,000

As set forth in the PACE Special Assessment Agreement, energy projects financed with more than \$250,000 require ongoing measurements to establish energy savings and a guarantee from the contractor that the energy project will achieve a savings to investment ratio greater than one.

17. Amendments to the Program

This Program may be amended by resolution of the City Commission.

**City of Kentwood PACE Special Assessment Agreement
Parcel #**

**APPENDIX A
SPECIAL ASSESSMENT AGREEMENT**

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

by and among

THE CITY OF KENTWOOD, MICHIGAN

and

PROPERTY OWNER

and

PACE LENDER

Dated: _____

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PACE SPECIAL ASSESSMENT AGREEMENT
(OWNER-ARRANGED FINANCING)

THIS PACE SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made this _____ between THE CITY OF KENTWOOD, a Michigan municipal corporation (“the City of Kentwood”), whose address is 4900 Breton Ave SE, Kentwood, Michigan 49508, PROPERTY OWNER, a Michigan _____ (the “Property Owner”), whose address is _____, and PACE LENDER, a _____ (the “Lender”), whose address is _____.

RECITALS:

A. Pursuant to Act 270 and a resolution adopted by the City Commission of the City of Kentwood on June 19, 2018, the City of Kentwood has established the PACE Program as described in the PACE Program Report and hereafter may create Special Assessment Districts under the PACE Program for the purpose, *inter alia*, of assisting a record owner of property within the Special Assessment District in obtaining Owner-Arranged Financing from a commercial lender to defray the costs of one or more Energy Projects on the property.

B. Under Act 270, the City of Kentwood is authorized, pursuant to an agreement with the record owner of property within the Special Assessment District, to impose a special assessment on the property to be benefitted by the Energy Projects in order to secure and provide for the repayment of the Owner-Arranged Financing.

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

D. In order to induce the Lender to make the Loan to the Property Owner, the Property Owner has requested that the City of Kentwood enter into this Agreement to impose a special assessment on the property to be benefitted by the Energy Projects, in accordance with Act 270, which special assessment will secure and provide for repayment of the Loan from the Lender.

E. Pursuant to Act 270 and the PACE Program, the City of Kentwood is authorized to enter into this Agreement.

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

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Capitalized terms used in this Agreement and Recitals shall have the meanings stated in Act 270 and as stated immediately below, except to the extent the context in which they are used requires otherwise:

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

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

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

(d) “**Authorized Official**” means the Mayor of the City of Kentwood or his designee, who is authorized to exercise the authority of an Authorized Official under the terms of the PACE Program Report.

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

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

(g) “**Energy Project**” means the installation or modification of an Energy Efficiency Improvement or the acquisition, installation, or improvement of a Renewable Energy Improvement.

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

(i) “**Force Majeure**” means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and

delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.

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

(k) “**Improvements**” means the Energy Efficiency Improvements and the Renewable Energy Improvements being undertaken by the Property Owner on the Special Assessment Parcel as described in **Appendix D** attached hereto.

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

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

(n) “**LEP**” shall mean Levin Energy Partners, LLC, a Michigan limited liability company.

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

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

(q) “**Owner-Arranged Financing**” means the process by which the Property Owner secures financing for improvements to its property that does not involve bonds or any other form of funding or indebtedness by the City of Kentwood.

(r) “**PACE Program**” shall mean the property assessed clean energy program implemented by the City of Kentwood pursuant to Act 270 and the PACE Program Report to stimulate energy efficiency and renewable energy projects in conformity with Act 270.

(s) “**PACE Program Report**” means the Lean & Green Michigan™ PACE Program Report approved by the City Commission of the City of Kentwood on June 19, 2018 including any amendments or changes thereto made before the date of this Agreement.

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

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

(v) “**Renewable Energy Improvement**” means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one

(1) or more renewable energy resources to generate electricity, gas, or other power. Renewable Energy Improvement includes a biomass stove but does not include an incinerator or digester.

(w) “**Special Assessment**” means the money obligation created pursuant to this Agreement and Act 270 with respect to the Special Assessment Parcel used to defray the cost of the Improvements and which shall, together with all interest, charges and penalties which may accrue thereon, be a lien upon the Special Assessment Parcel, from and after the date of confirmation of the Special Assessment Roll, of the same priority and status as other property tax liens and other assessment liens as provided in Act 270 until such amounts have been paid in full.

(x) “**Special Assessment District**” means the Special Assessment District established as part of the PACE Program pursuant to Act 270.

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

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

ARTICLE II DESCRIPTION OF IMPROVEMENTS

Section 2.01 Description of Improvements. The Improvements to be acquired, constructed, installed and financed by the Property Owner under the PACE Program are described in **Appendix G** attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, **Appendix G** may be amended or supplemented from time to time, in accordance with the terms of this Agreement. Such additional Improvements must meet all the eligibility criteria of the PACE Program and the PACE Program Report and may be added to the original application as a modification, or submitted as a new project, at the discretion of LEP and the Authorized Official.

ARTICLE III COVENANTS OF THE PROPERTY OWNER

Section 3.01 Acquisition, Construction and Installation of Improvements.

(a) The Property Owner covenants and agrees to acquire, construct and install the Improvements as described in **Appendix G** on the Special Assessment Parcel described on **Appendix D** in full conformity with all applicable laws and regulations and in compliance with the PACE Program eligibility requirements set forth in **Appendix C**. If the proceeds of the Loan are not sufficient to pay the costs of the Improvements as aforesaid, the Property Owner agrees to complete the Improvements and to pay that portion of the costs of the Improvements in excess of the amount of the Loan. The Property Owner acknowledges and agrees that the City of Kentwood makes no representation, either express or implied, that the proceeds of the Loan will be sufficient to pay the total costs of the Improvements, and the Property Owner agrees that if,

after exhaustion of the proceeds of the Loan, the Property Owner shall be required to pay any portion of the costs of the Improvements from its own funds, the Property Owner shall not be entitled to any reimbursement therefor from the City of Kentwood or from the Lender, nor shall the Property Owner be entitled to any abatement or diminution of the amount of the Special Assessment created by this Agreement or of any interest, charges or penalties which may accrue thereon.

(b) To provide for monitoring and verification of the Energy Project, the Property Owner has created an Energy Star Portfolio Manager account and has linked this account to the Levin Energy Partners Energy Star Portfolio Manager account. The Property Owner has entered all electricity bills for the Special Assessment Parcel for the year (12 consecutive months) immediately preceding the installation of the Energy Project. The Property Owner further agrees to enter its electricity bills for the duration of the Agreement on an annual basis. Annual electricity bills for the Special Assessment Parcel will be entered into the Property Owner's Energy Star Portfolio Manager account by January 31 of each year after the year for which the electricity bills are to be entered.

ARTICLE IV PACE SPECIAL ASSESSMENT

Section 4.01 PACE Special Assessment Created.

(a) At the request of the Property Owner, the City of Kentwood agrees to make reasonable efforts to assist the Property Owner in obtaining the Loan to defray a portion of the cost of the Improvements on the Special Assessment Parcel by the levy of the Special Assessment upon the Special Assessment Parcel, which the Authorized Official on behalf of the City of Kentwood finds is especially benefitted in proportion to the cost of the Improvements. The Special Assessment created hereby has been spread by the Authorized Official on behalf of the City of Kentwood on the Special Assessment Roll attached hereto as **Appendix E** (the "Special Assessment Roll"), with the consent of the Property Owner, to allocate one hundred percent (100%) of the Special Assessment to the Special Assessment Parcel. If for any reason the Special Assessment is deemed to be invalid, the Property Owner consents to the establishment of a new Special Assessment to effectuate the purposes set forth herein.

(b) The Special Assessment, as allocated by the Authorized Official with the consent of the Property Owner, is hereby finally established and levied against the Special Assessment Parcel as described on the attached **Appendix D** in the principal amount of _____ as stated on the Special Assessment Roll. The Special Assessment is effective immediately upon the execution and delivery of this Agreement by the Property Owner. The Special Assessment shall be paid by the Property Owner in _____ semi-annual installments on the dates and in the amounts set forth in the payment schedule attached hereto as **Appendix F** (the "Payment Schedule"). The Special Assessment Roll and the Payment Schedule are hereby confirmed by the Authorized Official on behalf of the City of Kentwood. The unpaid amount of the Special Assessment Roll shall bear interest from the date of execution and delivery of this Agreement at the Applicable Interest Rate, as calculated by the Lender in accordance with the terms of the Loan Documents, payable by the Property Owner semi-annually on each date on

which any installment of the Special Assessment is due in accordance with the Payment Schedule. Notwithstanding the foregoing, (i) if any installment of the Special Assessment or any interest due and payable on the Special Assessment Roll is not paid by the Property Owner when and as the same shall become due and payable in accordance with the provisions of this Section 4.01 or (ii) any “event of default” under the Loan Documents has occurred and is continuing, the unpaid amount of the Special Assessment Roll shall bear interest at the Default Rate as calculated by the Lender in accordance with the terms of the Loan Documents, for as long as such amounts remain unpaid or for so long as such “event of default” under the Loan Documents exists and is continuing. The City of Kentwood, the Property Owner and the Lender agree that the Lender shall be solely responsible for the determination from time to time of the Applicable Interest Rate and the Default Rate and the amount of interest due and payable by the Property Owner on the Special Assessment Roll on each day on which interest thereon is due and payable as provided in this Agreement, and the Lender’s determination thereof shall be binding on the Property Owner absent manifest error. The Property Owner and the Lender agree that the City of Kentwood shall under no circumstance have any obligation to determine the Applicable Interest Rate or the Default Rate or to calculate the amount of any interest payment due on the Special Assessment Roll as provided in this Agreement, and the City of Kentwood may conclusively rely upon the Lender’s determinations thereof for the purpose of exercising and discharging all of the City of Kentwood’s rights and obligations under this Agreement. The Lender agrees to provide, or cause to be provided, notice to the Property Owner and the City of Kentwood of the determinations of the Applicable Interest Rate and the Default Rate, as applicable, pursuant to this Section 4.01(b) at such times, and from time to time, as the Property Owner or the City of Kentwood may request.

Section 4.02 Assignment of Special Assessment Payments to Lender. At the request of the Property Owner and the Lender, and pursuant to Section 9(g)(iii) of Act 270, the City of Kentwood hereby irrevocably assigns to the Lender its right to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01(b) of this Agreement. In pursuance of the foregoing, the City of Kentwood, the Property Owner and the Lender agree that, except as provided in Section 4.05 of this Agreement, (i) all installments of the Special Assessment, whether payable in accordance with the Payment Schedule or upon prepayment of the Special Assessment in whole or in part in accordance with Section 4.06 of this Agreement, together with all payments of interest due and payable upon the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, shall be paid by the Property Owner directly to the Lender when due at such address in the United States as may be designated by the Lender in writing to the Property Owner and the City of Kentwood; (ii) the City of Kentwood shall have no obligation or duty to include any installments of the Special Assessment on any tax bill issued by the City of Kentwood or to bill, collect or remit to the Lender any installments of the Special Assessment or any interest due and payable upon the Special Assessment Roll; and (iii) absent receipt by the City of Kentwood of written notice from the Lender of a payment default in accordance with Section 4.05 hereof, the City of Kentwood shall be entitled to conclusively presume that all installments of the Special Assessment and all

payments of interest due and payable on the Special Assessment Roll have been made by the Property Owner to the Lender when due as required by the terms of this Agreement.

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

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

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

(c) In addition to any conditions, covenants, warranties and representations specified in the Loan Documents, the Property Owner shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the Special Assessment to any successors in interest, lessees, purchasers or assigns and having made a copy of this Agreement part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which the Property Owner purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, transferees, licensees and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by the Lender with the Register of Deeds of the County of Kent, State of Michigan.

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

(e) The City of Kentwood agrees that following (i) payment by the Property Owner in full of the Special Assessment, together with all accrued interest on the Special Assessment

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

(f) The provisions of this Section 4.03 shall survive termination of the Agreement.

Section 4.04 Lien. The Special Assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be a lien upon the Special Assessment Parcel for the amount of the Special Assessment and all interest, charges and penalties that may accrue thereon. Such lien shall be of the same character and effect as liens created pursuant to the ordinances of the City of Kentwood for City taxes and shall be treated as such with respect to procedures for collection as set forth in the General Property Tax Act and the ordinances of the City of Kentwood, including accrued interest, charges and penalties. The Special Assessment confirmed hereby is a debt to the City of Kentwood from the Property Owner and its successors in interest, lessees, purchasers and assigns. The right of the City of Kentwood to receive all installments of the Special Assessment required to be paid by the Property Owner pursuant to this Agreement, together with all payments of interest due and payable on the Special Assessment Roll at the Applicable Interest Rate or the Default Rate, as the case may be, as provided in Section 4.01, has been irrevocably assigned by the City of Kentwood to the Lender in accordance with the provisions of Section 4.02 of this Agreement. No judgment or decree shall destroy or impair any lien of the City of Kentwood upon the premises assessed for such amount of the Special Assessment as may have been equitably or lawfully charged and assessed thereon. Failure of the Property Owner or any subsequent property owner to receive any notice required to be sent under the provisions of the ordinances of the City of Kentwood or this Agreement shall not invalidate the Special Assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.

Section 4.05 Payment Default.

(a) If any installment of the Special Assessment or interest due on the Special Assessment Roll shall not have been paid by the Property Owner to the Lender, as assignee of the City of Kentwood, at the time and in the amount required by Section 4.01 hereof (a "Payment Default"), the Lender shall, within thirty (30) days following the date such sums were due and payable (the "Payment Default Date"), deliver written notice to the City of Kentwood stating all

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

(b) The City of Kentwood hereby agrees that, pursuant to the assignment set forth in Section 4.04, it will cause to be paid over to the Lender all amounts received by the City of Kentwood from the Kent County Treasurer as collections of any Payment Default Amount within forty-five (45) days of the date such sums are received by the City of Kentwood from the Kent County Treasurer. The parties hereto expressly acknowledge and agree that in no event shall the City of Kentwood advance to the Lender the amount of any unpaid Payment Default Amount, and the City of Kentwood shall be obligated to pay over to the Lender only such sums as are actually received by the Kent County Treasurer and remitted to the City of Kentwood as collections of any Payment Default Amount.

(c) In the event that any interest, penalties, fees or other charges shall be imposed upon the Special Assessment Parcel or against the Special Assessment Roll or the amount of any unpaid Special Assessment pursuant to the ordinances of the City of Kentwood or the General Property Tax Act, either by the County of Kent or by the City of Kentwood, Michigan, for the

administration, billing, collection or enforcement of the Special Assessment created hereby, such amounts shall remain a debt of the Property Owner to the City of Kentwood or the County Treasurer of the County of Kent, Michigan, as their interests may appear, and shall not be deemed to have been assigned to the Lender pursuant to the terms of this Agreement or otherwise.

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

Section 4.07 Invalidity; Cure. In the event of any invalidity of the Special Assessment, the Authorized Official, at the request of the Lender, and if the City of Kentwood shall have received indemnity satisfactory to the Authorized Official for its costs and expenses (including reasonable attorneys' fees), shall cause a new Special Assessment to be made for all or any part of the Improvements in accordance with Act 270 and the PACE Program as reasonably determined by the Authorized Official. The Property Owner, on behalf of itself and its successors in interest, lessees, purchasers, and assigns, hereby waives any objections to and agrees to the imposition of such new Special Assessment; *provided, however*, that the amount of the new Special Assessment shall not exceed the unpaid principal amount of the Loan at the time the new Special Assessment shall be established.

ARTICLE V CONDITIONS PRECEDENT

Section 5.01 Conditions Precedent to the City of Kentwood's Obligations.

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

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

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

could have a material adverse effect on the ability of the Property Owner of the City of Kentwood to comply with any of the obligations and terms of this Agreement.

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

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

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

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

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

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

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties of the City of Kentwood.

The City of Kentwood represents and warrants to the Property Owner that:

(a) The execution and delivery of this Agreement has been duly authorized by the City of Kentwood, and this Agreement complies with Act 270 and constitutes a valid and binding agreement of the City of Kentwood, enforceable against the City of Kentwood in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or other laws affecting creditors' rights generally, now existing or hereafter enacted, and by the application of general principals of equity, including those relating to equitable subordination.

(b) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of any existing law, ordinance, rule, resolution or regulation to which the City of Kentwood is subject, or any agreement to which the City of Kentwood is a party or by which the City of Kentwood is bound,

or any order or decree of any court or governmental entity by which the City of Kentwood is subject.

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

Section 6.02 Representations and Warranties of the Property Owner.

The Property Owner represents and warrants to the City of Kentwood and the Lender that:

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

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

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

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

(e) Property Owner warrants and agrees that any contractual, legal or other disputes between it and the Lender--other than matters specifically related to enforcement of property tax obligations--or the contractor involved in the Improvements, do not involve the City of Kentwood, and Property Owner agrees to hold the City of Kentwood and its agents, including but not limited to LEP, harmless from any such disputes or causes of action.

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

(g) The provisions of this Section 6.02 shall survive termination of the Agreement.

Section 6.03 Representations and Warranties of the Lender.

The Lender represents and warrants to the City of Kentwood that:

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

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

(c) Lender warrants and agrees that any contractual, legal or other disputes between it and Property Owner--other than matters specifically related to enforcement of property tax obligations--do not involve the City of Kentwood, and Lender agrees to hold the City of Kentwood and its agents, including but not limited to LEP, harmless from any such disputes or causes of action.

(d) The provisions of this Section 6.03 shall survive termination of the Agreement.

**ARTICLE VII
DEFAULT**

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

Section 7.02 Remedies for Property Owner Event of Default. Upon the occurrence of an Event of Default as provided in Section 7.01 hereof, the City of Kentwood, after giving written notice as required, without further notice of any kind, and in addition to all other rights and remedies provided at law or in equity, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from the Property Owner any damages incurred by the City of Kentwood and any costs incurred by the City of Kentwood in enforcing or attempting to enforce this Agreement or the Special Assessment, including attorneys’ fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the City of Kentwood shall not be obligated to institute any of the actions or proceedings or to exercise any of the remedies authorized by this Section 7.02 upon the occurrence of an Event of Default hereunder, and that

its obligations with respect to the billing, collection and enforcement of the Special Assessment or any installment thereon shall be limited to those obligations set forth in Article IV of this Agreement. The Lender acknowledges that neither the Special Assessment nor any installment thereon can be accelerated.

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

Section 7.04 Remedy for City Default. Upon the occurrence of a City Default as provided in Section 7.03 hereof, and if the Property Owner or the Lender, as the case may be, shall have otherwise fully performed all of its obligations hereunder, the Property Owner or the Lender, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but neither the Property Owner nor the Lender shall have the right to seek to recover money damages against the City of Kentwood, including any costs or fees (including attorneys’ fees) incurred by the Property Owner or the Lender in enforcing or attempting to enforce this Agreement. Neither the occurrence of a City Default nor the institution of any proceeding or the exercise of any remedy upon the occurrence of a City Default shall negate or diminish the obligations of the Property Owner hereunder to pay the installments of the Special Assessment and interest accrued on the Special Assessment Roll and all other costs hereunder when the same shall become due and payable.

Section 7.05 Waiver. Failure of any party hereunder to act upon discovery of a default or to act upon the existence of an Event of Default shall not constitute a waiver of the right to pursue the remedies provided herein.

ARTICLE VIII MISCELLANEOUS

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

Section 8.02 Assignment.

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

(b) The Lender and its successors and assigns may assign its rights and obligations under this Agreement and its rights in the Special Assessment, in whole but not in part; *provided, however,* that any such assignment shall be made only in accordance with applicable law; *and provided further, however,* that no such assignment shall be effective unless the City of

Kentwood shall have first received (i) notice of the assignment disclosing the name and the address of the assignee, which shall be an address in the United States and (ii) a Certificate of Assignment executed by the assignee in the form attached to this Agreement as **Appendix H**. From and after the date of satisfaction of the conditions for the assignment of this Agreement as provided in this Section 8.02(b), the assignee of the Lender shall be a party hereto and shall have the rights and obligations of the Lender specified hereunder, and such assignee shall be deemed to be the “Lender” for all purposes of this Agreement.

Section 8.03 Notices. All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows, or to such other address as such party may specify by written notice to the other parties hereto:

If to the City:

With a copy to:

If to the Property Owner:

With a copy to:

With a copy to:

If to the Lender:

With a copy to:

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

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

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

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

Section 8.08 Applicable Law. This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

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

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

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

[SIGNATURES ON THE FOLLOWING PAGE]

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

PROPERTY OWNER

By: _____

Its:

THE CITY OF KENTWOOD

By: _____

Its:

PACE LENDER

By: _____

Its:

State of Michigan)
) ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ the Authorized Signatory of _____ on behalf of _____.

Notary Public
_____County, Michigan
My Commission Expires _____

State of Michigan)
) ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ the Authorized Signatory of _____ on behalf of _____.

Notary Public
_____County, Michigan
My Commission Expires _____

State of Michigan)
) ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ the Authorized Signatory of _____ on behalf of _____.

Notary Public
_____County, Michigan
My Commission Expires _____

APPENDIX B

LEAN & GREEN MICHIGAN PACE PROGRAM APPLICATION

PACE Program Application

Property and Property Owner Information

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

Parcel #: Click here to enter text.

Address: Click here to enter text.

Owner: Click here to enter text. (Legal name)

2. Property Type (Check all that apply)

- Commercial**
 - Grocery/convenience store
 - Health care/clinic
 - Mixed use
 - Multi-family unit (3 or more)
 - Office
 - Retail
 - Restaurant
 - Recreational
 - Warehouse
 - Other - Please describe [Click here to enter text.](#)
- Industrial**
- Nonprofit**

3. Property Owner(s) Contact Information

Contact Name: Click here to enter text. (Person that will sign loan documents)

Company Name: Click here to enter text. (As it should appear in legal documents)

Address: Click here to enter text.

E-mail Address: Click here to enter text.

Telephone Number: Click here to enter text.

4. Property Owner(s) Type

- | | | |
|--------------------------------------|--------------------------------|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> LLP | <input type="checkbox"/> LLC |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> 501C3 | <input type="checkbox"/> Other (please specify) |

5. Property Valuation

State Equalized Value (SEV): NA
Date of SEV: NA

Appraisal: Click here to enter text.
Dave of Appraisal: Click here to enter text.

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

Amount	Type	End Date
\$ Click here to enter text.	Click here to enter text.	Click here to enter text.
\$ Click here to enter text.	Click here to enter text.	Click here to enter text.
\$ Click here to enter text.	Click here to enter text.	Click here to enter text.

Total Dollar Amount of Liens Against Property: Click here to enter text.

7. Balance of Any Mortgage(s):

	Amount of Mortgage	Name of Mortgage Holder
First Mortgage	\$ Click here to enter text.	Click here to enter text.
Second Mortgage	\$ Click here to enter text.	Click here to enter text.
Additional Debt on Property	\$ Click here to enter text.	Click here to enter text.

8. Consent: Consent by mortgage holder(s) obtained, if subject to a mortgage. Yes

Attach:

- Title Report
- Appraisal
- Property Tax Record
- Mortgage Lender Consent

Energy Project Information

1. PACE Project Developer (If you do not have a PACE project developer, contact Lean & Green Michigan)

Name: Click here to enter text.
Address: Click here to enter text.
E-mail Address: Click here to enter text.
Telephone Number: Click here to enter text.
Other Contractors: Click here to enter text.

2. Overall Energy Project Cost: Click here to enter text.

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

3a. Year 1: Click here to enter text.

3b. Overall: Click here to enter text.

4. Useful Life of Energy Project Measures: Click here to enter text.

5. User ID for Energy Star Portfolio Manager (for property): Click here to enter text.

Attach:

- Baseline energy audit performed on the property, including useful life calculations of individual measures.
- Cash flow analysis using LEP model
- Energy savings guarantee contract between project developer/contractor and property owner

PACE Loan Details

1. PACE Lender/Capital Provider (If you do not have a PACE lender, contact Lean & Green Michigan)

Name: Click here to enter text.
Address: Click here to enter text.
E-mail Address: Click here to enter text.
Telephone Number: Click here to enter text.

2. Requested Assessment Amount

Energy Project Cost:	\$ Click here to enter text.
Energy Audit	\$ Click here to enter text.
Engineering/Architect Plans	\$ Click here to enter text.
Building Permit Fees	\$ Click here to enter text.
Other (Please explain)	\$ Click here to enter text.
Total Assessment Amount:	\$ Click here to enter text. (total of all lines above)

3. Requested Assessment Repayment Period: Click here to enter text.

4. Interest Rate Offered By Lender: Click here to enter text.

5. Repayment Method (only select one):

- On property tax bill and then remitted to lender
- Direct pay to lender

All Attachments to Application:

- Appraisal
- Baseline energy audit performed on the property, including useful life calculations of individual measures.
- Cash flow analysis using LEP model
- Energy savings guarantee contract between project developer/contractor and property owner
- Lender Consent from Mortgage Holder

- Property Tax Record
- Title Report

APPENDIX C

PROGRAM ELIGIBILITY CHECKLIST

Property is privately owned commercial or industrial real property within the City of Kentwood's jurisdictional boundaries, which may be owned by any individual or private entity, whether for-profit or non-profit. MCL 460.933(g). Multi-family residential property is included in the definition of commercial property.

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

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

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

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

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

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

For projects financed for more than \$250,000, a performance guarantee must be provided by the contractor(s) to guarantee a savings to investment ratio greater than one (1). MCL 460.939(p). The performance guarantee must meet the standards set by LEP.

For projects financed for more than \$250,000, financial and logistical arrangements for ongoing measurement and verification of energy savings that meet standards set by LEP. MCL 460.939(p).

APPENDIX D

SPECIAL ASSESSMENT PARCEL DESCRIPTION

Parcel Number:

Address:

LEGAL DESCR:

APPENDIX E

SPECIAL ASSESSMENT ROLL

PACE Project Special Assessment

Parcel Number:

Address:

City:

Owner:

Assessment:

Percent:

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

[INSERT CITY TREASURER]
City of Kentwood Treasurer

Dated

APPENDIX F

PAYMENT SCHEDULE

(TBD)

APPENDIX G

DESCRIPTION OF IMPROVEMENTS

APPENDIX H

CERTIFICATE OF ASSIGNMENT

This Certificate of Assignment of the Special Assessment Agreement (“**Assignment**”), dated effective as of _____, 201__ (the “**Effective Date**”), is made by INSERT LENDER (“**Assignor**”) to _____ (“**Assignee**”). Assignor and Assignee are referred to at times, each individually as a “**Party**,” and collectively as the “**Parties**.”

Agreement

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

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

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

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

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

(Name)

(Address)

(Attention)

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

ASSIGNOR:

[INSERT LENDER]

By: _____

Its: _____

ASSIGNEE:

Name: _____

By: _____

Its: _____