



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
MARTIN J. WALSH

October 5, 2020

TO THE CITY COUNCIL

Dear Councilors:

I hereby transmit for your approval an Order authorizing the City of Boston to participate in the Massachusetts Commercial Property Assessed Clean Energy Program (PACE Massachusetts). This Order authorizes the City to enter into a Municipal Assessment and Assignment Agreement with MassDevelopment, thereby allowing building owners in Boston to participate in this statewide financing program.

PACE is a state-created financing mechanism administered by MassDevelopment that enables low-cost, long-term funding for energy improvements in existing commercial, industrial, nonprofit, and multifamily buildings with five or more units. PACE loans are repaid via a voluntary better assessment placed on property tax bills, with those payments remitted to MassDevelopment. The minimum amount financeable is \$250,000, and the maximum amount is the projected energy savings. The maximum term of the PACE assessment is 20 years or the life of the measures financed. This long-term financing, like the 20-year period for performance contracts under the City's Renew Boston Trust, allows for measures with longer-term payback to be balanced by measures with shorter-term payback. No City funds are used, and there is no liability to the City.

PACE is a critical tool to help the City reach its goal of carbon neutrality by 2050, and to help building owners make their buildings healthier, more efficient, and more comfortable. With the financial impact of the pandemic, additional private capital sources are in even greater demand, and PACE can help to fill that need.

I urge your Honorable Body to act favorably on the proposed Order without delay.

Sincerely,

Martin J. Walsh  
Mayor of Boston

**CITY OF BOSTON**  
**IN CITY COUNCIL**

**ORDER AUTHORIZING THE CITY OF BOSTON TO PARTICIPATE IN THE MASSACHUSETTS COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM**

**WHEREAS**, pursuant to G. L. c. 23M, as amended (the “PACE Act”), the Commonwealth has established a commercial sustainable energy program known as the Massachusetts Property Assessed Clean Energy Program (“PACE Massachusetts”) to provide a financing mechanism (“PACE financing”) to private owners of commercial and industrial properties for certain qualifying commercial energy improvements (“improvements”); and

**WHEREAS**, pursuant to the PACE Act, PACE Massachusetts is administered by the Massachusetts Development Finance Agency (“MassDevelopment”), in consultation with the Massachusetts Department of Energy Resources; and

**WHEREAS**, under PACE Massachusetts, the owner of the commercial or industrial property benefitting from the improvements (the “benefitted property”) is required to repay the PACE financing through the payment of a betterment assessment (a “PACE betterment assessment”) placed on such benefitted property by the municipality in which the benefitted property is located; and

**WHEREAS**, in order for an owner of commercial or industrial property to participate in PACE Massachusetts, Section 2 of the PACE Act requires that the municipality in which such property is located must elect to participate in PACE Massachusetts; and

**WHEREAS**, the City of Boston (the “City”) has determined that it is in the best interest of the Municipality to participate in PACE Massachusetts as a “participating municipality,” as provided in the PACE Act, to permit the owners of commercial and industrial properties located in the Municipality to access PACE financing for qualifying commercial energy improvements through PACE Massachusetts; *NOW THEREFORE BE IT*

**ORDERED**, as follows:

The City Council of the City of Boston hereby resolves to approve the City participating in PACE Massachusetts pursuant to the PACE Act, and authorizes the Mayor and/or the Collector-Treasurer to enter into a PACE Massachusetts Municipal Assessment and Assignment Agreement (the “Agreement”) with MassDevelopment, pursuant to which the City will agree to: (i) levy PACE betterment assessments and impose PACE betterment assessment liens on benefitted properties located in Boston, in the amounts determined by MassDevelopment to be sufficient to repay the PACE financing; (ii) assign the PACE betterment assessment liens to MassDevelopment, which MassDevelopment may in turn assign to the providers of the PACE

financing (each a "capital provider"), as collateral for such PACE financing; (iii) include on the property tax bills for the benefitted properties the installment payments necessary to repay the PACE betterment assessments, in the amounts and at the times as determined by MassDevelopment; (iv) collect and pay over to MassDevelopment or its designee, the PACE betterment assessment installment payments, as and when collected; and (v) enforce, to the extent required by the Agreement, the PACE betterment assessments and liens; the Agreement to be substantially in the form appended hereto, with such changes, modifications and insertions as the Mayor or Collector-Treasurer may approve as being in the best interest of the City. The Collector Treasurer or such other City agency as may be designated in the Agreement is authorized to levy such PACE betterment assessments and impose the PACE betterment assessment liens on behalf of the City without further authorization by this legislative body.

Notwithstanding any other provision of law to the contrary, officers and officials of the City, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or to any other person for claims, of whatever kind or nature, under or related to PACE Massachusetts, including, without limitation, claims for or related to uncollected PACE betterment assessments. Other than fulfillment of the obligations specified in the Agreement, the Municipality has no liability to the owner of the benefitted property or to any capital provider related to the Municipality's participation in PACE Massachusetts.

I HEREBY CERTIFY THAT  
THE FOREGOING, IF PASSED IN  
THE ABOVE FORM, WILL BE IN  
ACCORDANCE WITH LAW.  
BY Eugene L. O'Flaherty ANC  
EUGENE L. O'FLAHERTY  
CORPORATION COUNSEL

## **Attachment**

**PACE MASSACHUSETTS  
MUNICIPAL ASSESSMENT AND ASSIGNMENT AGREEMENT**

This Municipal Assessment and Assignment Agreement (this "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the [CITY/TOWN OF \_\_\_\_\_] (the "Municipality"), a political subdivision of The Commonwealth of Massachusetts (the "Commonwealth"), and MASSACHUSETTS DEVELOPMENT FINANCE AGENCY ("MassDevelopment"), a body politic and corporate and a public instrumentality of the Commonwealth.

**RECITALS**

**WHEREAS**, pursuant to M.G.L. Ch. 23M (as amended from time to time, the "PACE Act"), the Commonwealth has established a commercial sustainable energy program known as the Massachusetts Property Assessed Clean Energy Program ("PACE Massachusetts") to provide a financing mechanism to private owners of qualifying commercial and industrial properties for certain qualifying commercial energy improvements ("Improvements"); and

**WHEREAS**, pursuant to the PACE Act, PACE Massachusetts is administered by MassDevelopment, in consultation with the Massachusetts Department of Energy Resources ("DOER"); and

**WHEREAS**, under PACE Massachusetts, the owner of the qualifying commercial or industrial property benefitting from the improvements (the "benefitted property") is required to repay the financing through the payment of a betterment assessment levied on such benefitted property by the municipality in which the benefitted property is located; and

**WHEREAS**, in order for an owner of qualifying commercial or industrial property (an "Owner") to participate in PACE Massachusetts, the PACE Act requires that the municipality in which the benefitted property is located must elect to participate in PACE Massachusetts; and

**WHEREAS**, the Municipality, pursuant to a [vote/resolution], adopted on \_\_\_\_\_, \_\_, 20\_\_\_ has elected to participate in PACE Massachusetts as a "participating municipality" as provided in the PACE Act, to permit the Owners of qualifying commercial and industrial properties located in the Municipality to access financing for Improvements through PACE Massachusetts; and

**WHEREAS**, the Municipality and MassDevelopment desire to set forth their respective obligations with respect to the levying of betterment assessments and the imposition of betterment assessment liens upon benefitted properties within the Municipality to secure the financing of Improvements to such benefitted properties;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the PACE Act, the Municipality and MassDevelopment hereby agree as follows:

Section 1. Definitions.

In addition to the terms set forth in the Recitals to this Agreement, the following terms shall have the following meanings as used in this Agreement:

(a) "Bonds" means bonds, notes or other obligations issued or incurred by MassDevelopment in connection with providing funding for Improvements to benefitted properties within the Municipality.

(b) "Business Day" means any day which is not (i) a Saturday, or (ii) a Sunday, or (iii) another day of the year on which banks located in Boston, Massachusetts are required or authorized by law or by executive order to close.

(c) "Chapter 80" means M.G.L. Ch. 80, as amended from time to time.

(d) "Closing Date" means the date on which a Financing Agreement is to be effective, and all conditions to the execution and delivery of the Financing Agreement by an Owner and the applicable Capital Provider have been met.

(e) "Financing Agreement" means a PACE Massachusetts Financing Agreement between the Owner of benefitted property within the Municipality and a Capital Provider.

(f) "Capital Provider" means the provider of PACE financing for Improvements to benefitted property within the Municipality that has entered into a Financing Agreement with the Owner of such benefitted property.

(g) "PACE Betterment Assessment" means a betterment assessment levied by the Municipality on benefitted property located in the Municipality to secure the obligations of an Owner under a Financing Agreement, in accordance with the PACE Act and Chapter 80.

(h) "PACE Lien" means a lien on benefitted property imposed by the Municipality in connection with levying a PACE Betterment Assessment on such benefitted property, in accordance with the provisions of the PACE Act and Chapter 80.

(i) "Payment Schedule" has the meaning assigned to such term in Section 2(b)(i).

(j) "Registry" means the Registry of Deeds or Registry District of the Land Court identified in **Exhibit B**.

(k) "Servicer" has the meaning assigned to such term in Section 3(g)(2).

(l) "Term" has the meaning assigned to such term in Section 5.

Section 2. Obligations of MassDevelopment. MassDevelopment shall:

(a) Provide a Notice of Benefitted Property, in the form of **Exhibit A** attached hereto (the "Preliminary Notice"), to the Municipality when a project proposed by an Owner who has filed an application with MassDevelopment for participation in PACE Massachusetts has been approved by DOER and MassDevelopment has determined that the project complies with the financial underwriting guidelines for PACE Massachusetts established by MassDevelopment. The Preliminary Notice shall be signed by MassDevelopment and acknowledged by the applicable Owner. The Preliminary Notice shall include:

1. an estimate of the aggregate amount of the PACE Betterment Assessment to be levied on the benefitted property; and
2. appropriate documentation to identify the benefitted property for purposes of levying the PACE Betterment Assessment and recording the corresponding PACE Lien.

(b) Provide a Notice of PACE Betterment Assessment and Lien, in the form of **Exhibit B** attached hereto (the "Final Notice"), to the Municipality not later than seven Business Days prior to the applicable Closing Date, indicating the amount of the PACE Betterment Assessment to be levied on each benefitted property and of the corresponding PACE Lien to be placed upon such benefitted property. The total amount of the PACE Betterment Assessment shall include the total cost of the Improvements

financed, including interest on such financing, and any fees and costs to be financed through such PACE Betterment Assessment. The Final Notice shall be signed by MassDevelopment and consented to by the applicable Owner. The Final Notice shall include:

1. a copy of the payment schedule (the "Payment Schedule") that is to be a part of the Financing Agreement, which shall indicate the portion of the PACE Betterment Assessment to be included on each property tax bill issued by the Municipality with respect to such benefited property, including the required PACE Betterment Assessment payment date. It is expected that the Payment Schedule will indicate that the PACE Betterment Assessment shall be payable in equal [semi-annual/quarterly installment payments on May 1 and November 1/February 1, May 1, August 1 and November 1] of each calendar year so that they are due at the same time as the installments of the Municipality's real property taxes. If the Municipality changes, or is required by law to change, its practices concerning the billing of real property taxes as to the number of installments and their due dates, MassDevelopment will endeavor to change the Payment Schedule, to the extent possible, to correspond with the Municipality's practices;
2. a completed Form of PACE Massachusetts Betterment Assessment Statement, in the form of **Exhibit C** attached hereto;
3. confirmation that all holders of mortgage liens on the benefited property have consented to the PACE financing and to the Municipality placing a PACE Lien upon the benefited property to secure the respective Owner's obligations with respect to such financing, which PACE Lien shall be senior to the liens of such mortgage holders;
4. a completed PACE Massachusetts Municipal Assignment with respect to the benefited property, in the form of **Exhibit D** attached hereto and
5. the date on which the PACE Betterment Assessment is to be levied and the PACE Lien recorded, which shall not be less than seven Business Days from receipt of the Final Notice from MassDevelopment.

(c) MassDevelopment or its designee shall promptly provide notice to the Municipality following MassDevelopment's receipt of notice under a Financing Agreement of an Owner's prepayment of its PACE Betterment Assessment.

(d) MassDevelopment or its designee shall promptly provide notice to the Municipality following MassDevelopment's receipt of notice under a Financing Agreement of an Owner's sale or transfer of the Property and the name of the subsequent Owner, as provided to MassDevelopment.

### Section 3. Obligations of the Municipality.

(a) Acknowledgement of PACE Betterment Assessment. Upon receipt of a Preliminary Notice, in the form of a completed **Exhibit A**, from MassDevelopment, the Municipality shall acknowledge receipt, where indicated, and return a copy of the same to MassDevelopment within 10 Business Days following receipt.

(b) Levy of PACE Betterment Assessment. Upon receipt of a Final Notice, in the form of a completed **Exhibit B**, from MassDevelopment, the Assessing Board of the Municipality, on the date set forth in the Final Notice, shall levy the PACE Betterment Assessment on the benefited property, in accordance with the provisions of Chapter 80 to the extent applicable and consistent with the PACE Act, and shall place on and record, or cause to be recorded as set forth in paragraph (c) below, in the Registry a PACE Lien on the benefited property, in the form of the PACE Massachusetts Betterment Assessment Statement attached to the Final Notice, in accordance with Chapter 80 and the PACE Act. The PACE Massachusetts Betterment Assessment Statement will have three attachments: (i) the legal description of

the benefited property, (ii) the Payment Schedule, and (iii) a copy of the Financing Agreement. As provided in the PACE Act, the PACE Betterment Assessment levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the benefitted property until they are paid, notwithstanding the provisions of Chapter 80, Section 12, and shall continue notwithstanding any alienation or conveyance of the benefitted property. The PACE Lien shall be collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and lien priorities as provided in the PACE Act. The costs of recording the PACE Lien shall be paid by MassDevelopment, through its program origination fee paid by the applicable Owner.

(c) Notification of Recording; Designation of MassDevelopment. Upon recording of the PACE Lien in the Registry, the Assessing Board of the Municipality shall notify or cause to be notified the applicable Owner, providing a copy of the recorded PACE Lien. The Municipality hereby designates MassDevelopment as its designee to record, on behalf of the Municipality, the PACE Lien in the Registry, and upon recording, to notify the Owner in writing of such recording and provide a copy of the recorded PACE Lien to the Owner. MassDevelopment shall be responsible for recording the PACE Lien in the Registry, at the expense of the applicable Owner.

(d) Continuation, Recording and Release of PACE Lien. As provided in the Act, each PACE Lien shall be continued, recorded and released in the manner provided for property tax liens. Subject to the consent of existing mortgage holders, each PACE Lien shall take precedence over all other liens or encumbrances, except a lien for taxes of the Municipality on real property.

(e) Assignment of PACE Lien. The Municipality shall assign, in the form of **Exhibit D** as attached to the Final Notice, to MassDevelopment each PACE Lien recorded by or on behalf of the Municipality's tax collector, as provided in this Agreement. MassDevelopment shall be responsible for recording such assignment in the Registry, at the expense of the applicable Owner.

The Municipality acknowledges and agrees that MassDevelopment may sell or assign, for consideration, any and all PACE Liens so assigned to MassDevelopment by the Municipality. MassDevelopment also may assign its rights under this Agreement and any PACE Liens to a trustee for any Bonds that MassDevelopment may issue from time to time. The assignee of a PACE Lien shall have and possess the same powers and rights at law or in equity as MassDevelopment and the Municipality and its tax collector would have had if the PACE Lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest, and the fees and expenses of collection. The assignee shall have the same rights to enforce such PACE Lien as any private party holding a lien on real property, including, but not limited to, foreclosure in a manner consistent with the rights afforded a mortgagee under the provisions of M.G.L. Ch. 183, §21, and an action of contract or any other appropriate action, suit or proceeding, as provided in the PACE Act.

(f) Amendment of the PACE Betterment Assessment and Lien; Prepayment.

Pursuant to a Financing Agreement, the final amount of a PACE Betterment Assessment may be adjusted after the levy of the PACE Betterment Assessment and recording of the PACE Lien. In the event that the final PACE Betterment Assessment amount needs to be adjusted at the completion of the Improvements, or at any other time, MassDevelopment will notify the Municipality of such change, and provide the Municipality with an amended PACE Massachusetts Betterment Assessment Statement, including an updated Payment Schedule and new amount of the PACE Betterment Assessment and PACE Lien. The Municipality shall adjust the PACE Betterment Assessment in the assessing and taxing records of the Municipality to permit the adjusted PACE Betterment Assessment to be included on the property tax bill for the applicable benefitted property as soon as practicable. The Municipality will execute the amended PACE Massachusetts Betterment Assessment Statement and return the same to MassDevelopment. MassDevelopment or, if the applicable PACE Lien has been assigned by MassDevelopment, the applicable assignee will be responsible for the recording of the amended PACE Massachusetts Betterment Assessment Statement in the Registry.



(g) Billing and Collection; Payment to MassDevelopment.

1. The Municipality shall bill the PACE Betterment Assessments in the same manner and at the same time as it bills its real property taxes. The PACE Betterment Assessment payments shall be a separate clearly defined line item on the property tax bill for the benefitted property and shall be due on the dates set forth in the Payment Schedule. The amount of the PACE Betterment Assessment will be recorded on the Municipality's tax rolls in the same manner as any other betterment assessment, such that the public will have access to its existence and payment status. The penalties and interest on delinquent PACE Betterment Assessments shall be charged in the same manner and rate as the Municipality charges for delinquent real property taxes.
2. The Municipality shall pay or cause to be paid all amounts collected with respect to the PACE Betterment Assessments to MassDevelopment or its designee, as identified in **Exhibit B** (the "Servicer"), as soon as practicable but no later than 30 days after receipt by the Municipality of the collected amounts.

(h) Collection of Delinquent Payments.

1. In the event that any Owner fails to make a PACE Betterment Assessment payment at the applicable time and in the applicable amount set forth on the Payment Schedule and included in the property tax bill for the benefitted property, the Municipality shall, no later than 30 days following the due date of any such payment, send a notice of demand to the Owner setting forth the amounts due, in the same form as the Municipality provides for delinquent real property taxes. The Municipality shall provide or cause to be provided, at the same time the notice of demand is sent to the Owner, a copy of the notice to MassDevelopment and the Servicer. After providing such notice to MassDevelopment and the Servicer, the Municipality shall have no obligation to take any further actions to enforce the PACE Lien or to collect the delinquent PACE Betterment Assessment payments, other than continuing to include the PACE Betterment Assessment on the property tax bill for the applicable benefitted property, including any penalties, interest and fees in the same manner applicable to delinquent real property taxes, and including the delinquent PACE Betterment Assessment payments in any additional demand notices sent to the Owner with respect to delinquent real property tax payments, if any, unless the Municipality enters into a separate agreement with MassDevelopment described in the following paragraph 2.

2. If MassDevelopment makes a written request to the Municipality for its assistance in the collection of delinquent PACE Betterment Assessments and related charges, other than the providing of a notice of demand as set forth in paragraph (h)(1), the Municipality, in its sole discretion, and MassDevelopment may enter into a separate agreement for those services, which agreement shall provide for compensation to be paid to the Municipality for its collection services. The agreement may provide for the Municipality to pursue the collection of any delinquent PACE Betterment Assessment payments with the same diligence it employs in the collection of the Municipality's real property taxes, and to take such actions as are required to preserve the PACE Lien. The agreement may also provide that MassDevelopment shall have the right to take over the enforcement of any delinquent PACE Betterment Assessment payments upon written notice to the Municipality, and thereupon the Municipality will have no further responsibility to collect such amounts.

3. The Municipality will provide not less than 30 days' prior written notice to MassDevelopment and the Servicer, of any sale or assignment of its real property taxes, or any institution of a foreclosure, tax taking or other proceeding against any benefitted property for delinquent real property taxes or other betterment assessments. Similarly, MassDevelopment shall provide or cause to be provided not less than 30 days' prior written notice to the Municipality of the institution of a foreclosure or other proceeding, of which MassDevelopment has knowledge, against any benefitted property for delinquent PACE Betterment Assessment payments.

(i) Allocation of Insufficient Payments.

The Municipality and MassDevelopment each acknowledge and agree that if an Owner fails to pay in full on any payment due date the full amount of the real property taxes, betterment assessments (including PACE Betterment Assessment payments), and any other charges due to the Municipality and included on the property tax bill for a benefitted property, any amounts received by the Municipality in payment of such taxes, assessments and charges, including any amounts received in payment of penalties or interest for prior delinquent payments, shall be applied first, to pay such real property taxes, betterment assessments (other than the PACE Betterment Assessment payments), and other charges (collectively, "Municipal Charges"), including penalties, interest and fees included in such property tax bill for any prior delinquent Municipal Charges, and second, to pay the PACE Betterment Assessment payments due, including any penalties, interest and fees included in such property tax bill for any prior delinquent PACE Betterment Assessment payments. Any subsequent payments received by the Municipality with respect to such Municipal Charges and PACE Betterment Assessment payments shall be applied in the same order as set forth in the prior sentence. Nothing in this paragraph is intended to affect the lien priority established with respect to PACE Liens under the PACE Act.

(j) Records; Audits.

MassDevelopment and its agents, at MassDevelopment's own expense, shall have the right to audit the records maintained by the Municipality or its designee relating to the PACE Betterment Assessment payments upon reasonable notice and during the Municipality's normal business hours. The Municipality also will permit any assignee of MassDevelopment of a PACE Lien, at such assignee's own expense, to audit the records maintained by the Municipality or its designee relating to the PACE Betterment Assessment payments upon reasonable prior written notice to the Municipality and during the Municipality's normal business hours. MassDevelopment and the Municipality agree to provide each other with such reasonable information as they may request and as is available with respect to the PACE Betterment Assessment and payments; MassDevelopment and the Municipality agree to provide such information in a computer format satisfactory to the other.

(k) Promotion of Program; Assistance for PACE Financing; Payment to Municipality.

1. The Municipality shall use good faith efforts to assist MassDevelopment in local marketing efforts and outreach to the local business community to encourage participation in PACE Massachusetts, such as including PACE Massachusetts program information on the Municipality's website, distributing an informational letter from the Municipality to local businesses regarding the program, any such information to be prepared by MassDevelopment and provided to the Municipality, and joining with MassDevelopment in conducting business roundtable events held in the Municipality.

2. The Municipality shall use good faith efforts to assist in gathering and providing information to MassDevelopment for use in the offer, sale and issuance of Bonds or to otherwise assist in the obtaining of financing for Improvements to benefitted properties within the Municipality.

Section 4. No Liability.

Notwithstanding any other provision of law to the contrary, officers and officials of the Municipality, including, without limitation, municipal tax assessors and tax collectors, are not personally liable to MassDevelopment or any assignee or to any other person for claims, of whatever kind or nature, under or related to PACE Massachusetts, including, without limitation, claims for or related to uncollected PACE Betterment Assessments. Other than fulfillment of the obligations specified in this Agreement, the Municipality has no liability to any Owner or Capital Provider.

Section 5. Term.

The term of this Agreement shall commence upon the date first written above and shall continue in full force and effect until the later of (i) the Municipality elects to terminate this Agreement as provided below, and (ii) all of the PACE Betterment Assessments levied by the Municipality in accordance with this Agreement have been paid in full or are deemed no longer outstanding (the "Term"). The Municipality may elect to terminate its participation in PACE Massachusetts at any time on 60 days' prior written notice to MassDevelopment, provided that the provisions of this Agreement shall continue with regard to PACE Betterment Assessments assessed prior to such termination until those PACE Betterment Assessments have been paid in full or are no longer outstanding.

Section 6. Default.

Each party shall give the other party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within such 30-day period, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such default. The parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance; provided however, in no event shall either party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 5 of this Agreement.

Section 7. Miscellaneous Provisions.

(a) Assignment or Transfer. Except as provided in Section 3(e) hereof, a party may not assign or transfer its rights or obligations under this Agreement to another municipality, political subdivision or agency or department of the Commonwealth or to a private party or entity, without the prior written consent of the other party and, if required, the prior approval of any trustee for or holders of any Bonds outstanding. If approval of the assignment by any such trustee or holders of any such Bonds is required, such approval shall be obtained in accordance with the indenture or other documents entered into by MassDevelopment in connection with the issuance of the applicable Bonds.

(b) Designation of Servicer. Notwithstanding the provisions of Section 7(a), MassDevelopment may designate an entity to serve as the Servicer for purposes of Sections 3(g) and (h), or any other provision hereof, upon written notice to the Municipality. Such notice may be included in a Final Notice sent pursuant to Section 2(b), or at a later date.

(c) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed, to be an original, and all of which together shall constitute but one and the same instrument.

(e) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the Municipality:  
CITY/TOWN NAME  
STREET ADDRESS  
CITY, STATE, ZIP CODE  
Attention:

If to MassDevelopment:  
Massachusetts Development Finance Agency  
99 High Street  
Boston, MA 02110  
Attention: Executive Vice President for Finance Programs  
With a copy sent to the same address addressed to:  
Attention: General Counsel

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by MassDevelopment and the Municipality.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City of Boston, Suffolk County, Massachusetts.

(h) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(i) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

*[Remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the Municipality and MassDevelopment have each caused this Agreement to be executed and delivered as of the date indicated above:

(SEAL)

ATTEST:

**[MUNICIPALITY]**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**MASSACHUSETTS DEVELOPMENT FINANCE  
AGENCY**

By: \_\_\_\_\_  
Name:  
Title: