



**COUNTY OF HOUGHTON, MICHIGAN
PACE PROGRAM**

DATE



LEVIN
ENERGY
PARTNERS

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Lean & Green Michigan™ PACE Program

Executive Summary

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

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

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



HOUGHTON COUNTY, MICHIGAN

PACE PROGRAM REPORT

This Lean & Green Michigan™ PACE Program Report contains the information required by Section 9 of Act 270. Additional information is available from the County of Houghton (“Houghton County”). The PACE Program and Report were approved by the Houghton County Board of Commissioners on INSERT DATE OF APPROVAL, subsequent to a public hearing held on INSERT DATE OF PUBLIC HEARING.

INTRODUCTION

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

The Houghton County Commission passed a Resolution of Intent to create a PACE district by joining the Lean & Green Michigan statewide PACE program on INSERT DATE OF APPROVAL. The Commission published its first version of this PACE Report thereafter, and held a public hearing on INSERT DATE OF PUBLIC HEARING. The Commission passed a Final Resolution adopting this PACE program on INSERT DATE OF FINAL ADOPTION.

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

1. Form of PACE Contract

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

2. Authorized Official/PACE Administrator

The INSERT TITLE OF AUTHORIZED OFFICIAL, or his designee (the “Authorized Official”) is authorized to enter into PACE Program contracts on behalf of Houghton County in consultation with Levin Energy Partners, LLC (“LEP”). The Authorized Official is further authorized to sign

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

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

3. Financing Parameters

In establishing its PACE district, Houghton County intends for PACE projects to be funded through owner-arranged private financing. The maximum aggregate annual amount of financing provided by Houghton County in 2015 shall be zero dollars. The maximum aggregate dollar amount for financing provided by the County may be adjusted and/or amended on an annual basis or more frequently by the Board of Commissioners and will remain at zero dollars unless and until it is changed.

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

4. Application Process/Eligibility Requirements

Application Process:

The application process for financing projects under the Program shall be that of LAGM. The current application form is attached as **Appendix B**. This form may be changed or amended as necessary by LEP.

Eligibility Requirements:

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

5. Financing Terms of Assessments

For funds supplied by Houghton County, the interest rate on a PACE special assessment shall be sufficient to pay principal and interest on the financing as determined by the Authorized Official. Additional financing terms shall be negotiated between the property owner and entity providing the financing.

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

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

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

6. Assessment Collection Process

Within the parameters set forth herein, the Authorized Official will determine to:

- i. Finance energy projects by the issuance of bonds to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the energy improvements; or
- ii. Authorize one or more commercial lenders to provide financing to defray all or part of the cost of the energy improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official will find is especially benefited in proportion to the costs of the energy improvements.

The Special Assessment Roll, attached as **Appendix E**, will be spread by the Authorized Official on behalf of Houghton County and without objection by the property owner to allocate one hundred percent (100%) of the PACE special assessment levy created hereby to the Special Assessment Parcel.

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

If the project is financed with bonds, the Special Assessment Roll shall bear interest at a rate sufficient to pay principal and interest on the bonds. If funds are supplied by commercial lenders, the interest rate for the PACE special assessment will be negotiated by the parties based on current market conditions.

7. Financing Program

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

Houghton County may also raise capital to finance qualified energy projects from the sale of bonds or notes, or may finance qualified energy projects under the Program from funds available to it from any other source.

8. Reserve Fund

In the event Houghton County decides to issue bonds to provide financing for a PACE Program, Houghton County can determine at that time to fund a bond reserve account from any legally available funds, including funds from the proceeds of bonds.

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

9. Fee Schedule

Application, administration and program fees for record owners shall be those of LAGM. Administration and program fees will be determined on a project-specific basis and will depend on the size, nature and complexity of the energy project(s) and financing mechanism(s) involved.

10. Useful Life

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

11. Property Eligibility Parameters

As set forth in the PACE Special Assessment Agreement, energy projects shall generally not exceed 25% of two times the State Equalized Value; and the overall indebtedness of the property (excluding the proposed PACE project) shall not be greater than 80% of the market value as agreed to by the parties using an appropriate measure such as the value of a recent appraisal or two times the State Equalized Value.

12. Mortgage Consent Requirement

If a property is subject to a mortgage the record owner must obtain written consent from the mortgagee to participate in the Program. Proof of lender consent must be submitted before a Special Assessment Agreement may be executed. A form of model lender consent to participate in a PACE Program is attached as **Appendix G**.

13. Marketing Program

LAGM has developed an ongoing marketing and participant education program. By joining LAGM, Houghton County gains access to this program and agrees to partner with LAGM in educating businesses in Houghton County about opportunities to save energy, save money and improve their property value. The County authorizes the use of Houghton County's logo by LAGM to be incorporated into the LAGM website and other communication vehicles. More information regarding the Program can be obtained at LAGM's website: www.leanandgreenmi.com; or at Houghton County's website at <http://www.houghtoncounty.net/>.

14. Quality Assurance and Antifraud Measures

LAGM includes the following quality assurance and antifraud measures:

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

15. Audit Requirement

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

16. Projects Over \$250,000

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

17. Amendments to the Program

A public hearing shall not be required to amend this Program. LEP may amend the Houghton County PACE program as necessary from time to time.

SPACE ABOVE FOR RECORDING PURPOSES

PACE SPECIAL ASSESSMENT AGREEMENT

between

COUNTY OF HOUGHTON, MICHIGAN

and

Dated _____, 20__

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PACE SPECIAL ASSESSMENT AGREEMENT

THIS PACE SPECIAL ASSESSMENT AGREEMENT (the “Agreement”) is made this ____ day of _____, 20____, between _____ (the “Property Owner”), a _____, whose address is _____, and the County of Houghton whose address is 401 E. Houghton Ave., Houghton, MI 49931.

RECITALS:

A. Houghton County desires to encourage economic development, improve property valuation, increase employment, reduce energy costs, reduce greenhouse gas emissions and contribute to the public health and welfare.

B. Act No. 270, Public Acts of Michigan, 2010 provides that Houghton County may create a special assessment to defray the cost of certain energy improvements and that a special assessment may be levied in connection therewith, whereby the property owner(s) benefited thereby shall contribute toward the cost thereof.

C. Based upon the authority set forth in the Lean & Green Michigan™ (“LAGM”) PACE Program Report approved by Resolution, adopted on _____, 20____, the parties have determined that it is necessary and appropriate to enter into this Agreement.

In consideration of the foregoing and the mutual covenants contained in this Agreement, Property Owner and Houghton County hereby enter into this Agreement and covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions

(a) The capitalized terms used in this Agreement shall have the following meanings, except to the extent the context in which they are used requires otherwise:

(b) “**Act 270**” means Act No. 270, Public Acts of Michigan, 2010, commonly referred to as the PACE Act.

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

(d) “**Authorized Official**” means NAME/TITLE OF OFFICIAL, or his designee, who is authorized to enter into this agreement under the Lean & Green Michigan™ PACE Program.

(e) “**Energy Efficiency Improvement**” means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-

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reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; and any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the Houghton County Lean & Green Michigan PACE Program.

(f) **“Energy Project”** means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system.

(g) **“Force Majeure”** means unforeseeable events beyond a party’s reasonable control and without such party’s failure or negligence including, but not limited to, acts of God, acts of public or national enemy, acts of the federal government, fire, flood, epidemic, quarantine restrictions, strikes and embargoes, labor disturbances, the unavailability of raw materials, and delays of contractors due to such causes, but only if the party seeking to claim Force Majeure takes reasonable actions necessary to avoid delays caused thereby.

(h) **“Lean & Green Michigan™”** shall mean a consortium of local units of government and private entities involved in facilitating PACE-financed transactions.

(i) **“LEP”** shall mean Levin Energy Partners, LLC, a Michigan Limited Liability Company.

(j) **“Municipality”** means the County of Houghton, its coordinate agencies and political subdivisions and their respective successors and assigns.

(k) **“Owner-Arranged Financing”** means the process by which a property owner secures financing for improvements to its property that does not involve bonds or any other form of funding provided by or supported by the Municipality.

(l) **“PACE”** shall mean Property Assessed Clean Energy as defined in Act 270.

(m) **“PACE Program”** shall mean a program implemented by a municipality to stimulate energy efficiency and renewable energy projects in conformity with Act 270.

(n) **“Renewable Energy Improvement”** means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that use one (1) or more renewable energy resources to generate electricity. Renewable energy includes a biomass stove but does not include an incinerator or digester.

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(o) “**Special Assessment**” means the money obligation created pursuant to this Agreement, used to defray the cost of the Improvements and which shall, until paid, be a lien upon the Special Assessment Parcel (as defined below) of the same priority and status as other property tax liens and other assessment liens as provided in Act 270.

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

(q) “**Special Assessment Parcel**” means the property to which one hundred percent (100%) of the Special Assessment Roll has been spread by Houghton County and which is more particularly described on the attached **Appendix D**.

(r) “**Special Assessment Roll**” means the roll of properties with a PACE Special Assessment that sets forth a description of the property, the amount of the assessment, and the name of the person to whom the property was assessed, and as set forth by the Authorized Official, attached as **Appendix E**.

ARTICLE II

DESCRIPTION OF IMPROVEMENTS

Section 1.02 Description of Improvements

(a) The Improvements to be constructed, installed and financed under the PACE Program are described in **Appendix H** attached hereto. If after project approval, the Property Owner seeks to undertake additional Improvements, **Appendix H** may be amended or supplemented from time to time. Such additional Improvements must meet all the eligibility criteria of the PACE Program and may be added to the original application as a modification; or submitted as a new project at the discretion of LEP and the Authorized Official.

ARTICLE III

COVENANTS OF NAME OF ENTITY

Section 1.03 Acquisition, Construction and Installation of the Project

(a) NAME OF ENTITY, shall acquire, construct and install the Improvements as described in **Appendix H**.

ARTICLE IV

COVENANTS OF HOUGHTON COUNTY

Section 1.04 [Project-specific provisions related to collection of PACE special assessments, such provisions may include a requirement to turn over delinquent special assessments to the County Treasurer for collection as determined by the Authorized Official and LEP].

ARTICLE V

PACE SPECIAL ASSESSMENT

Section 1.05 **PACE Special Assessment Created**

(a) The Board of Commissioners has determined to establish a PACE Program and allow the financing of Improvements by special assessment upon the Special Assessment Parcel, which the Authorized Official under the PACE Program finds is especially benefited in proportion to the costs of the Improvements. The Special Assessment Roll has been spread by the Authorized Official and this Agreement without objection by NAME OF ENTITY to allocate one hundred percent (100%) of the special assessment levy created hereby to the Special Assessment Parcel.

(b) The PACE special assessment, as allocated by the Authorized Official without objection by NAME OF ENTITY, is hereby finally established against the property and the Improvements now located or to be constructed on the Special Assessment Parcel as described on the attached **Appendix D** in an amount of: AMOUNT OF FINANCING Dollars (\$) as stated on the Special Assessment Roll attached hereto as **Appendix E**. The PACE special assessment is effective immediately upon the execution and delivery of this Agreement by NAME OF ENTITY. The amount of the PACE special assessment set forth in the Special Assessment Roll may be reduced as agreed between the NAME OF ENTITY and Houghton County [include any security provisions required by owner-arranged financing]. The PACE special assessment may be paid in semi-annual installments pursuant to the property tax collection mechanism of Houghton County. Delinquent PACE special assessment payments [shall/shall not] be turned over to the County Treasurer pursuant to the General Property Tax Act, 1893 PA 206, MCL 211.1 to 211.155. The Authorized Official hereby confirms the Special Assessment Roll attached hereto as **Appendix E** and a payment schedule for the PACE special assessment payments due attached hereto as **Appendix F** (the "Payment Schedule").

Section 1.06 **Agrees to PACE Special Assessment; Waiver**

(a) NAME OF ENTITY, hereby irrevocably agrees and confirms the creation of the Special Assessment Roll established pursuant to this Agreement and EXPRESSLY WAIVES ANY AND ALL CLAIMS CHALLENGING THE LEGALITY, VALIDITY OR COLLECTIBILITY OF THE PACE SPECIAL ASSESSMENT, including, but not limited to, claims arising from or based upon any theory of procedural defect concerning the approval of the Improvements, the establishment of the Special Assessment District, confirmation of the Special

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Assessment Roll and the Payment Schedule, Houghton County's right to place the special assessment lien on the Special Assessment Parcel, the collectibility and due dates of the PACE special assessment installments, or any other theory or claim. NAME OF ENTITY further waives notice of hearing and the right to file objections.

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

(c) NAME OF ENTITY shall not sell, transfer, alienate or convey any of its interest in the Special Assessment Parcel without first having given written notice of the PACE special assessment to any successors in interest, lessees, purchasers or assigns and made a copy as part of any purchase contract, sale contract, lease agreement, deed or any other conveyancing instrument by which NAME OF ENTITY purports to assign all or any part of its interest in the Special Assessment Parcel to any successors in interest, lessees, purchasers, and assigns. This Agreement shall be recorded against the real property constituting the Special Assessment Parcel by Houghton County with the Houghton County Clerk/Register of Deeds.

(d) Houghton County agrees that following payment to Houghton County in full of the PACE special assessment, as same may be expanded and/or amended, to promptly execute and deliver documentation discharging the County's interest with respect to the property. Until the PACE special assessment liability has been fully satisfied and the lien discharged, each purchaser of all or any part of the Special Assessment Parcel, as a condition of closing on such purchase, shall execute and deliver to the County a written notice: (i) acknowledging the principal amount unpaid and outstanding on the PACE special assessment; (ii) agreeing to the assumption of the liability to pay the PACE special assessment on a timely basis, when due, until the remaining balance and interest on said PACE special assessment has been paid in full; and (iii) acknowledging that the title insurance policy will state that the PACE special assessment has not been paid at time of closing thereon.

(e) NAME OF ENTITY agrees that it, its successors and assigns shall, during the term of this Agreement and the PACE special assessment, pay all ad valorem real property taxes and assessments levied against the property when due and NAME OF ENTITY specifically waives, irrevocably for itself, its successors and assigns as to any and all portions of the Special Assessment Parcel, the right to pay ad valorem real property taxes and assessments on any other installment method which may be available to property owners in Houghton County.

Section 1.07 Lien

(a) The PACE special assessment is an obligation with respect to the Special Assessment Parcel, and shall, until paid, be and continue to be a lien upon all such property assessed for the amount of the PACE special assessment and all interest and charges apportioned to such property which may accrue thereon. Such lien shall be of the same character and effect

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as liens created pursuant to the General Property Tax Act, and shall be treated as such with respect to procedures for collection, including accrued interest and penalties. The PACE special assessment confirmed hereby is a debt to Houghton County that has been assigned to NAME OF ENTITY and its successors in interest, lessees, purchasers and assigns. The transfer of title to all or any part of the Special Assessment Parcel shall not, in and of itself, trigger an acceleration of the PACE special assessment. No judgment or decree shall destroy or impair any lien of the County upon the premises assessed for such amount of the assessment as may have been equitably or lawfully charged and assessed thereon. Failure of NAME OF ENTITY or any subsequent property owner to receive any notice required to be sent shall not invalidate any PACE special assessment or the Special Assessment Roll and shall not be a jurisdictional requirement.

Section 1.08 **Installment Payments**

(a) Payments shall be made in accordance with attached **Appendix F**.

Section 1.09 **Delinquent Payments**

(a) In the event the payment by NAME OF ENTITY of a PACE special assessment installment shall be due and unpaid for more than NUMBER OF DAYS (__) days, then such installment shall be deemed delinquent and NAME OF ENTITY shall pay thereon, in addition to the interest described above, an administrative fee in an amount equal to the product of unpaid balance due multiplied by an annual rate equal to __% over the annual rate of interest borne by the bonds, multiplied by the number of days that the same remains unpaid and then divided by 365, together with the costs of collection, including actual attorneys' fees. All such amounts shall constitute a lien against the Special Assessment Parcel. [To be modified depending on terms of owner-arranged financing].

Section 1.10 **Use of Assessment**

(a) [To be determined based on owner-arranged financing; provided, however, the Authorized Official shall ensure that such uses include payment of any application, administration or legal fees associated with the PACE project. The Authorized Official is permitted to allow payment be made directly to the financing source and not through the traditional assessment collection process, if such change is made, conforming changes shall be made throughout the Agreement.] If the project was financed by a source other than by bonds, the assessment, as collected, may be forwarded by Houghton County to said financing source as identified in **Appendix I** attached hereto to be credited towards principal and interest owed by NAME OF ENTITY to said financing source in accordance with a specific agreement entered into between NAME OF ENTITY and said financing source.

Section 1.11 **Invalidity; Cure**

(a) In the event of any invalidity of the PACE special assessment because of irregularity in the proceedings, or the adjudgment of the PACE special assessment as illegal by a court of competent jurisdiction, the Authorized Official may cause a new special assessment to be made for the Improvements, and NAME OF ENTITY, on behalf of itself and its successors in interest, lessees, purchasers, and assigns with respect to all or any part of the Improvements as

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reasonably determined by the County, hereby waives any objections to and agrees to the imposition of such new PACE special assessment. [Authorized Official to make modifications for owner-arranged financing to limit discretion to change Special Assessment Roll and to obligate itself to revise the Special Assessment Roll to ensure owner-arranged financial institution is made whole.]

ARTICLE VI

CONDITIONS PRECEDENT

Section 1.12 Conditions Precedent to Houghton County's Obligations

(a) The obligations of Houghton County to issue and/or sell bonds under this Agreement and/or to approve owner-arranged financing between NAME OF ENTITY and a third-party financing source are subject to the following conditions precedent as required herein, or waived in writing by Houghton County, except as specifically hereinafter provided:

(b) The County and NAME OF ENTITY shall have authorized, executed and delivered this Agreement and all approvals required hereby shall have been secured.

(c) No action, suit, proceeding or investigation shall be pending before any court, public board or body to which NAME OF ENTITY or Houghton County is a party, or is threatened in writing against NAME OF ENTITY or Houghton County, contesting the validity or binding effect of this Agreement, the PACE special assessment, or the bonds, which could result in an adverse decision that may have a material adverse effect upon the ability of NAME OF ENTITY to pay, or Houghton County to levy and collect the PACE special assessments to pay the bonds or to pay a third-party financing source, including, without limitation, any determination by any agency or official as to the ability to levy the PACE special assessments, or which would have a material adverse effect on NAME OF ENTITY or Houghton County's ability to comply with any of the obligations and terms of this Agreement or the bonds.

(d) There shall be no ongoing breach of any of the covenants and agreements of NAME OF ENTITY required to have been observed or performed by NAME OF ENTITY under the terms of this Agreement and no Event of Default by NAME OF ENTITY or no event which with notice or the passage of time could become an Event of Default by NAME OF ENTITY under this Agreement shall have occurred.

(e) All documents, schedules, materials, maps, plans, descriptions and related matters which are contemplated to be made Appendices to this Agreement shall have been fully completed by NAME OF ENTITY to Houghton County's reasonable satisfaction and shall have been appended hereto.

(f) No objection shall have been made by NAME OF ENTITY or any other party claiming an interest in the Special Assessment Parcel at Houghton County's Board of Commissioners meeting at the time the Authorized Official has spread the roll.

Appendix C. (g) NAME OF ENTITY shall meet all eligibility requirements as set forth in

(h) NAME OF ENTITY shall not have filed bankruptcy or sought the protections of any state and federal law insolvency statutes providing protections to debtors.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 1.13 Representations and Warranties of Houghton County

(a) Houghton County represents and warrants to NAME OF ENTITY that:

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

(ii) Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated herein is in violation of any provision of any existing law, ordinance, rule, resolution or regulations, order or decree of any court or governmental entity, or any agreement to which Houghton County is a party or by which the County is bound.

(iii) Houghton County has taken all preliminary action necessary to empower the County to adopt the bond Resolution [For bond transactions only] authorizing the issuance and sale of the bonds and/or has taken all action necessary to empower the County to permit owner-arranged financing.

Section 1.14 Representations and Warranties of NAME OF ENTITY

(a) NAME OF ENTITY represents and warrants to Houghton County that:

(i) NAME OF ENTITY is duly organized and validly existing as a TYPE OF ENTITY in good standing under the laws of the State of Michigan, with power under the laws of this state to carry on its business as now being conducted, and is duly qualified to do business in the State of Michigan; and NAME OF ENTITY has the power and authority to own the property and carry out the obligations to complete the Improvements.

(ii) The execution and delivery of this Agreement will not result in a violation or default by NAME OF ENTITY of any provision of its Articles of Organization or Operating Agreement, or under any indenture, contract, mortgage, lien, agreement, lease, loan agreement, note, order, judgment, decree or

**Draft PACE Special Assessment Agreement
APPENDIX A**

other instrument of any kind or character to which it is a party and by which it is bound, or to which it or any of its assets are subject.

(iii) NAME OF ENTITY represents and warrants that it is the sole and exclusive legal and equitable title owner of fee simple title to the Special Assessment Parcel and the Improvements located, or to be located, thereon and has full legal power and authority to consent to the finalization and levying of the PACE special assessment as provided herein.

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

ARTICLE VIII

DEFAULT

Section 1.15 NAME OF ENTITY **Default**

(a) If NAME OF ENTITY breaches any covenant of this Agreement or any other agreement related to this Agreement and fails to pursue a cure of such breach within NUMBER OF DAYS (__) days after the written notice thereof has been received, NAME OF ENTITY shall be deemed to have committed an event of default ("Event of Default").

Section 1.16 **Remedies**

(a) If NAME OF ENTITY commits an Event of Default under this Agreement, Houghton County, after giving written notice as required, without further notice of any kind, shall be entitled to seek and obtain a decree of specific performance of this Agreement from a court of competent jurisdiction; or the right to recover from NAME OF ENTITY any damages incurred by Houghton County and any costs incurred by the County in enforcing or attempting to enforce this Agreement or the PACE special assessment, including attorneys' fees and expenses; or to foreclose on the Special Assessment Parcel and to sell all or any part of the Special Assessment Parcel to the extent necessary to recover any damages and costs; or any combination of the foregoing.

Section 1.17 **Houghton County's Default**

(a) If Houghton County breaches any covenant of this Agreement or any other agreement related to the carrying out of this Agreement and fails to pursue a cure of such breach within NUMBER OF DAYS (__) days after written notice thereof has been received, Houghton County shall be deemed to have committed an Event of Default.

Section 1.18 Remedies

(a) If Houghton County commits an Event of Default under this Agreement and NAME OF ENTITY shall have otherwise fully performed all of its obligations hereunder, NAME OF ENTITY, after giving written notice as required, without further notice or demand, shall be entitled to seek and obtain a decree of specific performance from a court of competent jurisdiction; but NAME OF ENTITY shall not have the right to seek to recover any money damages against the County incurred by NAME OF ENTITY and any costs incurred by NAME OF ENTITY against the County, including the costs of enforcing or attempting to enforce this Agreement. If Houghton County defaults in any of its express obligations, NAME OF ENTITY shall be entitled to pursue its remedies as may be contained therein, but such default shall not negate NAME OF ENTITY obligation to pay the PACE special assessment and other costs due hereunder.

Section 1.19 Waiver

(a) Failure to act upon discovery of a default or to act upon the existence of an Event of Default, shall not constitute a waiver or right to pursue the remedies provided.

ARTICLE IX

MISCELLANEOUS

Section 1.20 Term

(a) Except as otherwise provided in this Agreement, the terms of this Agreement shall commence on the date first written above and shall expire upon the payment in full of the PACE special assessment created herein.

Section 1.21 Assignment of this Agreement

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

Section 1.22 Notices

(a) All notices, certificates or communications required by this Agreement to be given shall be in writing and shall be sufficiently given and shall be deemed delivered when personally served, or when received if mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties as follows:

If to the County:	Houghton County Board of Commissioners Office 401 E. Houghton Ave. Houghton, MI 49931 Attn: <u>INSERT TITLE OF AUTHORIZED OFFICIAL</u>
-------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

**Draft PACE Special Assessment Agreement
APPENDIX A**

With a copy to: Houghton County
401 E. Houghton Ave.
Houghton, MI 49931
Attn: _____

If to NAME OF ENTITY: _____

_____, _____
Attn: _____

With a copy to: _____

_____, _____
Attn: _____

or to such other address as such party may specify by written notice. To the extent Houghton County is advised in writing by NAME OF ENTITY of the name, address and contact person for any lender, the County shall provide written notice to said Lender of any default hereunder by NAME OF ENTITY simultaneously with providing such written notice to NAME OF ENTITY.

Section 1.23 Amendment and Waiver

(a) No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by each party hereto. No waiver of any term of this Agreement shall be binding upon any party until such waiver is reduced to writing, executed by the party to be charged with such waiver, and delivered to the other party hereto.

Section 1.24 Entire Agreement

(a) This Agreement and the agreements and documents specifically referenced herein, contain all agreements between the parties. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the parties, except to the extent reference is made thereto in this Agreement.

Section 1.25 Execution in Counterparts

(a) This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

Section 1.26 Captions

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

Section 1.27 Applicable Law

(a) This Agreement shall be governed in all respects, whether as to validity, construction, performance and otherwise, by the laws of the State of Michigan.

Section 1.28 Mutual Cooperation

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

Section 1.29 Binding Effect

(a) This Agreement, being for the benefit of the property, shall be binding upon the parties hereto and upon their respective successors and assigns.

Section 1.30 Force Majeure

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

[SIGNATURES ON THE FOLLOWING PAGE]

**Draft PACE Special Assessment Agreement
APPENDIX A**

IN WITNESS WHEREOF, Houghton County and NAME OF ENTITY have caused this PACE Special Assessment Agreement to be duly executed and delivered as of the date first written above.

Witnessed:

By: _____, a Michigan

Signature of:

By: _____

Signature of:

Signature of: _____
Its: Authorized Signatory

Witnessed as to both
signatures by:

County of Houghton, Michigan
Municipal corporation

Signature of:

By: _____
Signature of: _____
Its: _____

Signature of:

By: _____
Signature of: _____
Its: Clerk/Register of Deeds

State of Michigan)
) ss
County of Houghton)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ the Authorized Signatory of _____ on behalf of the _____.

Notary Public
_____ County, Michigan
My commission expires _____

State of Michigan)
) ss
County of Houghton)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by AUTHORIZED OFFICIAL, the TITLE OF AUTHORIZED OFFICIAL of Houghton County, Michigan and

Draft PACE Special Assessment Agreement
APPENDIX A

_____, the County Clerk/Register of Deeds of Houghton County, Michigan on behalf of the County of Houghton.

Notary Public
_____ County, Michigan
My commission expires _____

APPENDIX B

Lean & Green Michigan™ PACE Program Application

Public Act 270 of 2010 (“Act 270”) authorizes local units of government to adopt Property Assessed Clean Energy (“PACE”) programs to promote the installation of energy efficiency improvements and renewable energy systems by owners of commercial or industrial property within a district designated by Houghton County. Act 270 allows private commercial lenders to finance energy projects and authorizes local units of government to issue bonds, notes and other indebtedness. Act 270 authorizes the assessment of properties for the cost of the energy projects and provides for repayment to local governments through a voluntary property assessment. The property assessment remains with the property and has the same priority as other property tax and assessment liens in the event of foreclosure.

LAGM has developed a PACE program that provides voluntary special assessments for certain energy efficiency improvements and renewable energy systems that are associated with real property.

The property eligibility requirements are as follows:

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

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

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

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

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. The ratio will be determined on a project-by-project basis by LEP and shall not exceed 25% of two times the State Equalized Value without written approval. MCL 460.939(j).

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

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

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

PACE Program Application
APPENDIX B

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

Bonds or notes issued under Act 270 shall not be general obligations of the local unit of government, but shall be secured by the voluntary assessments and other security mechanisms provided in the statute. MCL 460.945(2).

The applicant assumes all risk with respect to the implementation of a PACE Program in respect of the applicant's property. Houghton County is an accommodation party only, and is providing access to the PACE Program so as to enable property owners to make decisions regarding energy improvements to their property in a manner which allows the property owner to make the improvements in a cost-effective manner and for the property owner's benefit.

Energy projects that may be eligible for PACE assessments include, but are not limited to: equipment, devices, or materials intended to decrease energy consumption, including: insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems; storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption; automated energy control systems; heating, ventilating, or air-conditioning and distribution system modifications or replacements; caulking, weather-stripping, and air sealing; replacement or modification of lighting fixtures to reduce the energy use of the lighting system; energy recovery systems; day lighting systems; installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity; measures to reduce the usage of water or increase the efficiency of water usage; any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the Board of Commissioners; and a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use one (1) or more renewable energy resources to generate electricity, but does not include an incinerator or digester.

Mail or deliver your application and attachments to:

Attention:
Program Administrator for Houghton County PACE Program
c/o Levin Energy Partners, LLC
26700 Lahser, Suite 400
Southfield, MI 48033

Applications and attachments may also be e-mailed to the Program Administrator through the webpage www.levinenergypartners.com. For questions regarding the status of your application please contact the Program Administrator at 248.581.9128.

Applicant Information
(Use attachments as necessary)

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

	Name	Parcel #
Owner 1	_____	_____
Owner 2	_____	_____
Owner 3	_____	_____

2. Property Owner(s) Contact Information

Name	Address	E-mail Address	Telephone No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Property Owner(s) Type

Individual LLP LLC
 Corporation Other (please specify) _____

4. Property Type (Check all that apply)

Commercial

- Grocery/convenience store
- Health care/clinic
- Mixed use
- Multi-family unit (3 or more)
- Office
- Other - Please describe _____
- Retail
- Restaurant
- Recreational
- Warehouse

Industrial

Please describe _____

5. Property Addresses and Parcel Number

Physical Property Address of Improvements

Mailing Address (if different)

Assessor's Parcel #

6. Balance of Any Mortgage(s):

	Amount of Mortgage	Name of Mortgage Holder
First Mortgage	\$ _____	_____
Second Mortgage	\$ _____	_____
Other	\$ _____	_____
State Equalized Value (SEV)	\$ _____	
Requested assessment amount	\$ _____	

The lien to value ratio (*including* the mortgage, if any, and *excluding* the requested financing amount) cannot exceed 80% of two times the State Equalized Value.

Consent by mortgage holder(s) obtained, if subject to a mortgage. Please attach consent.

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

Amount	Type	End Date
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
Total: \$ _____		

8. Requested Assessment Amount

Energy Project	\$ _____
Energy Audit	\$ _____
Engineering/Architect Plans	\$ _____
Building Permit Fees	\$ _____
Other (Please explain)	\$ _____
Total	\$ _____

The lien to value ratio (*including* the mortgage, if any, and *excluding* the requested financing amount) cannot exceed 80% of two times the State Equalized Value.

The assessment to assessed value ratio cannot exceed 25% of two times the State Equalized Value without written approval of the Authorized Official.

9. Requested Assessment Repayment Period (Term may not exceed the lesser of the useful life of the energy project or 25 years.)

Term: _____ years

10. Projects Over \$250,000

Please attach details regarding provisions for ongoing measurements of energy savings and information regarding performance guarantees.

11. Baseline Energy Audit

Please attach the baseline energy audit performed on the property and all supporting documentation.

APPENDIX C

PROGRAM ELIGIBILITY CHECKLIST

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

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

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

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

An appropriate ratio must be determined for the amount of assessment in relation to the assessed value of the property. The ratio will be determined on a project-by-project basis by LEP and shall not exceed 25% of two times the State Equalized Value without written approval. MCL 460.939(j).

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

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

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

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

APPENDIX D

**SPECIAL ASSESSMENT PARCEL WHICH IS ENCUMBERED
BY THE PACE SPECIAL ASSESSMENT ROLL**

[PROJECT-SPECIFIC]

Parcel

Tax Parcel I.D. No.: _____.

APPENDIX E

PACE SPECIAL ASSESSMENT ROLL

[PROJECT-SPECIFIC]

APPENDIX F

PAYMENT SCHEDULE

[PROJECT-SPECIFIC]

APPENDIX G

Lender Consent and Acknowledgement of Owner Participation in
County of Houghton, Michigan PACE Program¹

This acknowledgement is granted _____, 20___, by NAME OF MORTGAGE HOLDER (the “Lender”), and for the benefit of NAME OF ENTITY (the “Property Owner”), and Houghton County in the State of Michigan.

Recitals

A. Pursuant to Public Act No. 270 of 2010, Houghton County established the Houghton County Property Assessed Clean Energy (“PACE”) Program on _____, 20___, by RESOLUTION # to promote installation of energy efficiency improvements and/or renewable energy systems.

B. The Property Owner has applied to the Program to finance the amount of \$ AMOUNT OF FINANCING, to be paid back as an assessment on Property Owner’s real property, described in **Appendix D** attached hereto (the “Property”), over a period of NUMBER OF YEARS years.

C. Owner has previously executed a mortgage, deed of trust, dated _____, 20___, to the Lender, covering the Property, to secure a promissory note in the sum of \$ AMOUNT OF LOAN, and recorded on _____, 20___ at Liber __, Page __, Houghton County Register of Deeds.

D. Repayment by the Property Owner under the PACE Special Assessment Agreement will be a statutory assessment levied against the Property notice of which shall be recorded against the Property in the Office of the County Clerk/Register of Deeds for Houghton County, Michigan, and which assessment, together with interest and any penalties, shall constitute a lien (the “Lien”) on the Property, and shall be collected subject to the terms agreed to between the parties and as contained in the PACE Special Assessment Agreement.

Consent and Acknowledgement

Lender acknowledges that it has been informed of the Property Owner’s participation in the Houghton County PACE Program, and agrees that Property Owner’s execution of the PACE Special Assessment Agreement will not constitute a default under Lender’s Deed of Trust.

Execution of this Consent and Acknowledgement by Lender’s representative shall constitute full and complete consent to the Property Owner’s participation in the Houghton County PACE Program.

¹ If property being improved has no mortgage, please submit documentation demonstrating such.

Lender Consent and Acknowledgement
APPENDIX G

Name of Lender: _____

Date: _____

By: _____

Title: _____

STATE OF MICHIGAN)
) ss
COUNTY OF HOUGHTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____, on behalf of _____.

_____, Notary Public
_____ County, State of _____
Acting in _____ County
My Commission Expires:

APPENDIX H

DESCRIPTION OF IMPROVEMENTS

[PROJECT-SPECIFIC]

APPENDIX I

SOURCE OF PRIVATE FINANCING

[PROJECT-SPECIFIC]