

PACE LENDER CONTRACT

THIS PACE LENDER CONTRACT (the “**Contract**”) is made as of the ____ day of _____, 20__, by and between Dtc|qu County, Texas (“**Dtc|qu County**”) and _____ (“**Lender**”).

RECITALS

A. Dtc|qu County has established a program to facilitate the financing by property owners of water and energy conserving improvements for commercial, industrial, agricultural, and large multifamily residential (5 or more dwelling units) real property (the “**PACE Program**”) pursuant to Resolution No. _____, dated _____, 2015, adopted by the Dtc|qu County Commissioners Court in accordance with the provisions of the Property Assessed Clean Energy Act (the “**PACE Act**”), Texas Local Government Code, Chapter 399. The Dtc|qu County Commissioners Court has designated the entire territory within Dtc|qu County’s jurisdiction as a region within which the authorized County official named below and the owners of such real property may enter into written contracts to impose assessments on the property to repay the financing of qualified improvements.

B. Property Owner is the legal and record owner of the tract of qualified commercial, industrial, agricultural, or large multifamily residential real property within Dtc|qu County’s jurisdiction located at _____, Texas, and more fully described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

C. Pursuant to Application number _____, Property Owner has applied to Dtc|qu County to participate in the PACE Program by installing or modifying on the Property certain permanent improvements intended to decrease water or energy consumption or demand, which are or will be fixed to the Property as “qualified improvements”, as defined in Section 399.002 of the PACE Act. The installation or modification of such qualified improvements on the Property will be a “qualified project” as defined in Section 399.002 of the PACE Act (the “**Project**”).

D. Property Owner and Dtc|qu County have signed a PACE Owner Contract, a copy of which is attached hereto as Exhibit B and made a part hereof (the “**Owner Contract**”), in which Property Owner has agreed to the imposition by Brazos County of an assessment on the Property (the “**Assessment**”) secured by an assessment lien to repay the Property Owner’s financing for the Project, as permitted by the PACE Act and set forth in the Notice Of Contractual Assessment Lien Pursuant to Property Assessed Clean Energy Act, a copy of which is attached hereto as Exhibit C and made a part hereof. Unless otherwise expressly provided in this Contract, all terms used herein will have the same meanings ascribed to them in the Owner Contract.

E. Financing for the Project (the “**Financing**”) will be provided to Property Owner by Lender in accordance with financing documents described in, or copies of which are included as, Exhibit D attached hereto and made a part hereof (the “**Financing Documents**”). Such Financing includes only those costs and fees for which an assessment may be imposed under the PACE Act. This Contract is entered into between Brazos County and Lender as required by Section 399.006 of the PACE Act to provide for repayment of the Financing secured by the Assessment.

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

AGREEMENT

NOW, THEREFORE, the parties do hereby agree as follows:

1. Maintenance and Enforcement of Assessment. Lender agrees to provide the Financing for the Project in the total amount of \$ _____, according to the terms set out in the Financing Documents attached hereto as Exhibit D. In consideration for the Financing provided or to be provided by Lender for the Project, and subject to the terms and conditions of this Contract, Brazos County agrees to maintain and continue the Assessment for the benefit of Lender until the Financing, all contractual interest according to the Financing Documents, and any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full and to release the Assessment upon notice from Lender of such payment. Brazos County agrees to enforce the assessment lien against the Property for the benefit of Lender in the event of a default by Property Owner. Brazos County will have no obligation to repurchase the Assessment should there be a default or an event of default in the payment thereof or should there be any other loss or expense suffered by Lender or under any other circumstances.

2. Installments. The Assessment, including the amount financed and contractual interest, is due and payable in installments as set forth in the Financing Documents. As required by Section 399.009(a) (8) of the PACE Act, the period during which such installments are payable does not exceed the useful life of the Project. When the Assessment has been paid in full, Brazos County’s rights under the Owner Contract will cease and terminate, and upon notice from Lender Brazos County will execute and record a release of the Assessment and the Owner Contract.

3. Assignment of Right to Receive Installments. Lender will have the right to assign or transfer the right to receive the installments of the Assessment, provided all of the following conditions are met:

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

- Any federally insured depository institution such as a bank, savings bank, savings and loan association and federal or state credit union;
- Any insurance company authorized to conduct business in one or more states;
- Any registered investment company, registered business development company, or a Small Business Administration small business investment company;
- Any publicly traded entity; or
- Any private entity that:
 - Has a minimum net worth of \$5 million;
 - Has at least three years' experience in business or industrial lending or commercial real estate lending (including multifamily lending), or has a lending officer that has at least three years' experience in business or industrial lending or commercial real estate lending;
 - Can provide independent certification as to availability of funds; and
 - Has the ability to carry out, either directly or through a servicer, the bookkeeping and customer service work necessary to manage the assessment accounts.

(b) Property Owner, Brazos County, and the PACE Program Administrator are notified in writing of the assignment or transfer and the address to which payment of the future installments should be mailed at least 30 days before the next installment is due according to the payment schedule included in the Financing Documents attached hereto as Exhibit D; and

(c) The assignee or transferee of the right to receive the installments executes an explicit written assumption of all of Lender's obligations under this Contract.

Upon written notice to Brazos County, Property Owner, and the PACE Program Administrator of an assignment or transfer of the right to receive the installments that meets all of these conditions, Dtc|qu County will execute a release of Lender making such assignment from this Contract, and all of the obligations of the Lender under this Contract accruing after the date of the assignment will be assumed by and transferred to such assignee or transferee. Any attempt to assign or transfer the right to receive the installments of the Assessment that does not meet all of these conditions is void.

4. Financing. Lender assumes full responsibility for determining the financial ability of the Property Owner to repay the Financing and for advancing the funds as set forth in the Financing Documents and performing Lender's obligations and responsibilities thereunder.

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

(a) Delinquent installments of the Assessment incur interest and penalties in the same manner and in the same amount as delinquent property taxes, viz., a delinquent installment incurs a penalty of 6% of the amount of the installment for the first calendar month it is delinquent plus 1% for each additional month or portion of a month the

installment remains unpaid prior to July 1 of the year in which it becomes delinquent. However, an installment delinquent on July 1 incurs a total penalty of 12% of the amount of the delinquent installment without regard to the number of months it has been delinquent. A delinquent installment also accrues interest at the rate of 1% for each month or portion of a month the installment remains unpaid. Subject to the limitation set out in paragraph 10 below, penalties and interest payable under this paragraph will be retained by Dtc| qu County to compensate it for the cost of enforcing the Assessment.

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

(1) is a first and prior lien against the Property from the date on which the Notice of Contractual Assessment Lien Pursuant to Property Assessed Clean Energy Act is filed in the Official Public Records of Dtc| qu County, as provided by Section 399.013 of the PACE Act, until the Assessment and any penalties and interest are paid; and

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

(c) The lien created by the Assessment runs with the land, and any portion of the Assessment that has not yet become due is not eliminated by foreclosure of a property tax lien, according to Section 399.014(b) of the PACE Act. In the event of a sale or transfer of the Property by Property Owner, the obligation for the Assessment will be transferred to the succeeding owner without recourse on Dtc| qu County or the PACE Program Administrator, and with recourse on Property Owner only for any unpaid installments of the Assessment that became due during Property Owner's period of ownership.

(d) In the event of a default by Property Owner in payment of the installments called for by the Financing Documents, the assessment lien will be enforced by Dtc| qu County in the same manner according to Texas Tax Code Secs. 33.41 to 34.23 that a property tax lien against real property may be enforced by a local government, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(e) In a suit to collect a delinquent installment of the Assessment, Dtc| qu County will be entitled to recover costs and expenses, including attorney's fees in the amount of 15% of the total amount of the delinquent installment, penalties, and interest due, in the same manner according to Texas Tax Code Sec. 33.48 as in a suit to collect a delinquent property tax.

6. Servicing and Enforcement of Assessment.

(a) Servicing. The Assessment payments will be billed, collected, received, and disbursed in accordance with the procedures set out in the Financing Documents attached hereto as Exhibit D. Unless otherwise specifically undertaken by or on behalf of the PACE Program Administrator in the Financing Documents, Lender will be responsible for all servicing duties other than those specifically undertaken by Dtc| qu County in this Contract.

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

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

- (1) Mail a written notice of delinquency and demand for payment to the Owner by both certified mail, return receipt requested, and first class mail and
- (2) Mail a second notice of delinquency to the Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.

If the Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, the Lender or its designated servicer may notify Dtc| qu County in writing of a default by the Owner, and upon receipt of such notice, Dtc| qu County agrees that the Authorized County Official will enforce the assessment lien for the benefit of Lender pursuant to Tex. Local Gov't Code Sec. 399.014(c), in the same manner as a property tax lien against real property may be enforced, to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(d) Final Payment and Release. When the Assessment has been satisfied and paid in full, together with all interest provided under the Financing Documents and all costs, fees, penalties, and interest applicable under the PACE Act and payable to Lender or Dtc| qu County, Dtc| qu County's rights under the PACE Owner Contract will cease and terminate, and upon notice of such payment from Lender, Dtc| qu County will execute and record a release of the Assessment and the Owner Contract.

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

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

(e) Costs. No provisions of this Contract will require Dtc| qu County to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

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

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

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

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

8. Written Contract Required by the PACE Act. This Contract constitutes a written contract between Dtc|qu County and Lender, as required under Section 399.006 of the PACE Act.

9. Miscellaneous.

(a) Binding Effect. This Contract is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

(b) Notices. All notices and other communications required or permitted hereunder shall be in writing and mailed by certified mail, return receipt requested, addressed to the other party at the address stated below the signature of such party or at such other address as such party may from time to time designate in writing to the other party, and shall be effective from the date of receipt.

(c) GOVERNING LAW. THIS CONTRACT SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

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

(e) Captions. Section titles are for convenience of reference only and shall not be of any legal effect.

(f) Counterparts. This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on the parties, notwithstanding that all parties are not signatories to the same counterpart.

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

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

12. Special Provisions. *(to be added as necessary)*

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the date first above written.

LENDER:

DTC\ QUCOUNTY, TEXAS

By: _____

By: _____

Name: _____

Kristeen Roe, Brazos County Tax
Assessor-Collector

Address: _____

4151 County Park Ct.
Bryan, Texas 77802

Title: _____

AUTHORIZED COUNTY OFFICIAL

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B

OWNER CONTRACT

EXHIBIT C

NOTICE OF CONTRACTUAL ASESMENT LIEN
PURSUANT TO PROPERTY ASSESSED CLEAN ENERGY ACT

EXHIBIT D
FINANCING DOCUMENTS

EXHIBIT E
MORTGAGE HOLDER(S) CONSENT