

**PROGRAM GUIDEBOOK:  
C-PACER PROGRAM**

**MEMPHIS, Tennessee**

September 21, 2022

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## I. Introduction

### ABOUT C-PACER

The City of Memphis (the “City”) administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under Tennessee Code Annotated 68-205-101 et seq. (the “C-PACER Act”). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified improvements. While the financing is repaid to the Capital Provider, the C-PACER Act directs the City to levy a voluntary assessment and record a lien (the “C-PACER Lien”) on the property. This approach to financing has been used by programs like C-PACER on thousands of properties in more than 24 states and the District of Columbia.

In 2021, the Tennessee State legislature passed C-PACER enabling legislation, T.C.A. § 68-205-101, *et seq.*, which was recently amended in 2022. This legislation allows counties, municipalities and local jurisdictions to establish Commercial Property Assessed Clean Energy and Resilience (C-PACER) programs. The legislation emphasized allowing resilience improvements, adding an “R” to the popular acronym. C-PACER allows Record Owners to access financing for qualifying energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings. Improvements made to reduce lead in drinking water also qualify as improvements.

Individual counties and municipalities may now take action to create their own C-PACER programs and help buildings become more efficient and resilient. Creating a City C-PACER program is simple: first, the City adopts an ordinance and guidelines that govern how its C-PACER program works. Second, since the repayment of the C-PACER financing is between a private lender and a Record Owner, when the lender’s lien against the property is filed, the City only has to review the lien application for compliance with the C-PACER state law, and then record a unique agreement that includes the acknowledgment of a special property “assessment” by the City.

In Tennessee, C-PACER financing is available in four categories: energy efficiency, renewable energy, water conservation, and resiliency improvements. Improvements that reduce greenhouse gas emissions would qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A voluntary C-PACER loan is secured by a senior lien on the property and paid back over time; tax liens and other government assessments are equal in priority to the C-PACER lien. Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time. The C-PACER repayment obligation transfers automatically to the next owner if the property is sold. In the event of default, only the payments in arrears are due. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, or solar installations – over the useful life of the measures.

The Program exists as a function of Tennessee’s C-PACER legislation and the rules established by the City. No change in the Program or in Tennessee’s C-PACER legislation will affect a Record Owner’s obligations to pay C-PACER assessments incurred under the Program prior to such changes.

## II. Benefits of C-PACER

C-PACER offers benefits to building owners, developers, municipalities, mortgage holders, and building professionals.

**For Building Owners and Developers:** One of the biggest barriers to converting potential projects to completed projects for efficiency and resiliency upgrades are the up-front cost of the types of measures identified in the statute as qualifying improvements. C-PACER financing typically requires little up-front investment, and qualifying improvements improve property value. Energy efficiency measures, in particular, also lower operating costs. In addition, C-PACER financing has the following benefits:

- **Up to 100%, long-term financing.** Many owners lack the capital to complete efficiency and resiliency improvements. All direct and indirect costs incidental to the qualified improvements can be wrapped into C-PACER financing.
- **Transferrable upon sale.** Some owners may want to sell the building before the financing is repaid. The C-PACER lien and assessment are attached to the property and transfers to the new owner.
- **Cash flow benefits.** C-PACER financing may be repaid over the useful life of the improvements, which because of the long-term financing options can have positive effects on cash flow.
- **Triple-net and full-net leases may allow pass-through of assessment installments to tenants.** Under triple/full net leases, C-PACER payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

**For Energy Auditors, Architects, Building Engineers, and Contractors:** By allowing a Record Owner to access 100% up-front financing for longer terms than are typically available for conventional financing, more substantial efficiency and resiliency improvements are now more affordable with C-PACER. Energy auditors, architects, engineers, and contractors can suggest C-PACER financing as a way for their clients to implement needed energy or resiliency upgrades that might otherwise be unaffordable. Since the demand for building efficiency and resiliency improvements will grow in a C-PACER-enabled jurisdiction, C-PACER is a powerful business growth catalyst for building professionals like energy auditors and contractors.

**For Local Jurisdictions:** C-PACER is an economic development tool. By making it more affordable for building owners to make major improvements to their buildings, local building stock value is enhanced, and more jobs are created. Energy and resiliency upgrades create a more competitive environment for retaining and attracting new businesses by lowering energy costs and improving the structural soundness of buildings. Upgraded buildings can generate higher property tax payments for the City. Energy upgrades also typically reduce greenhouse gases and other pollutants, which facilitates adherence to City or state climate action plans or goals.

**For Existing Lien Holders:** C-PACER improvements can enhance property value and typically improve a building's longevity, thereby reducing the risk of property value decline over time. In addition, C-PACER financing is non-accelerating, meaning only current or past due annual payments can be collected each year while future payments stay with the property. As such, existing mortgage holders see their collateral improved without substantial increase in credit risk and with only a modest impact on lien priority. C-PACER financing is not permitted without the consent of all existing lien holders and, under certain

circumstances, the holders of certain other obligations encumbering commercial or residential property.

### **III. C-PACER Financing Program Rules**

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of the City, and is approved in connection with, and as an attachment to, the enabling ordinance for this program (the “C-PACER Ordinance”) dated August, 23, 2022. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the C-PACER Program for the City. The C-PACER Program enables financing for commercial Record Owners (“Record Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in this Guidebook.

Qualified Improvements, including all eligible costs that are to be financed as described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Record Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Record Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Tennessee State, and
- The appropriate steps and forms needed for a City to receive and process a C-PACER project lien application.

#### **1. Establishment of C-PACER Program Boundaries**

The City adopted Ordinance number 5832 on August 23, 2022, establishing the C-PACER Program for all eligible commercial properties within the boundaries of the City. The Region is illustrated in Exhibit 1.

#### **2. Administration of Program; Authorized Officials**

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and the County of Shelby, Tennessee (“EDGE”) is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. EDGE will then execute the Assessment Agreement and C-PACER Lien documents on behalf of the City and record them with the real property records.

As part of Program operation, EDGE will:

- Accept Project Applications from Record Owners and Capital Providers for prospective C-PACER projects;
- Review the Project Application to determine conformance with the Application Checklist;
- Approve/conditionally approve/disapprove the Project Application and communicate to applicant;
- Execute (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) MLGW Compliance Certificate; (7) Mortgage Holder Consent; and (8) Program Application Checklist; and
- Record (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien;

(3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) MLGW Compliance Certificate; (7) Mortgage Holder Consent; and (8) Program Application Checklist

### 3. Eligibility Requirements

Eligible Property means privately owned commercial, industrial, or agricultural real property, or privately owned residential real property consisting of five (5) or more dwelling units, property owned by nonprofit, charitable, or religious organizations, and property owned by pseudo-governmental organizations such as Industrial Development Corporations, Housing Authorities, or Health Educational and Housing Facility Boards. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments, as well as other business types determined in the Local Government's sole discretion shall not be considered Commercial Property.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Record Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Prior to approval of financing on a leasehold owned by the state or the Local Government, but leased to a privately owned entity as described in T.C.A. § 68-205-102(2)(C), the consent of this state or Local Government must be obtained. A change to the leasehold must be approved by this state or the Local Government, as applicable. The state or Local Government must be held harmless if the privately owned entity to which the leasehold is leased defaults on a financing agreement for a leasehold changed in accordance with the statute and ordinance.

The Eligible Property must be assessed by a state-certified appraiser. That assessment, plus existing indebtedness on the property, cannot exceed: (1) 90% of the fair market value prior to the completion of all planned real property improvements, with the exception that properties qualified under the federal low-income housing tax credit program set forth in 26 U.S.C. § 42 are exempt from this requirement; and (2) 25% of the fair market value of the property at the time of the completion of all planned real property improvements.

Minority and Women Owned Business Enterprise Participation means that anyone utilizing this Program on a Qualified Project shall use a "best faith effort" to reach no less than 25% Minority/Women Business Enterprise (MWBE) participation on the Qualifying Costs.

Record Owner means the owner or owners on title, duly recorded, of a Commercial Property, the owner listed on the property's legal documents on file or the owner of an estate for years created pursuant to a written ground lease agreement or similar agreement.

The Record Owner may be any type of business, corporation, individual, or non-profit organization.

The Record Owner must certify (1) the Record Owner is the legal owner of the Eligible Property; (2) the Record Owner is current on mortgage and property tax payments; (3) the Record Owner is not insolvent or in bankruptcy proceedings; and (4) the title of the Eligible Property is not in dispute.

Qualified Improvements means a permanent improvement costing no less than \$1,000,000.00 affixed to the real property that must meet at least one of these criteria:

- Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy, including but not limited to a

product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature; (“Energy Efficiency Improvement”);

- Support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, or allow for the reduction in demand (“Water Efficiency Improvement”);
- Reduce or eliminate lead from water which may be used for drinking or cooking (“Safe Drinking Water Improvement”);
- Increase water and waste water resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the City (“Resiliency Improvement”);
- Electrical vehicle charging infrastructure;
- Conform to the requirements of the most recent version of the International Energy Conservation Code adopted by the City; or
- Conform to seismic requirements of the most recent version of the International Building Code adopted by the City.

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to an Eligible Property.
- Qualified Projects include the refinancing of existing properties that have had Qualified Improvements installed and completed for no more than two (2) years prior to the date of Project Application.

Qualifying Capital Provider may be any private third-party entity, including its designee, successor, and assigns, that makes or funds C-PACER financing, including refinancing

Qualifying costs that can be C-PACER financed must exceed \$1,000,000.00 and can include:

- The cost of the Qualified Improvements plus the costs of materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural and engineering fees;
- Capitalized interest in an amount determined by the Record Owner and the Capital Provider not to exceed the maximum rate allowed by Tennessee law;



- Interest reserves;
- Any other fees or costs that may be incurred by the Record Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
- See also the definition of Total Eligible Construction Costs in Section 5(5)(D).

The period of the special assessment for these qualifying costs must not exceed the weighted average of the useful life of the Qualified Project that is the basis for the assessment.

#### 4. Application Process

The Tennessee C-PACER statute reduces the administrative burden on participating counties, municipalities and local jurisdictions as much as possible. Thus, EDGE will review the Application for proof of compliance with the requirements of the statute that are necessary for EDGE to approve the application and execute the applicable documents for the proposed C-PACER transaction. All applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that EDGE will rely upon to verify compliance with the statute are present in the completed Application.

The process of obtaining financing under the Program starts when a Record Owner approaches a Capital Provider. The Capital Provider will work with the Record Owner to collect a number of diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties should settle on the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Record Owner and the Capital Provider prepare the Project Application, consisting of the Project Application Checklist and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that EDGE will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) EDGE will accept applications until the first Wednesday of each month. EDGE shall take no longer than ten (10) business days to evaluate the application and officially act at a regularly scheduled meeting (typically on the third Wednesday of the month) or at a specially called meeting with required notice.
- (3) EDGE's application review process is confined to confirming that the Project Application is complete and all attachments conform to these guidelines. ***EDGE's approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.*** EDGE will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for EDGE to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and EDGE will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (4) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below.
- (5) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (6) If the Project Application received conditional approval, the Closing Documents executed by EDGE may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (7) At closing, EDGE will record the Closing Documents in the Office of the Register of Deeds for Shelby County. At the election of the applicant, EDGE may delegate the recording of the Closing Documents to the applicant or their designee(s).
- (8) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement.
- (9) The Record Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement.

## 5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached)
- Lienholder(s) Consent (form attached)
- Economic Benefits Certification (form attached): The applicant will certify that the economic benefits of the Qualified Improvements exceed the costs of the assessment.
- Certificate of Qualified Improvements:
  - (1) For Renewable Energy Improvements, Energy Efficiency Improvements, or Water Efficiency Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in either the more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.
  - (2) For Safe Drinking Water Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in the reduction of lead in potable water.
  - (3) For Resilience Improvements on an existing building: A certification that the Qualified Improvements will result in improved resilience, which may include, without limitation, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
  - (4) For new construction: A certification that each proposed Qualified Improvement or the building as a whole will enable the subject property to exceed the energy efficiency or, water efficiency

or, renewable energy or, renewable water, or resilience requirements of the current building code requirements of the City.

- (5) For all Qualified Improvements, the aforementioned certifications (in subsections #1-4) must be completed by either a licensed Professional Engineer or an authorized representative of a licensed engineering firm. The certifying individual may hold additional licenses or qualifications demonstrating their qualifications. The certifying individual must inspect the installation of the Qualified Improvements and provide a stamped inspection report from a Professional Engineer licensed with the State of Tennessee to EDGE attesting all improvements have been installed to applicable code requirements and/or product specifications.

## 6. Closing Documents

The following documents require the signature of EDGE and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although it is expected that Record Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Assessment Agreement (**Attachment A**)
- Project Application Checklist (**Attachment B**)
- Notice of Assessment Interest and C-PACER Lien (**Attachment C**)
- Economic Benefits Compliance Certificate (**Attachment D**)
- Energy Water Resilience Compliance Certificate (**Attachment E**)
- MLGW Compliance Certificate (if applicable) (**Attachment F**)
- Mortgage Holder Consent (**Attachment G**)
- Certificate of C-PACER Completion (**Attachment H**)

## 7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Record Owner and the Capital Provider, but may not exceed the maximum rate allowed under Tennessee law. EDGE has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Record Owners and Capital Providers.

## 8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments will be handled by the Memphis City Treasurer using the same process that it uses for collecting ad valorem property taxes.

## 9. Enforcement of C-PACER Lien

The Memphis City Treasurer will enforce the C-PACER Lien through the same tax sale mechanism that it uses to enforce the liens for ad valorem property taxes.

## **10. Program Fee**

EDGE, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Ordinance, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Assessment Agreement and C-PACER Lien is entitled to a fee equal to 1% of the amount financed by the Record Owner, not to exceed \$50,000. The Record Owner must pay this fee to EDGE at the closing of the transaction between the Record Owner and the Capital Provider, and such payment is a condition precedent to recording. EDGE shall invoice the applicant, collect the Program Fee and distribute 50% of the fee collected to the City of Memphis Department of Finance.

## **11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements**

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement, or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

## **12. Form of Closing Documents**

The Program has adopted form Closing Documents: The Assessment Agreements and Notice of Assessment Interest and C-PACER Lien. A Record Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms.

The forms are attached in the Exhibits below and respectively incorporated herein as referenced

## **13. Written Consent from Lienholder(s) Required**

Before entering into an Assessment Agreement with the City, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a mortgage or a deed of trust interest in the real property.

If the consents are executed at closing, the signatures of EDGE to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Memphis City Treasurer, an amended Project Application with the consents attached must be sent to the Memphis City Treasurer. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

## **14. Provisions for Marketing and Participant Education**

This Guidebook will be made available to the public on the EDGE website. It is determined that there is no need for marketing and participant education at this time. It is presumed that Record Owners and Capital Providers understand the principles and processes associated with C-PACER financing and will look to the Guidebook for understanding and clarification of the City Program.

## **15. Neither City Nor EDGE Has Liability or Financial Responsibility**

Neither the City, its governing body, executives, or employees, nor EDGE, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this

Program. Neither the City nor EDGE shall pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

[EXHIBITS TO BE INSERTED]

## **Assessment Agreement for C-PACER Financing**

**CITY OF MEMPHIS, TENNESSEE**

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY**

**(C-PACER) PROGRAM**

September 21, 2022

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**INTERNAL USE ONLY (I)**

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## Assessment Agreement for C-PACER Financing

### City of Memphis, Tennessee

This ASSESSMENT AGREEMENT for C-PACER FINANCING (this "**Agreement**") is made and entered into as of this [ ] day of [ ], 20xx , (the "**Effective Date**") by and between the City of Memphis, Tennessee (the "**City**"), by and through the City Treasurer (the "**Treasurer**"), the Economic Development Growth Engine Industrial Development Board of the City of Memphis and the County of Shelby, Tennessee ("**Edge**" or the "**Administrator**"), [CAPITAL PROVIDER], a [STATE] [ENTITY TYPE] (together with its successors and assigns, "Capital Provider") and [ ], the record owner(s) (the "**Property Owner**") of the fee title to the real property identified on Exhibit A (the "**Property**").

### RECITALS

**WHEREAS**, the City has, on August 23, 2022, established the Commercial Property Assessed Clean Energy and Resiliency Program (the "**Program**") through the adoption of Ordinance No. 5832 ("**City Ordinance**") to allow the financing of certain renewable energy, energy and water efficiency, and resiliency improvements ("**Qualified Improvements**"), through the levy of contractual assessments pursuant to Tenn. Code Ann. §§ 68-205-101 et seq. (as may be amended from time to time, the "**C-PACER Act**"); and

**WHEREAS**, in the City Ordinance, the City designated the Administrator as the Program Administrator as such term is defined in the City Ordinance; and

**WHEREAS**, the purpose and method of approval of C-PACER financing under the Program are described in the Program Guidebook established by the Program Administrator, as the same may be amended from time to time prior to the Effective Date of this Agreement (the "**Program Guidebook**"); and

**WHEREAS**, the Property is located in the boundaries of the City and the City has consented to owners of eligible properties within its jurisdiction participating in the Program; and

**WHEREAS**, the Property Owner has submitted application materials including a description of the Qualified Improvements that will be acquired, constructed on and/or installed on the Property; and

**WHEREAS**, the City through the Program Administrator, has reviewed such application materials to assess compliance with the C-PACER Act, the City Ordinance, and Program Guidebook and has determined that the project proposed by the Property Owner complies with such criteria and is approved for participation in the Program (the "**Approved Project**"); and

**WHEREAS**, the Approved Project is to be financed pursuant to a financing agreement between the Property Owner (the "**Financing Agreement**") and the Capital Provider and under which the Property Owner agrees to repay such Capital Provider; and

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

**WHEREAS**, it is a condition to closing of the Financing Agreement that the Property Owner and the City enter into this Agreement; and

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

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

### **AGREEMENT**

**Section 1. Purpose.** The Property Owner, Capital Provider and the City are entering into this Agreement for the purpose of subjecting the Property to a C-PACER assessment to finance or refinance the purchase, installation, or construction of the Qualified Improvements identified on Exhibit B on the Property.

**Section 2. The Property.** This Agreement relates to the real property identified in Exhibit A. The Property Owner has supplied to the City and Capital Provider current evidence of its ownership of fee title or an estate for years created pursuant to a written ground lease agreement or similar agreement to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

**Section 3. Assessment and Lien.**

(a) The Property Owner agrees that upon the execution and delivery of this Agreement by the parties, the Property Owner voluntarily and willingly consents to the placement of an assessment levied against the Property by the City pursuant to this Agreement and applicable law in the principal amount of \$[\_\_\_\_], together with all interest, penalties, and fees as described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the Program Administrator, on behalf of the City, will execute and cause to be recorded in the office of the Register of Deeds for Shelby County, together with a copy of this Agreement, pursuant to Tenn. Code Ann. § 68-205-109, the Notice of Assessment Interest and C-PACER Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the City (the “**C-PACER Lien**”) and provide record notice to third parties of the existence of the C-PACER Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the levy of the Assessment by the City against the Property without any further action required by the parties.

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

(d) The Assessment shall be secured by the C-PACER Lien until paid in full. Failure to pay any Assessment Installment, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing on the amounts due on the terms and provisions of the Financing

Agreement. In addition, under those circumstances, the C-PACER Lien may be subject to a tax sale in the manner specified in Section 4, below.

(e) The Property Owner hereby certifies to the City and Capital Provider that

(i) The amount of the Assessment plus any existing indebtedness on the property does not exceed ninety percent (90%) of the fair market value of the property prior to the completion of all planned real property improvements, including any existing indebtedness on the property as determined by a qualified appraiser in the report, with the exception that properties qualified under the federal low-income housing tax credit program set forth in 26 U.S.C. § 42 are exempt from this requirement; and

(ii) the amount of the Assessment does not exceed twenty-five percent (25%) of the fair market value of the property at the time of the completion of all planned real property improvements, as determined by a qualified appraiser.

**Section 4.** Collection of Assessment; Assignment of Rights; Tax Sale.

(a) The Assessment Installments shall be collected in the manner specified in the Ordinance.

(b) The City hereby irrevocably assigns its right to receive all installments of the Assessment required to be paid by the Property Owner pursuant to this Agreement, whether in accordance with the Assessment Schedule or upon prepayment of the Assessment in whole or in part in, and any and all sums collected pursuant to foreclosure and enforcement, together with all payments of interest due and payable, including penalty interest if delinquent, to the Capital Provider, its successors or assigns. The Parties hereby acknowledge and agree that an overdue Assessment Installment will be collected by the City in the same manner that the collection of delinquent real property taxes, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing at the time.

**Section 5.** Term; Agreement Runs with the Land.

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the final payment or prepayment of the Assessment. Following such termination, the City shall cause to be executed, delivered, and/or recorded such instruments as are necessary in order to release the C-PACER Lien. The C-PACER Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land.

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

(c) In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will be assigned to each of the newly created parcels on the basis of [relative valuation] at the time of the subdivision, unless the Financing Agreement provides that the Assessment should be allocated in an alternate manner.

**Section 6.** Assessment Billing, Collection and Disbursement to Capital Provider.

(a) In General. The City agrees to collect the Assessment Installments pursuant to Section 4 hereof and forward payments received to the Administrator, its successors, or its permitted assignees, for further payment to the Capital Provider, no later than thirty (30) days after receipt of the

amounts. The Administrator agrees to forward all such payments to the Capital Provider promptly and, in any event, within fourteen (14) days of the Administrator's receipt. In the event the Administrator ceases to act as the Program Administrator and there is no successor Program Administrator, the City hereby agrees to forward the payments to the Capital Provider within thirty (30) days after receipt of said payments.

(b) Delinquencies. Funds collected by the City pursuant to Section 4(b) for the payment of the overdue Assessment Installment from a tax sale with respect to the Property, including any penalties and interest and the costs and fees incident to the collection thereof, shall be paid to the City, its successors, or its permitted assignees no later than thirty (30) days after receipt of the amounts, provided that any sale proceeds in excess of the amount of the overdue Assessment Installment will be distributed by the City in accordance with applicable law. The City agrees to forward all such payments, less its costs of performing the tax sale that the City is permitted to retain in accordance with the C-PACER Act to the Administrator within thirty (30) days. The City agrees to forward all such payments to the Capital Provider promptly and, in any event, within fourteen (14) days of the City's receipt.

**Section 7.** Recordation of Documents. The City shall cause the Program Administrator to record, or the Program Administrator may delegate to the Capital Provider to record, in the office of the Shelby County Register of Deeds the Notice of Assessment, which includes this Agreement as an attachment, and such other documents that are attached as Exhibits to this Agreement.

**Section 8.** Amendment.

(a) This Agreement may be modified only by the written agreement of the City, or any successor or assign of the City, the Capital Provider, or any successor or assign of the Capital Provider, and the Property Owner.

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

**Section 9.** Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the City, Administrator, Capital Provider, the Property Owner and their respective successors and assigns; provided, however, that neither the City nor the Administrator may assign their rights and obligations under this Agreement without the prior written consent of the Capital Provider. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue a tax sale with respect to the C-PACER Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. The Capital Provider may assign any or all of its rights arising under this Agreement without the consent of the City, the Property Owner or the Administrator, provided the Capital Provider provides notice of the assignment to the City, the Property Owner, and the Administrator.

**Section 10.** No Liability of the City or Program Administrator. Pursuant to the C-Pacer Act, so long as the City and Program Administrator comply in good faith with the C-Pacer Act, the Ordinance, and the City's obligation to bill, collect and enforce the Assessment under this Agreement, neither the City nor the Program Administrator shall incur liability as a result of any provision of this Agreement, nor shall any members of the governing body, employees, board members and executives of the City or Program Administrator be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the City, its governing body, employees, board

members, and executives, and the Program Administrator, its governing body, employees, board members, and executives, and not to the benefit of the City's successors or assigns of this Agreement.

**Section 11.** Indemnification. Property Owner agrees to defend, indemnify and hold the City, its Council members, employees, agents, and contractors, and the Program Administrator, its Board of Directors, employees, agents, and contractors ("City Indemnified Parties") harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the C-PACER Lien. Property Owner's duty to indemnify the City Indemnified Parties shall not apply to liability for damages to the extent caused by or resulting from the sole or gross negligence or willful misconduct of the City Indemnified Parties. Property Owner agrees to defend, indemnify and hold the Capital Provider, its directors, officers, employees, agents and representatives harmless hereunder in the same manner provided in the Financing Agreement.

**Section 12.** Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of Tennessee. Any legal action brought under this Agreement must be instituted in a court of the State of Tennessee located in Shelby County, Tennessee.

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

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

*Signatures Appear on Following Page*

**IN WITNESS WHEREOF**, the City, Administrator, Capital Provider, and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

**ATTEST:**

**CITY OF MEMPHIS, TENNESSEE**

\_\_\_\_\_  
**City Comptroller**

By: \_\_\_\_\_  
**Jim Strickland, Mayor**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**

**ECONOMIC DEVELOPMENT GROWTH  
ENGINE INDUSTRIAL DEVELOPMENT  
BOARD OF THE CITY OF MEMPHIS AND  
THE COUNTY OF SHELBY, TENNESSEE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CAPITAL PROVIDER:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PROPERTY OWNER:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY'S ACKNOWLEDGEMENT**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, a notary public within and for said state and county, at Memphis, Tennessee, duly commissioned and qualified, personally appeared JIM STRICKLAND, with whom I am personally acquainted, and who upon oath acknowledged himself to be the Mayor of the City of Memphis and that he as such mayor being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the city of Memphis by himself as mayor.

WITNESS my hand and seal of office at Memphis, Tennessee, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

[SEAL]

**ADMINISTRATOR'S ACKNOWLEDGMENT**

STATE OF TENNESSEE        )  
COUNTY OF SHELBY        )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainer, a [corporation / limited liability company / limited partnership / general partnership / non-profit entity], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

**CAPITAL PROVIDER'S ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainor, a [corporation / limited liability company / limited partnership / general partnership / non-profit entity], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

**PROPERTY OWNER'S ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainor, a [corporation / limited liability company / limited partnership / general partnership / non-profit entity], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**PROPERTY LEGAL DESCRIPTION**

[To be inserted]

Being the same property conveyed to the Property Owner pursuant to a deed of record as \_\_\_\_\_ in the office of the Register of Deeds of Shelby County, Tennessee.

**EXHIBIT B**  
**QUALIFIED IMPROVEMENTS**

[To be inserted]

**EXHIBIT C**  
**FORM OF NOTICE OF ASSESSMENT**

[To be inserted]



Attachment B

APPLICATION INFORMATION	APPLICANT-PROVIDED INFORMATION	ACCEPTED DOCUMENTATION	VERIFIED / NOTES
<b>PROPERTY ADDRESS</b>		<b>DEED TITLE INSURANCE REPORT ASSESSOR OFFICIAL RECORD</b>  The address must be within the County.	
<b>PROPERTY OWNER:</b>	Legal name(s) of Owner(s) (LIST ALL):  Name of contact person:  Phone number:  Email address:	<b>DEED TITLE INSURANCE REPORT</b> All names must match exactly what is on the Title Insurance Report and Assessor Official Record  If the name(s) is different:  Certified copy of personal/corporate name change; Certified copy of merger/sale document reflecting name change; Certified copy of Power of Attorney	
<b>QUALIFYING PROPERTY</b>	is this Property: _____ commercial _____ agricultural _____ industrial _____ multi-family of 5+ units The improvements sought are for: _____ existing building _____ new construction	<b>ASSESSOR / TREASURER OFFICIAL RECORDS APPRAISAL ZONING REPORT GROUND LEASE (if applicable)</b>	

Attachment B

<p><b>QUALIFYING OWNER</b></p>	<p>Is property owned by a  <input type="checkbox"/> limited liability company  <input type="checkbox"/> general or limited partnership  <input type="checkbox"/> corporation  <input type="checkbox"/> individual/Sole proprietorship  <input type="checkbox"/> trust</p>	<p>If property is held by a limited liability company, general or limited partnership or a corporation, the applicant should include a copy of the certificate of formation, organization, incorporation or similar document and a good standing certificate/certificate of existence from the state or organization and, if not organized in Tennessee, a certificate of registration to conduct business in Tennessee as a foreign entity.</p> <p>If a trust, a copy of the trust agreement or a trustees' certificate.</p> <p>If an individual, a copy of a valid driver's license.</p> <p>If the application is to be signed by a party other than the applicant, then, in addition to the foregoing, a power of attorney or corporate resolution authorizing said party.</p>	

Attachment B

<p><b>CAPITAL PROVIDER</b></p>	<p>Legal Name: Name of contact person: Phone number: Email address:</p>		
<p><b>QUALIFYING IMPROVEMENT CERTIFICATION (Existing Building)</b></p>	<p>The improvement sought are (check all that apply):  <input type="checkbox"/> Energy efficient  <input type="checkbox"/> Water efficient  <input type="checkbox"/> Renewable Energy  <input type="checkbox"/> Lead Reduction, water</p> <p>If Resiliency, specify type:  <input type="checkbox"/> flood mitigation  <input type="checkbox"/> stormwater management  <input type="checkbox"/> other (please specify in an attachment)</p> <p>Attach description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.</p>	<p>Original and copy of: Energy, Water &amp; Resilience Compliance Certificate that is complete, signed, with accompanying documentation. MLGW Compliance Certificate, if applicable.</p>	

Attachment B

<p><b>QUALIFYING IMPROVEMENT CERTIFICATION</b> (New Construction)</p>	<p>The improvement sought are (check all that apply):  <input type="checkbox"/> Energy efficient  <input type="checkbox"/> Water efficient  <input type="checkbox"/> Renewable Energy</p> <p>If Resiliency, specify type:  <input type="checkbox"/> flood mitigation  <input type="checkbox"/> stormwater management  <input type="checkbox"/> other (please specify in an attachment)</p> <p>Attach description of improvements and certifications for improvements sought, including documentation of the appropriate license/qualifications required by the Guidebook.</p>	<p>Original and copy of:             Energy, Water &amp; Resilience Compliance Certificate that is complete, signed, with accompanying documentation required by the Certificate.             MLGW Compliance Certificate, if applicable.</p>	
<p><b>ECONOMIC BENEFIT CERTIFICATION</b></p>	<p>The economic benefits of the proposed Qualified Improvements exceed the costs of the proposed assessment.</p>	<p>Original and copy of:             Economic Benefits Compliance Certificate that is complete and signed.</p>	
<p><b>LIENHOLDER CONSENT</b></p>	<p>CONSENT(s)  <input type="checkbox"/> attached  <input type="checkbox"/> delivered at close</p>	<p>Applicant should submit the Lienholder Consent Form (must be substantially the same as the Model form)</p> <ul style="list-style-type: none"> <li>• The form must be signed and notarized in appropriate places</li> </ul>	



Attachment B

		Cross-check list of Lienholders from Title Report with Written Consents provided by Capital Provider.	
--	--	---	--

IF CONSENT WILL BE EXECUTED AT CLOSING, CONDITIONAL APPROVAL IS GIVEN.  
IF CONSENTS ARE DELIVERED AT CLOSING, APPLICANT MUST HOLD COUNTY-EXECUTED CLOSING DOCUMENTS IN ESCROW UNTIL CONSENTS ARE OBTAINED. AT DISCRETION OF THIS OFFICE, THIS APPLICATION MAY BE AMENDED AND RETURNED WITH COPIES OF CONSENTS ATTACHED.

BY SIGNATURE BELOW, THE APPLICANTS (THE PROPERTY OWNER AND CAPITAL PROVIDER) AFFIRM THAT THE INFORMATION AND DOCUMENTATION ARE TRUE AND CORRECT TO THE BEST OF THEIR ABILITY AND THAT THE APPLICANTS HAVE READ THE DISCLOSURES AND DISCLAIMERS ATTACHED TO THIS APPLICATION AND UNDERSTAND THE RISKS OF PARTICIPATING IN THE C-PACER PROGRAM; FURTHER, THAT THE APPLICANTS AFFIRM THAT NEITHER THE COUNTY, ITS GOVERNING BODY, EXECUTIVES, NOR EMPLOYEES ARE PERSONALLY LIABLE AS A RESULT OF EXERCISING ANY RIGHTS OR RESPONSIBILITIES GRANTED UNDER THIS PROGRAM.

**APPLICATION FORM SIGNED AND DATED**

ON BEHALF OF PROPERTY OWNER: \_\_\_\_\_  
NAME & TITLE: \_\_\_\_\_

ON BEHALF OF CAPITAL PROVIDER: \_\_\_\_\_  
NAME AND TITLE: \_\_\_\_\_

\_\_\_\_\_

**TO BE COMPLETED BY AUTHORIZED ADMINISTRATOR OFFICIAL**

APPLICATION: \_\_\_\_\_ APPROVED \_\_\_\_\_ CONDITIONALLY APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_

ON BEHALF OF ADMINISTRATOR: \_\_\_\_\_  
NAME AND TITLE: \_\_\_\_\_

DISCLOSURES & DISCLAIMERS

INSTRUMENT PREPARED BY AND  
WHEN RECORDED, RETURN TO:

**NOTICE OF ASSESSMENT INTEREST AND C-PACER LIEN**  
Tennessee Code Annotated 68-205-109 Filed in Shelby County

(GRANTEE) CITY OF MEMPHIS

(GRANTOR) [PROPERTY OWNER]

Notice is hereby given that the City, at the request of the property owner named below, is placing a C-PACER Lien pursuant to Tennessee Code Annotated 68-205-109. In support of this lien the following information is submitted:

1. THE ASSESSMENT LIEN GRANTEE	CITY OF MEMPHIS
2. DATE ON WHICH THE ASSESSMENT AGREEMENT WAS SIGNED GRANTING THE RIGHT TO PLACE AN ASSESSMENT AND C-PACER LIEN ON THE PROPERTY	[INSERT]
3. THE PROPERTY OWNER(S) GRANTING THE PLACEMENT OF THE ASSESSMENT AND C-PACER LIEN	[INSERT]
4. THE PROPERTY AGAINST WHICH THE ASSESSMENT AND C-PACER LIEN IS PLACED IS LOCATED AT THE FOLLOWING MUNICIPAL ADDRESS:	[INSERT]
5. LEGAL DESCRIPTION OF THE PROPERTY IS AS FOLLOWS	SEE EXHIBIT A TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
6. ASSESSOR'S PARCEL NUMBER OF THE PROPERTY	[INSERT]
7. PRINCIPAL AMOUNT OF ASSESSMENT SECURED BY C-PACER LIEN	[INSERT]

Attachment C

8. TERMS AND LENGTH OF ASSESSMENT SECURED BY C-PACER LIEN	SEE EXHIBIT _ TO THE ASSESSMENT AGREEMENT ATTACHED HERETO
9. COPY OF ASSESSMENT AGREEMENT (ATTACHED)	SEE EXHIBIT A HERETO

**IN WITNESS WHEREOF**, Grantee and Grantor have caused this Notice of Assessment Interest and C-PACER Lien to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

**GRANTEE:**

**City of Memphis, Tennessee**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTOR:**

**[PROPERTY OWNER]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF XXXX

Before me, \_\_\_\_\_, a Notary Public in and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [her/him]self to be the \_\_\_\_\_ of the \_\_\_\_\_, the within-named bargainor, a county, and that [s/sh]e as such \_\_\_\_\_, being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the county by [her/him]self as such \_\_\_\_\_.

WITNESS my hand and seal at office, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Development Corporation Expires:

\_\_\_\_\_

[seal]

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged [him/her]self to be \_\_\_\_\_ (office held) of \_\_\_\_\_, the within named bargainor, a [corporation / limited liability company / limited partnership / general partnership], and that [s/h]e as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the [corporation / company / partnership] by him/herself as \_\_\_\_\_.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

EXHIBIT A  
ASSESSMENT AGREEMENT

[see attached]



**CITY OF MEMPHIS C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Economic Benefits**

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the City of Memphis Commercial C-PACER Program:

**I CERTIFY:** The economic benefits of the proposed Qualified Improvements exceed the costs of the proposed assessment.

Signature: \_\_\_\_\_

**NAME:**

**TITLE:**

**CITY OF MEMPHIS C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

I, the undersigned, hereby certify the following facts and make the following certifications with respect to the project described in the attached Project Application (the "Project") under the City of Memphis Commercial C-PACER Program:

1. I am either a licensed Professional Engineer or an authorized representative of a licensed engineering firm, whose registration number and stamp are shown below, and

If applicable, I am accredited by or belong to a firm with an accreditation from (please denote with a "X" and checkmark):

- Building Energy Assessment Professional (BEAP);
- Building Energy Modeling Professional (BEMP);
- Certified Building Energy Assessment Professional (BEAP) (offered by ASHRAE);
- Certified Energy Auditor (CEA) (offered by Association of Energy Engineers [AEE]);
- Certified Energy Manager (CEM) (offered by AEE);
- Certified FORTIFIED Commercial™ Evaluator (offered by IBHS);
- Certified GeoExchange Designer (CGD);
- Certified High-Performance Building Design Professional (HBDP) (offered by ASHRAE);
- Certified Measurement and Verification Professional (CMVP) (offered by AEE and EfficiencyValuation Organization);
- Investor Confidence Project (ICP) Quality Assurance Assessor;
- Investor Confidence Project (ICP) Project Developer;
- LEED Accredited Professional;
- Licensed Architect;
- Water Quality Association Professional Certification;
- North American Board of Certified Energy Practitioners (NABCEP) (for solar PV only, a design specialist certification is acceptable).

Please provide verification of professional accreditation and recognition

2. The application is for:
  - an existing building
  - new construction
3. Please describe your relationship to the project:
  - I am employed by the project applicant in my professional capacity
  - I am a contracted independent third-party reviewer
5. I reviewed the following information regarding the project (e.g., equipment specifications OR design drawings/modeling OR permit applications OR an ASHRAE Level 1 assessment/energy assessment OR an ASHRAE Level 2 full building model ): Please Describe:  

---

**CITY OF MEMPHIS C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

- 6. The project proposal includes the "Qualified Improvements", as defined in Tenn. Code Ann. § 68-205-102 and the Program Guidebook, and the estimated useful life of each Qualified Improvement, which are listed in an attachment to this certification. (Please attach)
- 7. The Qualified Improvements will be permanently affixed to the property.

**IF FOR AN EXISTING BUILDING (check those that apply):**

**I CERTIFY:**

- The proposed Qualified Improvements will result in either the more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.
- The proposed Qualified Improvements will result in the reduction of lead in potable water.
- The Qualified Improvements will result in improved resilience, which may include, without limitation, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids. If other, specify: \_\_\_\_\_

**IF FOR NEW CONSTRUCTION (check those that apply):**

**I CERTIFY:**

- Each proposed Qualified Improvement or the building as a whole will enable the subject property to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code of the county.

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF MEMPHIS C-PACER PROGRAM  
CERTIFICATE OF COMPLIANCE  
Energy, Water, Renewable Energy, Resilience**

**NAME:**

Business name:

Business address:

Business contact email:

Business contact phone:

**IF APPLICABLE**

License No. \_\_\_\_\_

Stamp: \_\_\_\_\_

ATTACHMENTS (Please attach to Certification)

**MLGW COMPLIANCE CERTIFICATE**

Property Owner: \_\_\_\_\_

Property Address: \_\_\_\_\_

The undersigned certifies that the Qualified Improvement involving power generation has received approval from the Memphis, Light, Gas and Water Division (“MLGW”) for interconnection with MLGW’s system, and the owner has entered into all applicable interconnection agreements with MLGW related to the Qualified Improvement.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

MEMPHIS LIGHT, GAS AND WATER  
DIVISION

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Date of application approval: \_\_\_\_\_

Date of executed interconnection agreement: \_\_\_\_\_

**MORTGAGE HOLDER CONSENT****Date:** \_\_\_\_\_**Mortgage Holder:**

BANK NAME

BANK ADDRESS

BANK CITY, STATE, ZIP

PHONE NUMBER

**Loan Number(s):** ( \_\_\_\_\_ )**Property Owner and Mailing Address:**

OWNER NAME

OWNER ADDRESS

OWNER CITY, STATE, ZIP

**Property (as more particularly described in the attached Exhibit A):**

PROPERTY ADDRESS

PROPERTY CITY, STATE, ZIP

**Recording Information:** [Date] and [Book] and [Page] or [Document No.]

This is a Mortgage Holder Consent (this "Consent") by the undersigned entity (the "Mortgage Holder") with respect to the above-referenced loan(s) (the "Loan") secured by the Property.

The Property Owner intends to finance the installation of eligible improvements in an amount of up to \$[INSERT MAX TFA]\* ("Financing") in order to reduce energy consumption, to reduce water consumption, to increase resiliency, or to install renewable energy systems on the Property by participating in the commercial property assessed clean energy ("C-PACE") program ("Program") authorized by the City in which the Property is located. Pursuant to the Program, the Property Owner agrees to the levying of an assessment ("Lien") against the Property that will be collected in installments in the same manner as and subject to the same penalties, remedies, and lien priorities as real property taxes. In no circumstances will the amount owing on the assessment be accelerated on account of a payment default or for any other reason, but rather any proceeding to enforce the Lien shall be limited to the collection of the amount then currently due with respect to the assessment, including past-due interest, past-due fees, and costs of collection as permitted under the property assessed clean energy act, state tax code, and contracts with local government governing the Program.

By signing below, Mortgage Holder hereby: (i) acknowledges receipt of timely prior notice of the Financing and Lien, (ii) consents to the Lien in the amount of the Financing; (iii) agrees that the Financing and the Lien will not constitute an event of default or trigger the exercise of any remedies under the loan documents between Mortgage Holder and Property Owner, and (iv) acknowledges that this Consent is being relied on by all parties participating in, lending in or administering the Program.

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\* Includes cost of issuance and capitalized interest. PACE may provide financing for up to 110% of the Financing.

September 21, 2022

The undersigned hereby represents that he/she is authorized to execute and deliver this Consent on behalf of Mortgage Holder.

MORTGAGE HOLDER:

[ \_\_\_\_\_ ]

By \_\_\_\_\_ (SEAL)  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss. \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_ )

On this the \_\_ day of \_\_\_\_\_, 2022, before me, a Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be \_\_\_\_\_ of \_\_\_\_\_, the within named bargainor, a \_\_\_\_\_, and that she as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the \_\_\_\_\_ by herself as \_\_\_\_\_.

[SEAL]

\_\_\_\_\_  
 Notary Public  
 My Commission Expires:

**Exhibit A**  
**(Legal Description)**



**CERTIFICATE OF C-PACER IMPROVEMENTS COMPLETION**

Property Owner: \_\_\_\_\_

Property Address: \_\_\_\_\_

C-PACER application approval date: \_\_\_\_\_

C-PACER financing closing date: \_\_\_\_\_

The undersigned certifies that the work under the above approved C-PACER Application, attached as **Exhibit A** hereto, has been satisfactorily and properly completed and all improvements are operating as intended.

PROPERTY OWNER:

[INSERT ENTITY NAME, IF APPLICABLE]

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**Exhibit A**

C-PACER Application

[See Attached]