

**OPERATING AGREEMENT BETWEEN  
CONTRA COSTA COUNTY AND PACE PROVIDER FOR  
PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING**

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2018 ("Effective Date"), is by and between Contra Costa County, a political subdivision of the State of California (the "County"), and California Municipal Finance Authority, a California joint powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California, Section 6500 and following (the "PACE Provider").

RECITALS

A. Property Assessed Clean Energy (PACE) financing is a method of providing financing to property owners to finance permanent energy efficiency improvements on real property. A property owner who obtains PACE financing repays the financing by entering into an agreement that allows an assessment or special tax to be levied on the property. These levies are known as voluntary contractual assessments.

B. Voluntary contractual assessments that are utilized to finance the installation of energy efficiency improvements on real property are authorized by (1) the Improvement Act of 1911, as amended by AB 811 (Streets and Highways Code Section 5898.10 et seq.) ("Improvement Act") and (2) the Mello-Roos Community Facilities Act of 1982, as amended by SB 555 (Government Code Section 53311 et seq. ("Mello-Roos Act").

C. The PACE Provider is a joint exercise of powers authority that has created one or more PACE financing programs (each, a "PACE Program"). The PACE Provider has established one or more PACE Programs to allow the financing of certain renewable energy, energy efficiency and water efficiency, and other authorized improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by property owners participating in a PACE Program. Under each PACE Program, the PACE Provider accepts applications from eligible property owners, conducts assessment proceedings, and levies assessments.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties agree as follows:

AGREEMENT

1. Definitions. As used in this Agreement, the following terms have the following meanings:

- a. "PACE Administrator" means each independent contractor of the PACE Provider that markets, administers and carries out a PACE Program on behalf of the PACE Provider.

- b. "Eligible Improvement" is a renewable energy improvement, energy efficiency improvement or other improvement authorized by the Improvement Act, the Mello-Roos Act or other state law pertaining to voluntary contractual assessments.
- c. "Non-residential Property" means a property with four or more residential units or any commercial, agricultural, or industrial property that is otherwise eligible for PACE Financing.
- d. "Participating Contractor" is any contractor that installs Eligible Improvements that are funded by a PACE Provider.
- e. "Program Participant" is a property owner who enters into a voluntary contractual assessment with the PACE Provider.
- f. "Property Assessed Clean Energy (PACE) Financing" is a means of financing Eligible Improvements as authorized by the Improvement Act, the Mello-Roos Act, or other state law pertaining to voluntary contractual assessments.
- g. "Residential Property" means a property with three or fewer residential units.
- h. "Value" means the greater of: (1) assessed value; or (2) fair market value, as determined either by an automated valuation model or an appraisal.

## 2. General Requirements.

- a. PACE Provider's Specified Services. The PACE Provider may offer and provide Property Assessed Clean Energy Financing to property owners in the unincorporated areas of the County. The PACE Provider is solely responsible for the formation, operation and administration of the PACE Program, including the conduct of assessment proceedings, the levy and collection of assessments, and the offer, sale and administration of any bonds issued by or other financing offered by the PACE Provider on behalf of the PACE Program. The PACE Provider may contract with third parties to perform any part of these functions on behalf of California Municipal Finance Authority but as between the County and the PACE Provider, the PACE Provider shall be responsible for the performance of any third parties.
- b. Cooperation with County. The PACE Provider shall independently operate its program and cooperate with the County and County staff as described in this Agreement.
- c. Performance Standard. The PACE Provider shall provide PACE Financing in a manner consistent with the level of competency and standard of care

normally observed by an organization providing PACE Financing pursuant to the Improvement Act or Mello-Roos Act.

3. Disclosure Requirements.

The PACE Provider shall require and ensure that each PACE Administrator does all of the following:

- a. Discloses in writing to potential Program Participants the financial risks associated with PACE Financing, including the risks associated with federal regulation and administration of mortgage financing and the position of the Federal Housing Finance Agency (FHFA) on PACE lending. The disclosure materials must include the disclosures contained in the E3 Program Application, which is attached and incorporated herein as Attachment A.
- b. Requires potential Program Participants to sign a written acknowledgment of the Federal Housing Finance Agency (FHFA) position on PACE liens.
- c. Requires Program Participants who own non-residential properties to obtain written consent to participate in the PACE Program from lenders who have made loans to the Program Participant where the property serves as security for the loan.
- d. Provides federal Truth in Lending Act disclosure details to the applicant specific to the requested amount of the financing. The details shall be provided to the applicant in the Truth in PACE Disclosure Statement, which is attached and incorporated herein as Attachment B.
- e. Advises potential Program Participants of available state or federal rebate or incentive programs.
- f. Requires each Program Participant to obtain from the County all building permits for improvements.
- g. The PACE Administrator may recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.

4. Financial Requirements.

The PACE Provider shall require and ensure that each PACE Administrator does all of the following:

- a. Administers and reviews Program Participant eligibility and determines the Eligible Improvement costs to be financed.
- b. Establishes each PACE Program's own interest rates, payback terms and fees.
- c. Participates in the State of California's PACE Loss Reserve Program, administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), and provide evidence of current participation and copies of all application materials submitted to CAEATFA. If the State discontinues the PACE Loss Reserve Program, or if the County determines that the State's PACE Loss Reserve Program does not provide adequate coverage, then the County may terminate this Agreement unless the County is satisfied with coverage by an alternative loan loss reserve program.
- d. For residential properties, ensures that the loan amount to a Program Participant does not exceed 15% of the value of the property up to the first \$700,000 of the value of the property, and is for less than 10% of the remaining value of the property above \$700,000.
- e. Ensures that the combined amount of any loans existing prior to the proposed PACE lien and the amount of the PACE lien itself, have an aggregate amount of no more than 95% of the value of the property, including all mortgage-related debt as determined as of the date the assessment contract is executed.
- f. Ensures that the total property taxes and annual assessments for each property that will have PACE Financing will not exceed 5% of the value of the property as determined as of the date the assessment contract is executed.
- g. Verifies that each Program Participant is current on all property taxes and has not made late payments in the past three years or period of ownership (whichever is less), and verifies that each Program Participant has not filed for bankruptcy in the past three years.
- h. Coordinates with the Auditor-Controller's Office each year regarding delinquent assessments.

5. Reports.

For each property that has entered into a voluntary contractual assessment through the PACE Provider, the PACE Provider shall require and ensure that each PACE Administrator provides project information and data in an accessible electronic format to the County on a monthly and annual basis and upon request, including but not limited to the following:

- a. The Assessor's Parcel Number (APN) and property type (residential or non-residential) of the property.
  - b. The amount of the contractual assessment.
  - c. All installed Eligible Improvements financed through PACE Financing.
  - d. If applicable, the solar STC-DC rating in watts or kilowatts of each Eligible Improvement.
  - e. If available, the expected financial and energy savings associated with each Eligible Improvement.
  - f. For each property with an agreement to subordinate the PACE obligation, the effective date of that agreement.
6. Participating Contractor Obligations. The PACE Provider shall require and ensure that each PACE Administrator does all of the following:
- a. Requires and ensures that each Participating Contractor has all required California State License Board licenses and all other required State and County licenses.
  - b. Requires and ensures that each Participating Contractor's bonding is in good standing.
  - c. Requires and ensures that each Participating Contractor holds harmless, indemnifies and defends the County as set forth in Section 9 (c).
  - d. Requires and ensures that each Participating Contractor has insurance as required in Section 12 (b).
  - e. Requires and ensures that each Participating Contractor and their representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County or the Department of Conservation and Development or claim association or affiliation with the County or Department of Conservation and Development.
7. Agreement with County Auditor-Controller. The PACE Provider will enter into a separate agreement with the Contra Costa County Auditor-Controller for the administration of property tax assessments placed on properties through the PACE Financing program.

8. Agreement with Program Participant. Each voluntary contractual assessment between the PACE Provider and a Program Participant shall require the Program Participant to hold harmless, indemnify and defend the County, and release the County from liability, in accordance with the Assessment Contract, which is attached and incorporated herein as Attachment C. The terms set forth in Attachment C shall be incorporated into the PACE Provider's voluntary contractual assessment with each Program Participant for PACE Financing.

9. Indemnification and Release.

a. Indemnification Obligation of the PACE Provider. To the fullest extent not prohibited by applicable law, the PACE Provider shall defend, indemnify, protect, save, and hold harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively and individually the "Indemnitees"), from any and all claims, cost, loss, liability, expense, damages, or other injury, claim, action or proceeding (collectively "Liability") arising out of or connected with this Agreement or activities taken by the parties pursuant to this Agreement, including but not limited to the establishment, placement or collection of assessments or special taxes on participating properties; and will make good to and reimburse Indemnitees for any expenditures, including reasonable attorney's fees, the Indemnitees may make by reason of such matters. If requested by any of the Indemnitees, the PACE Provider will defend any such suits at the sole cost and expense of the PACE Provider with counsel selected or approved by the Contra Costa County Counsel.

The PACE Provider's obligations under this section will exist regardless of concurrent negligence or willful misconduct on the part of any Indemnitee or any other person; provided, however, that the PACE Provider will not be required to indemnify Indemnitees for the proportion of Liability a court determines is attributable to the sole negligence or willful misconduct of the County, its governing body, officers or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

b. PACE Provider's Release. To the fullest extent not prohibited by applicable law, the PACE Provider hereby releases and forever discharges the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns (collectively "Released Parties"), from any and all claims, cost, loss, liability, expense, damage (including consequential damages), or other injury, claim, action or proceeding (including without limitation, attorneys' fees and expenses), which the PACE Provider now has or could assert in any manner arising out of or connected with this Agreement, the subject matter of this Agreement, or activities taken by the parties pursuant to this Agreement, including any claim, action or proceeding to attack, set aside, void,

abrogate, rescind or annul this Agreement or the actions of either party under this Agreement. The PACE Provider knowingly waives the right to make any claim against the Released Parties for such damages and expressly waives all rights provided by section 1542 of the California Civil Code, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

The rights and obligations contained in this paragraph will survive termination of this Agreement.

c. Indemnification and Release Obligations of Participating Contractors.

The PACE Provider shall require and ensure that each PACE Administrator requires and ensures that each Participating Contractor releases, defends, indemnifies, protects, saves, and holds harmless the County, the County Auditor-Controller, the County Treasurer-Tax Collector, their respective employees, agents, attorneys, officers, divisions, related agencies and entities, affiliates, successors and assigns, from any and all liability, claims, losses, costs, expenses, penalties, fines, forfeitures, judgments and damages, including attorneys' fees and costs, arising out of or connected with the Participating Contractor's actions under the PACE Program, including the installation of any Eligible Improvement.

10. Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 11, Termination.

11. Termination.

- a. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, the County or PACE Provider shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days' written notice to the other Party of this Agreement. This Agreement may be cancelled immediately by written mutual consent.
- b. Termination for Cause. Notwithstanding any other provision of this Agreement, if the PACE Provider fails to uphold any of its obligations under this Agreement, or otherwise violates any of the terms of this Agreement, the County may immediately terminate this Agreement by giving the PACE Provider written notice of such termination, stating the reason for termination.
- c. Discontinuation of PACE Program. Upon 24 hours' notice from the County, the PACE Provider shall immediately discontinue its residential PACE Program in the County's unincorporated area if the Federal Housing

Finance Authority (FHFA) takes any action in California pertaining to PACE Financing, as it relates to Fannie Mae and Freddie Mac mortgages, that the County determines will create an undue liability to the County or Program Participants.

- d. Delivery of Data and Information upon Termination. In the event of termination and within 14 days following the date of termination, the PACE Provider must deliver to County all data and information for all properties with contractual assessments, as specified in Section 5, Reports.
- e. Effect of Termination. If the Board of Supervisors terminates this agreement pursuant to this Section 11, the PACE Provider may not solicit new assessment contracts within the unincorporated areas of the County.
- f. Upon termination of this Agreement or the discontinuance of the PACE Program, the PACE Provider shall continue to administer all voluntary assessment contracts that exist at the time of the termination.

## 12. Insurance.

- a. The PACE Provider shall maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$1 million per occurrence.
- b. The PACE Provider will ensure that the following insurance requirements are incorporated into all contracts entered into by the PACE Provider with each PACE Administrator and Participating Contractor, or their respective contractors, subcontractors or assigns, in connection with this Agreement: (1) each PACE Administrator and Participating Contractor must maintain workers' compensation insurance pursuant to state law; (2) each PACE Administrator and Participating Contractor must maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$1 million per occurrence; (3) each PACE Administrator and Participating Contractor must maintain vehicle liability insurance with a minimum combined single-limit coverage of \$500,000 per occurrence; and (4) each PACE Administrator shall maintain Professional Liability Errors and Omissions Insurance coverage at \$1,000,000 per occurrence or aggregate limit. Each PACE Administrator and Participating Contractor shall provide certificates of insurance to the County, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days' written notice to the County of policy lapse, cancellation, or material change in coverage.





With a copy to the PACE ADMINISTRATOR as follows:

Energy Efficient Equity, Inc.  
Attn: Chris Peterson  
7676 Hazard Center Drive, 5<sup>th</sup> Floor  
San Diego, CA 92108

The effective date of notice is the date of deposit in the mail or other delivery, except that the effective date of notice to the County is the date of receipt by the Deputy Director, Building Inspection Division, Department of Conservation and Development. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

- f. Inspection. Upon the County's request, the County or its designee shall have the right at reasonable times and intervals to inspect the PACE Provider's financial and program records at the premises of the PACE Provider and the PACE Administrator. The PACE Provider or the PACE Administrator shall maintain all PACE Program records for a period of four years following termination of the Agreement, and shall make them available for copying upon the County's request at the County's expense.
- g. No Waiver of Breach. The waiver by the County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- h. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. The PACE Provider and the County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other.
- i. Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

- j. No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.
- k. Choice of Law. This Agreement is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- l. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- m. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion, expiration or termination for any reason.
- n. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- o. Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Agreement will be deemed to exist or to bind any of the parties hereto.
- p. Duplicate Counterparts. This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

PACE PROVIDER

CONTRA COSTA COUNTY

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

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

# Application

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## Property Information

Address [Property Street Address], [City], [State] [Zip]

Property Type [Property Type]

## Owner(s) Information, [Vesting type]

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Name [Owner Full Name]

Contact [Owner Phone], [Owner Email]

SSN & DOB ●●● ●● [4ssn], [01/01/2001]

Annual Income \$[0,000]

Mailing Address [Property Street Address], [City], [State] [Zip]

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Name [Owner Full Name]

Contact [Owner Phone], [Owner Email]

SSN & DOB ●●● ●● [4ssn], [01/01/2001]

Annual Income \$[0,000]

Mailing Address [Property Street Address], [City], [State] [Zip]

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## Property Owner Acknowledgments

By signing this Application, I acknowledge and represent that I and any other owner(s) of the property which is the subject of this application (the "Property") meet these qualifications and I authorize the Program Administrator to obtain a credit report for each of the property owner(s) and/or trustees whose social security number is provided on this application to verify such representations.

- I am current on all property taxes for the Property.
- I am current on property related debt.
- I am not aware of any involuntary liens, defaults or judgments in excess of \$1,000 on the Property.
- I have the authority to authorize the Program Administrator to obtain a credit report for each of the property owner(s) and/or trustee(s) whose social security number(s) is provided on this application.
- I am not party to an open bankruptcy proceeding and the property is not subject to a bankruptcy proceeding.

By signing this Application, I hereby declare under penalty of perjury under the laws of the State of California all of the following:

- That the information provided in this Application is true and correct as of the date set forth herein.
- I have received, read and understood the Financing Documents and have access to the Program Handbook.
- I am applying to participate in the Program, have the authority, without the consent of any third party, to execute and deliver this Application, the Assessment Contract, and the various other documents and instruments referenced herein.
- I understand that the financing provided by the Program will be repayable through an assessment levied against the Property.
- I understand that an assessment lien will be recorded by the Program against the Property in the office of the County Recorder upon execution of the Assessment Contract.
- I understand that the property tax bill (which includes my assessments) for the Property will increase by the amount of these assessment installment payments as specified in the Assessment Contract.
- I understand, as with all tax and assessment liens, this lien will be senior to all existing and future private liens against the Property, including mortgages, deeds of trust and other security instruments.

## Terms and Conditions

Interest Rate	You will be charged a fixed interest rate on your total financed amount. Your interest rate will be set at the time your Financing Documents are issued.
Initial Administration Fee	At the time of closing, you will be charged a one-time administration fee equal to [0.0]% of the principal amount of the assessment on the Property to cover the costs of administering the Program. This fee will be added to the assessment amount.
Recording Fee	At the time of closing, you will be charged a one-time recording fee equal to \$[0] to cover the costs of recording the assessment. This fee will be added to the assessment amount.
Reserve Deposit	At the time of closing, you will be charged a one-time reserve deposit fee equal to [0.00]% of the principal amount of the assessment to be used to pay debt service on a related series of bonds. This fee will be added to the assessment amount. Upon the final redemption date of the related series of bonds, a pro rata portion of the balance in the bond reserve account will be applied to the final Assessment payment.
Annual Ongoing Administration Fee	Each year, an annual administrative fee will be added to the assessment lien amount on your property tax bill. The cost for the first year is \$[0] and will be adjusted in subsequent years to meet the ongoing Program requirements. A fee equal to the first year annual ongoing administration fee will also be added to the assessment amount to cover the Program administrative expenses between the Assessment recording date and first assessment payment date.
Interest Before First Payment	Based on the date the assessment is recorded on your property, payments may not begin until the following year's tax statement. Interest Before First Payment is the amount of interest that is added to the assessment amount for the period between your closing date and the first payment date.
Prepayment	The Assessment may be prepaid, in whole or in any amount of at least \$5,000, at any time subject to terms of your assessment contract.
Additional Fees	The Program may apply additional eligible fees to your assessment as defined in the Program Handbook and subject to the terms of your assessment contract.

Disclosures

The following describes some (but not all) characteristics and risks of participation in the Program as well as laws to which the Program is subject. A full understanding of any item listed below can be gained only by reviewing the relevant laws, policy statements, and/or the contractual documents related to the Program. Energy Efficient Equity is available to answer questions regarding the items listed below before you enter into an Assessment Contract, and invites you to ask Program representatives any questions regarding these items or request any document related to the Program.

Existing Mortgage

The Program establishes the manner by which the Authority may finance, pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (commencing with Section 5898.10), the installation of Eligible Products. Eligible Products will be financed pursuant to an Assessment Contract between you and the Program.

BEFORE COMPLETING A PROGRAM APPLICATION, YOU SHOULD CAREFULLY REVIEW ANY MORTGAGE AGREEMENT(S) OR OTHER SECURITY INSTRUMENT(S) WHICH AFFECT THE PROPERTY OR TO WHICH YOU AS THE PROPERTY OWNER ARE A PARTY. ENTERING INTO A PROGRAM ASSESSMENT CONTRACT WITHOUT THE CONSENT OF YOUR EXISTING LENDER(S) COULD CONSTITUTE AN EVENT OF DEFAULT UNDER SUCH AGREEMENTS OR SECURITY INSTRUMENTS. DEFAULTING UNDER AN EXISTING MORTGAGE AGREEMENT OR SECURITY INSTRUMENT COULD HAVE SERIOUS CONSEQUENCES TO YOU, WHICH COULD INCLUDE THE ACCELERATION OF THE REPAYMENT OBLIGATIONS DUE UNDER SUCH AGREEMENT OR SECURITY INSTRUMENT. IN ADDITION, FANNIE MAE AND FREDDIE MAC, THE OWNER OF A SIGNIFICANT PORTION OF ALL HOME MORTGAGES, STATED THAT THEY WOULD NOT PURCHASE HOME LOANS WITH ASSESSMENTS SUCH AS THOSE OFFERED BY THE AUTHORITY. THIS MAY MEAN THAT PROPERTY OWNERS WHO SELL OR REFINANCE THEIR PROPERTY MAY BE REQUIRED TO PREPAY SUCH ASSESSMENTS AT THE TIME THEY CLOSE THEIR SALE OR REFINANCING.

IF YOUR LENDER REQUIRES AN IMPOUND FOR YOUR PROPERTY TAXES IT IS YOUR RESPONSIBILITY TO NOTIFY THEM OF THE ANNUAL ASSESSMENT PAYMENT AMOUNT SO THEY CAN ADJUST YOUR IMPOUND AMOUNT.

<u>          [Initials]          </u>	<u>          [Initials]          </u>
[Name]	[Name]

Federal Housing Finance Agency Alert

In May, 2010, Fannie Mae and Freddie Mac, government sponsored enterprises that purchase a large segment of conforming single family home mortgages, issued new instructions to lending institutions on how to treat properties with assessments under Property Assessed Clean Energy (PACE) programs such as the California Municipal Finance Authority's PACE program. These letters, and additional statements issued by the Federal Housing Finance Agency, the agency that regulates single family

home lenders, instruct lenders to treat energy assessments as "loans" instead of "assessments."

On August 31, 2010, the agencies issued additional instructions to lenders that Fannie Mae and Freddie Mac "will not purchase mortgage loans secured by properties with an outstanding PACE obligation."

These letters and statements may lead lenders to conclude the PACE assessment should be paid off before a property transfers or is refinanced. In addition, it may lead some lenders to conclude that participating in PACE program is a violation of typical mortgage terms prohibiting prior liens without lender consent. If you are selling your property, a buyer's lender may refuse to finance the buyer's first mortgage loan unless the assessment is paid off. We urge you to carefully read the disclosure information in the Program application, review your mortgage documents, evaluate the risks of proceeding with an application at this time, and contact your lender if you have any concerns or for information regarding any other financing options that may be available to you.

[Initials]	[Initials]
[Name]	[Name]

Electronic links to the copies of letters from the Federal Financing Housing Authority re: PACE programs:

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/ll1006.pdf>

<http://www.freddie.mac.com/singlefamily/guide/bulletins/pdf/iltr050510.pdf>

<http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx>

<http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-FHFA-Acting-Director-Edward-J-DeMarco-on-PACE-Programs.aspx>

<https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1012.pdf>

<http://www.freddie.mac.com/singlefamily/guide/bulletins/pdf/bl1020.pdf>

#### Foreclosure

Not later than October 1 each year, the Authority shall determine whether any annual assessment installment is not paid when due and shall have the right to order that any such delinquent payment, penalties, interest, and associated costs be collected by a foreclosure action brought in Superior Court that could result in a sale of the Property for the payment of such delinquent assessment installment.

#### Transfers

Property owner hereby agrees to provide copies of the Assessment Contract, Final Cost and Payment Summary and Program Handbook to any subsequent purchaser or transferee of the Property before the time of sale or transfer of the Property. Property owner understands and acknowledges that the Assessment, and obligation to pay the Assessment pursuant to such Assessment Contract, runs with the land and, upon sale or transfer of the Property or any interest therein, any subsequent owner



or transferee shall be required to pay the Assessment pursuant to such Assessment Contract. If a subsequent owner or transferee fails to pay the Assessment pursuant to such Assessment Contract, then the provisions of this Contract, including the "Foreclosure" provision listed above, shall apply to the subsequent owner or transferee's interest in the Property. Property owner further understands and acknowledges that a subsequent purchaser or transferee, or any interested party to the sale or transfer (such as a lender), may require as a condition of sale or transfer, that the Assessment be paid in full prior to sale or transfer. Information regarding Assessment prepayment can be found in the Contract to Pay Assessment; Prepayment section of the Assessment Contract.

Property Value Model	The Program uses a Property Value Model to determine your eligible financing amount. You have a right to receive a copy of the Property Value Report used in connection with this application. To obtain a copy of this report contact Energy Efficient Equity and submit a request. The Property Value Model is not an Appraisal.
No Endorsement	The Program and Energy Efficient Equity do not endorse any manufacturer, contractor, product, or system, or in any way warranty such equipment, installation, or the efficiency or production capability of any equipment and make no representations and have no responsibility regarding the equipment and its installation, including the quality, safety, cost savings, efficiency or production capability of any equipment; or any compliance of the equipment or its installation with any applicable laws, regulations, codes, standards or requirements. Further, Energy Efficient Equity and the Program shall not be in anyway liable for any incidental or consequential damages resulting from the equipment or its installation.
Inspection	At any time during the Term of the Assessment, Energy Efficient Equity and the Program may inspect and Validate that installed Eligible Improvements meet Program eligibility requirements. Energy Efficient Equity and the Program reserve the right to perform independent on-site Inspections of any Eligible Improvements financed by the Program.
Analysis	During the term of the Assessment, Energy Efficient Equity and the Program reserve the right to monitor and track energy systems' generation data, if applicable, and utility usage via property utility bill data. By submitting this application, you consent to any such monitoring and utility bill energy usage analysis. By submitting this application, you also agree to sign the authorization form to participate in utility billing energy usage analysis to measure Program impact savings and participant satisfaction.
Compliance	Energy Efficient Equity and the Program are subject to certain terms in the: Equal Credit Opportunity Act (ECOA); Fair Credit Reporting Act; Housing Financial Discrimination Act of 1977 and the Patriot Act. As such, your information may be obtained by the Program and shared with the applicable Agency to maintain compliance with the Law.

Property Owner Signature(s)

I declare that (i) I have received, read, and understand the risks and characteristics of the Program described in the Program Handbook, sample financing documents, and Disclosures set forth in this Application (ii) I have been informed that I must take the sole responsibility to satisfy myself that executing the Assessment Contract, receiving financing from the Program, and consenting to the assessment levied against the Property will not constitute a default under any other agreement or security instrument (specifically the terms of any mortgage on the Property) which affects the Property or to which I am a party. I hereby authorize the Program to obtain my credit information.

[Owner Full Name]	[Signature]		
Identity Verification Code	[ID Code]	Date	[01/01/2001]

[Owner Full Name]	[Signature]		
Identity Verification Code	[ID Code]	Date	[01/01/2001]

# Truth-in-PACE™ Disclosure Statement

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## Property Information

Owners [Owner Names]  
 Address [Property Address]  
 APN [Assessor Parcel Number]  
 Transaction # [E3 File ID]

## Summary of your Financing

Amount Financed	Financing Term	Interest Rate	Payment Amount
\$[0]	[0] Years	[0.00]%	\$(0)
Cost of your improvements	Number of years that payments will be added to the Property Tax Bill.	The annual cost of the financing, as a percentage.	The estimated amount due on your Semi-Annual Property Tax Bill

## Important Dates

Application Date	Expiration Date	Recording Date	First Payment Date
[01/01/2001]	[01/01/2001]	[01/01/2001]	[01/01/2001]
Date your application was submitted.	Your Improvements must be completed before this date to be eligible for Financing.	The estimated Date that the Assessment is recorded on the Property with the County.	The first property tax payment date.

If your Assessment is recorded on or before <Tax Roll Cutoff Date - 1 day> your first payment will be included on your November <This Year> property tax bill. If your Assessment is recorded After <Tax Roll Cutoff Date> your first payment will be included on your November <Next Year> property tax bill. Upon receiving your payments, your county will remit payment to service debt on the related municipal bond each March 2<sup>nd</sup> and September 2<sup>nd</sup> during the Financing Term.

## Items payable in connection with Financing

Program Administrative Expenses \$[0]

The estimated costs to provide financing for your Improvements. Includes; Processing, Ongoing annual administrative and Bond Issuance expenses.

Recording Fee \$[0]

Fee paid to your County to Record and process your Assessment.

Interest Before First Payment \$[0]

The estimated amount of interest accrued between the Recording Date and the first payment date on a related municipal bond.

Reserve Deposit \$[0]

Deposit for debt servicing on related Bond.

Other Fees \$[0]

[Fee Name]

## Calculations

Total Settlement Charges \$[0]

The Dollar Amount that the Financing will cost you.

Prepaid Amount \$[0]

The Dollar Amount Prepaid to your contractor.

Total Assessment Amount \$[0]

The total Assessment levied on your property.

Annual Assessment Amount \$[0]

The Amount added to your property taxes each year during the Term. Includes Principal, Interest, and \$95 for Administrative expenses.

Total of Payments \$[0]

The total amount you will have paid after you make all payments including principal, interest, settlement charges, and fees.

Annual Percentage Rate [0.00]%

The yearly cost of the financing, expressed as a percentage. This is not your interest rate.

Total Interest Percentage [0.00]%

The total amount of interest you will pay over the financing term as a percentage of the total Payments.

## Important Financing Terms

Is the Interest Rate Fixed?	Yes
Can the Balance Increase?	No
Is there a Prepayment Penalty?	No
Is there a Balloon Payment?	No
Is the Interest Tax Deductible?	Consult with a tax professional

## Understanding what can change at Settlement

This Truth-in-PACET<sup>™</sup> Disclosure Statement estimates your settlement charges based on an Assessment Recording date of [01/01/2001]. Actual amounts will be calculated based the Actual recording date of your Assessment and will be listed in the Final Cost and Payment Summary.

### Items that **Cannot** Increase at settlement

- Interest Rate
- Amount Financed
- Recording Fee
- Reserve Deposit

### Items that **Can** Increase at settlement

- Program Administrative Expense
- Interest before first payment

## Dealer Fees and Interest Rate Buydowns

The interest rate stated above has been subsidized by your contractor. To fund this subsidy, your contractor will pay E3 a 'Dealer Fee'. The "Cost of your improvements" stated above may include all or a portion of the Dealer Fee, depending upon the amount of such fee that your contractor has determined to pass along to you in connection with this transaction. The Dealer Fee paid to E3 by your contractor in connection with this transaction is [\$0]. For more information, contact \_\_\_\_\_.

## What you should know before hiring a contractor

By law, anyone in California who contracts for or bids on a construction project valued at \$500 or more (combined labor and material costs) must be licensed by the Contractors State License Board (CSLB). To qualify for a license, a contractor must verify four years of journey-level experience in the trade, pass both a trade and license law and business examination, and post a license bond. Since 2005, all new contractors have been required to pass a criminal background check. Contractors are required to put their CSLB license number in all advertisements. Ask to see the contractor's plastic pocket license and photo identification.

### Construction Project Checklist:

- Check the contractor license number at [www.cslb.ca.gov](http://www.cslb.ca.gov) to make sure it is current and in good standing.
- Ask to see the contractor's pocket license and a current photo ID.
- Ask for a list of current contact information (telephone number and business address) for the contractor, subcontractors, and suppliers.
- Find out from your local building department whether your project needs a building permit and confirm that your contractor will obtain all necessary permits.
- Get at least three contractor bids and references, and check out, in person, each prospective contractor's recent similar projects.
- Ask whether your contractor carries general liability insurance for employees in case accidental damage occurs during the project, and workers' compensation insurance for employees.
- Make sure all project materials and expectations are spelled out and signed in a written contract, including clean-up, debris removal, and site security.
- Ask your contractor if he or she understands your project expectations
- Schedule and document each phase of your project and the corresponding payment schedule. Do not let payments get ahead of the work.
- Pay no more than 10% down or \$1,000, whichever is less. There is an exception to this rule for contractors who have filed a blanket performance and payment bond with CSLB's Registrar. This information is noted on the contractor's license detail page on CSLB's website.
- Avoid paying in cash.
- Keep all of your project documents, including payments and photographs, in a job file
- Try researching your contractor's name online for additional reviews

### Questions

If you have questions about the financing terms or costs on this form, contact Energy Efficient Equity at:

Phone 844-622-5533  
 Fax 844-622-5533  
 Email [info@energyefficientequity.com](mailto:info@energyefficientequity.com)  
 Address 12100 Wilshire Blvd Suite 800  
 Los Angeles CA 90025  
[www.energyefficientequity.com](http://www.energyefficientequity.com)

### Acknowledgements

I understand that by participating in the Program an Assessment will be levied on my property which will result in an additional payment that will be added to my Property Tax Bill and:

If I refinance my property, my mortgage company may require me to pay off the remaining balance. [Initials] [Initials]  
\_\_\_\_\_  
[Name] [Name]

If I sell my property, the Buyer or their mortgage company may require me to pay off the remaining balance. [Initials] [Initials]  
\_\_\_\_\_  
[Name] [Name]

If I pay my property taxes using an impound account I need to save an estimated \$[0] for my first payment in November [2001] or cause the trustee of such impound account to adjust my payments upon settlement. [Initials] [Initials]  
\_\_\_\_\_  
[Name] [Name]

I should consult a qualified tax professional regarding the tax deductibility of the interest payments and other potential tax benefits of participation in the Program and ownership of eligible improvements financed by the Program. [Initials] [Initials]  
\_\_\_\_\_  
[Name] [Name]

If I pay my property tax payment late, the amount due will be subject to a 10% penalty, late fees, and 1.5% per month interest penalty as established by state law, and my property may be subject to foreclosure. [Initials] [Initials]  
\_\_\_\_\_  
[Name] [Name]

### Confirmation of Receipt

I declare that I have received, read, and understand this Truth-in-PACE™ disclosure statement.

[Owner Full Name] [Signature]  
\_\_\_\_\_

Identity Verification Code [ID Code] Date [01/01/2001]

[Owner Full Name] [Signature]  
\_\_\_\_\_

Identity Verification Code [ID Code] Date [01/01/2001]

# Right to Cancel

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Financing ID [E3 ID Number]  
 Owners [Owner Full Name], [Phone], [Email]  
 [Owner Full Name], [Phone], [Email]  
 Property Address [Property Address]

**Your Right to Cancel** You are entering into an Assessment Contract with the California Municipal Finance Authority ("CMFA") for Financing under the CMFA Energy Efficient Equity Program ("Program") that will result in a lien on the property at [Property Address]. Under the Program, you may cancel this transaction, without cost, within three (3) business days from the date on which you signed the Assessment Contract.

**If you Cancel** If you Cancel the transaction the Program will:

- Not Charge you a cancellation fee;
- Refund any money you have given the Program, excluding application and processing fees as applicable; and
- If the lien on your property has been recorded, take the necessary steps to discharge such lien within 20 calendar days after receiving your notification to cancel financing.

**How to Cancel** To Cancel this transaction, you may submit this form to Energy Efficient Equity in writing at:

Energy Efficient Equity  
 Attn: Right To Cancel Notification  
 12100 Wilshire Blvd, Suite 800  
 Los Angeles, 90025  
 Fax (844) 622-5533

**Deadline to Cancel** If you cancel by mail, fax or email, you must send the notice no later than midnight of the third business day following the date on which you signed the Assessment Contract. If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than the time indicated above.

## Acknowledgement of Receipt

[Owner Full Name]

[Signature]

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Identity Verification Code      [ID Code]      Date    [01/01/2001]

[Owner Full Name]      [Signature]

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Identity Verification Code      [ID Code]      Date    [01/01/2001]

I Wish to Cancel

(Only Sign here if you are canceling your financing)

If two or more people have the right to cancel this financing, cancellation by one person is effective for all of them.

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Print Name

Signature

Date

# Project Definition

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Contractor [Company Name]  
 Address [Company Address]  
 Contact [Name], [Phone], [Email]

Property Address [Property Address]  
 Owners [Owner Full Name], [Phone], [Email]  
 [Owner Full Name], [Phone], [Email]

Improvements	Price	Qty	Amount
[Make], [Model] [Description]	[\$0.00]	[0]	[\$0.00]
[Make], [Model] [Description]	[\$0.00]	[0]	[\$0.00]
[Make], [Model] [Description]	[\$0.00]	[0]	[\$0.00]
Total Cost of Improvements			[\$0.00]

This project definition is used to determine the total financing amount requested for your assessment. This project definition along with the requested financing amount will be submitted to the CMFA for approval. If the CMFA approves the project for financing, you and your contractor will receive a notice to proceed. The program makes no commitment to finance this project until you receive the notice to proceed.

# Assessment Contract

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## CALIFORNIA MUNICIPAL FINANCE AUTHORITY PACE PROGRAM

THIS ASSESSMENT CONTRACT (this "Contract"), dated as of [01/01/2001], is by and between the California Municipal Finance Authority (the "Authority"), and the record owner[s], [Property Owner Names] (the "Property Owner") of the fee interest in the real property described on Exhibit A (the "Property").

### RECITALS

WHEREAS, the Authority is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California;

WHEREAS, the Authority has established the CMFA PACE Program (the "Program") to allow the financing of certain distributed generation renewable energy sources, energy efficiency improvements, water efficiency improvements, seismic strengthening improvements, electric vehicle charging infrastructure and such other work, infrastructure or improvements as may be authorized by law from time to time that are permanently fixed to real property (the "Authorized Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds under Chapter 29 and, to the extent not in conflict with Chapter 29, the Improvement Bond Act of 1915 (California Streets and Highways Code Section 8500 and following) (to the extent not in conflict with Chapter 29, the "1915 Act") upon the security of the unpaid contractual assessments;

WHEREAS, Chapter 29 provides that assessments may be levied under the provisions thereof only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied pursuant to a contract between the property owner and the public agency;

WHEREAS, the Authority has conducted the proceedings required by Chapter 29 with respect to the territory within the boundaries of the City or County identified in Exhibit A (the "Participating Entity");

WHEREAS, the Authority has appointed Energy Efficient Equity Inc. as a program administrator (together with any successors thereto, the "Program Administrator") for the Program as it pertains to this Contract;

WHEREAS, the Property is located in the boundaries of the Participating Entity, and the Participating Entity has consented to (a) owners of property within its jurisdiction (the "Participating Property Owners") participating in the Program and (b) the Authority conducting assessment proceedings under Chapter 29 and issuing bonds under Chapter 29 and the 1915 Act to finance the Authorized Improvements; and

WHEREAS, pursuant to Chapter 29, the Authority and the Property Owner desire to enter into this Contract, pursuant to which the Property Owner will agree to pay an assessment in order to finance the installation of the Authorized Improvements described in Exhibit A (the "Improvements") and the Authority will agree to provide financing, all on the terms set forth in this Contract;

NOW, THEREFORE, in consideration of the foregoing and the material covenants hereinafter contained, the Property Owner and the Authority formally covenant, agree and bind themselves and their successors and assigns as follows:

## AGREEMENT

### 1 Purpose.

The Property Owner and the Authority are entering into this Contract for the purpose of financing the installation of the Improvements identified on Exhibit A. All references to finance, financing and financed in this Contract shall, as appropriate and as applicable, be deemed to also refer to refinance, refinancing and refinanced, respectively.

### 2 The Property.

This Contract relates to the Property, which is described on Exhibit A. The Property Owner has provided to the Authority evidence that the Property Owner is the owner of the fee interest in the Property and possesses all legal authority necessary to execute this Contract.

### 3 Assessment; Bonds; Installment; Prepayment; Collection.

(a) The Assessment. The Property Owner hereby freely and willingly agrees that an assessment in the amount specified in Exhibit B (the "Assessment") shall be levied by the Authority on the Property pursuant to Chapter 29. The amount of the Assessment shall be the amount specified in Exhibit B, which includes an amount to pay the costs to finance the Improvements, an amount to pay incidental expenses and, if so specified in Exhibit B, an amount to fund a reserve and an amount for capitalized interest on bonds to be issued. The Property Owner acknowledges and agrees that the maximum amount of the Assessment, as specified in Exhibit B, does not exceed the special benefit conferred on the Property by the installation of the Improvements thereon.

(b) Bonds. The Authority hereby determines that serial bonds, term bonds or both (the "Bonds") shall be issued as provided in Chapter 29 and the 1915 Act and payable from the Assessment installments described below. The final maturity date of the Bonds shall be no later than the Final Maturity Date specified in Exhibit B.

(c) Interest; Assessment Installments. Interest on the Assessment shall begin to accrue from the date of the Bonds and shall be computed at the rate specified in Exhibit B. The Final Scheduled Payment Date of the Assessment shall be as specified in Exhibit B. The unpaid Assessment shall be payable in annual installments corresponding in number and in the pro rata share of the proportionate amount to the number of installments and principal amount of the corresponding Bonds maturing or becoming subject to mandatory prior redemption in each year. An annual proportion of the Assessment shall be payable in each fiscal year preceding the date of maturity or mandatory prior redemption date of each of the corresponding Bonds, sufficient to pay the pro rata share of such Bonds when due.

(d) Collection. The annual proportion of the Assessment coming due in any year, together with the annual interest thereon, shall be payable in the same manner and at the same time and in the same installments as the general taxes on real property are payable, and have the same priority, become delinquent at the same time and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general taxes on real property.

(e) Administrative Expenses. In addition to the annual installment of the Assessment described in subsection (c) of this Section, the Authority shall, in accordance with and subject to the limitations contained in Section 8682 and Section 8682.1 of the 1915 Act, add thereto amounts to in order to pay for the costs of collecting the Assessment, the annual administration of the Assessment, the annual administration of the Bonds and other administrative costs (the "Annual Assessment Administrative Fee").

(f) Prepayment of the Assessment. The Assessment may be prepaid, in whole or in any amount of at least \$5,000, at any time upon the payment of (i) the amount of any delinquent installments of principal or interest on the Assessment, together with penalties accrued to the date of prepayment, plus (ii) the whole or, subject to the minimum amount set forth in this subsection, a portion of the unpaid non-delinquent principal of the Assessment (the "Assessment Prepayment Amount"), plus (iii) interest on the Assessment Prepayment Amount to the earlier of March 2 or September 2 occurring at least 50 days following the date the prepayment is made, plus (iv) \$[0.00], for the cost of administering the prepayment and the redemption of the Bonds, plus (v) an amount equal to the redemption premium, if any, necessary to redeem the principal amount of Bonds corresponding to the amount of the Assessment Prepayment Amount.

(g) No Reduction or Offset. The Property Owner hereby acknowledges and agrees that the Assessment will not be subject to reduction, offset or credit of any kind in the event that the Improvements fail to perform in any way or for any reason.

#### 4 Lien; Foreclosure.

(a) Lien. The Assessment, and each installment thereof and the interest and penalties thereon shall constitute a lien against the Property until they are paid, which lien shall be coequal to and independent of the lien for general taxes.

(b) Foreclosure. The Property Owner acknowledges and agrees that if any Assessment installment is not paid when due, the Authority has the right to have such delinquent installment and its associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys' fees. The Property Owner acknowledges that the Authority may obligate itself, through a covenant with the owners of the Bonds, to exercise its judicial foreclosure rights with respect to delinquent Assessment installments under circumstances specified in such covenant.

#### 5 Financing of the Improvements.

The parties hereby agree that the net proceeds of the Bonds allocable to the Assessment shall be used to finance the Improvements. The parties hereby further agree that E3 Credit SPV, LLC (or another subsidiary or affiliated entity of Energy Efficient Equity Inc.) (the "Advancing Party") will advance funds to the Property Owner to (a) initially finance the costs of Improvements, as specified in Exhibit A, in the amount of \$<Improvement Cost>[, and (b) initially finance the costs to pay or prepay the assessments, loans and/or other debt instruments relating to existing Improvements, as specified in Exhibit A, in an amount of \$<Refi Cost>]. Such advance of funds constitutes the initial financing of the Improvements, and the Advancing Party shall be repaid for such advance, together with interest thereon at the Assessment Interest Rate specified in Exhibit B, from the net proceeds of the Bonds allocable to the Assessment on the date of issuance of the Bonds. Such repayment shall constitute a refinancing of the Improvements.

#### 6 Term; Contract Runs with the Land; Division.

(a) Except as otherwise set forth in this Contract, this Contract shall expire upon the final payment or prepayment of the Assessment, and all accrued interest thereon, together with any applicable penalties, costs, fees and other charges, have been paid.

(b) This Contract establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land pursuant to Civil Code Section 1462.

(c) The obligation to pay the Assessment is an obligation of the Property and no agreement or action of the Property Owner shall be competent to impair in any way the Authority's rights, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.

(d) In the event the Property is divided while the Assessment remains unpaid, the unpaid installments of the Assessment shall be segregated and apportioned in accordance with the benefits to the original lot or parcel plus costs and fees of making the apportionment.

## 7 Recordation of Documents.

The Authority shall record or cause to be recorded in the office of the County Recorder a notice or notices and other documents required by Chapter 29 and other applicable laws to be recorded against the Property.

## 8 Notice.

To the extent required by applicable Law, the Property Owner shall provide written notice to any subsequent purchaser of the Property, or a portion thereof, of the obligation to pay the Assessment, interest thereon and the Annual Assessment Administrative Fee.

## 9 Waivers, Acknowledgment and Contract.

(a) Since the Assessment is voluntary and imposed, in accordance with Chapter 29, pursuant to this Contract, the Property Owner hereby waives any otherwise applicable requirements of Article XIII D of the California Constitution, or any other provision of California law, for an engineer's report, notice, public hearing, protest or ballot.

(b) The Property Owner hereby waives its right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the Authority undertaken in connection with the Program. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Assessment regardless of whether the Improvements are properly installed, operated, maintained or perform as expected.

(c) The Property Owner hereby agrees that the Authority is entering into this Contract solely for the purpose of assisting the Property Owner with the financing of the installation of the Improvements, and that neither the Authority nor the Participating Entity has any responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, maintenance or performance of the Improvements. The Property Owner hereby waives the right to recover from and fully and irrevocably releases the Authority, the Participating Entity and any and all agents, employees, program administrators, attorneys, representatives and successors and assigns of the Authority and the Participating Entity from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the subject matter of this Contract that the Property Owner may now have or hereafter acquire against the Authority, the Participating Entity and any and all agents, employees, program administrators, attorneys, representatives and successors and assigns of the Authority or the Participating Entity.

(d) To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and

kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, OWNER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

[Owner Name]

[Initials]

[Owner Name]

[Initials]

(e) The waivers, releases and agreements set forth in this Section shall survive termination of this Contract.

#### 10 Indemnification.

(a) The Property Owner agrees to indemnify, defend, protect, and hold harmless the Authority, the Participating Entity and any and all agents, employees, program administrators, attorneys, representatives and successors and assigns of the Authority or the Participating Entity, from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with (i) the Property Owner's participation in the Program, (ii) the Assessment, (iii) the Improvements, or (iv) any other fact, circumstance or event related to the subject matter of this Contract, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Contract.

(b) The provisions of this Section shall survive the termination of this Contract.

#### 11 Right to Inspect Property.

The Property Owner hereby grants the Authority, its agents and representatives the right to enter at any reasonable time, upon reasonable notice, to inspect the Improvements. The Property Owner further hereby

grants the Authority, its agents and representatives the right to examine and copy any documentation relating to the Improvements.

## 12 Carbon Credits.

The Property Owner hereby agrees that any carbon credits attributable to the Improvements shall be owned by the Authority or its assignees.

## 13 Program Application.

The Property Owner hereby represents and warrants to the Authority that the information set forth in the Program Application submitted to the Authority in connection with its request for financing is true and correct as of the date hereof, and that the representations set forth in the Program Application with respect to the Property and the Property Owner are true and correct as of the date hereof as if made on the date hereof.

## 14 Amendment.

This Contract may be modified or amended only by the written agreement of the Authority and the Property Owner.

## 15 Binding Effect; Assignment.

This Contract inures to the benefit of and is binding upon the Authority, the Property Owner and their respective successors and assigns. The Authority has the right to assign any or all of its rights and obligations under this Contract without the consent of the Property Owner. The Authority intends to delegate certain of its functions under this Contract to the Program Administrator and may pledge and assign this Contract to a trustee as security for the Bonds.

## 16 Exhibits.

Exhibits A and B attached to this Contract are incorporated into this Contract by this reference as if set forth in their entirety in this Contract.

## 17 Severability.

If any provision of this Contract is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Contract.

## 18 Corrective Instruments.

The Authority and the Property Owner shall, 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 Contract.



## 19 Governing Law: Venue.

This Contract shall be construed in accordance with and governed by the laws of the State of California applicable to contracts made and performed in the State of California. This Contract shall be enforceable in the State of California, and any action arising hereunder shall (unless waived by the Authority in writing) be filed and maintained in the Superior Court of California, County of Los Angeles; provided, however, that actions to foreclose delinquent installments of the Assessment shall be filed and maintained in the Superior Court of California in the County identified in Exhibit A.

## 20 Counterparts.

This Contract may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

## 21 Monitoring and Recording of Telephone Calls.

The Program may monitor and/or record telephone calls for security and customer service purposes. By agreeing to this Contract the Property Owner agrees to have his, her or its telephone calls with the Program recorded.

## 22 Electronic Signatures.

(a) The parties hereto acknowledge and agree that this Contract may be executed by one or more electronic means ("Electronic Signatures"). Each party hereto agrees that Electronic Signatures provided by such party shall constitute effective execution and delivery of this Contract by such party to all other parties to or relying on this Contract. Each party hereto agrees that Electronic Signatures shall constitute complete and satisfactory evidence of the intent of such party to be bound by those signatures and by the terms and conditions of this Contract as signed. Each party hereto agrees that Electronic Signatures shall be deemed to be original signatures for all purposes.

(b) Each party hereto agrees to accept Electronic Signatures provided by any and all other parties to this Contract as (i) full and sufficient intent by such parties to be bound hereunder, (ii) effective execution and delivery of this Contract, and (iii) constituting this Contract an original for all purposes, without the necessity for any manually signed copies to be provided, maintained or to exist for back up or for any other purpose.

(c) If Electronic Signatures are used to execute this Contract, each party hereto hereby accepts the terms of, and intends and does sign, this Contract by its Electronic Signature hereto.

## 23 Contract Documents.

(a) The Property Owner acknowledges and agrees that the entire agreement between Property Owner and the Authority includes each and every document specified in the List of Documents contained in Exhibit B (collectively, the "Contract Documents").

(b) By executing this Contract, the Property Owner acknowledges and agrees that:

(i) The Property Owner has had sufficient time to review and has reviewed each of the Contract Documents and has had the opportunity to ask any questions of the Authority that Property Owner may have regarding such Contract Documents;

(ii) The Property Owner has reviewed, understands and agrees to each and every additional requirement and term contained in the Program Handbook (as defined in Exhibit B to this Contract, the "Program Handbook");

(iii) The Property Owner has reviewed, understands, agrees to and affirms each and every representation and warranty contained in the Property Owner's application and the Program Handbook; and

(iv) Prior to executing this Contract has read and understands the Property Owner's Acknowledgments and Disclosures contained in the (A) Application, (B) this Contract, (C) the Privacy Notice, and (D) the Program Handbook

#### 24 Execution and Return of Contract.

The Property Owner must execute and return this Contract to the Authority at the address set forth in the "Notice Information" section of Exhibit A so that it is received by the Authority not later than <Expiration Date>. If the Property Owner fails to return this Contract so executed to the Authority by the indicated date, the Program reserves the right to require the Property Owner to enter into a new Contract. The signature of each person signing as or on behalf of the Property Owner must be notarized by a duly licensed notary unless all such persons have previously successfully completed the identity verification process approved by the Authority.

IN WITNESS WHEREOF, the Authority and the Property Owner have caused this Contract to be executed in their respective names by their duly authorized representatives, all as of the Effective Date. The "Effective Date" is defined as the last date entered with the signatures of the parties below.

#### Property Owner(s):

[Owner Name]	[Signature]		
Identity Verification Code	[ID Code]	Date	[01/01/2001]
[Owner Name]	[Signature]		
Identity Verification Code	[ID Code]	Date	[01/01/2001]

#### Authority:

Authorized Signatory	[Signature]		
Name	[Name]	Date	[01/01/2001]

# EXHIBIT A

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## DESCRIPTION OF PROPERTY, DESCRIPTION OF THE IMPROVEMENTS, AND NOTICE INFORMATION

### Description of Property:

Property Owner(s): [Owner Full Name]  
 [Owner Full Name]

Property Address: [Property Address]  
 APN: [Assessor Parcel Number]  
 County: [County]

### Description of Improvements:

The improvements to be financed consist of the following:

[Improvement Description]

[Improvement Description]

[Improvement Description]

The existing improvements to be refinanced consist of the following:

[None][Existing Improvement Description]

### [Payments Relating to Existing Improvements to be Refinanced:]

[\$[0.00] will be submitted to [PAYEE] to refinance the [insert general description of existing improvements to be refinanced].]

### Notice Information:

Administrator: Energy Efficient Equity  
 Attn: Assessment Notice  
 12100 Wilshire Blvd Suite 800  
 Los Angeles CA 90025  
 Property Owner: [Owner Names]  
 [Property Address]

# EXHIBIT B

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## LIST OF CONTRACT DOCUMENTS, DISBURSEMENT, AND SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS, INCLUDING PRINCIPAL, INTEREST AND ANNUAL ASSESSMENT ADMINISTRATIVE FEE

### List of Contract Documents:

This Contract shall consist of the following documents:

- This Contract and the exhibits hereto;
- The Application;
- The Truth-In-PACE™ Disclosure Statement
- The Completion Certificate;
- The Assessment Cost and Payment Summary;
- The Notice of Assessment and Payment of Contractual Assessment Required;
- The Program Handbook; and
- The Program website located at [www.energyefficientequity.com](http://www.energyefficientequity.com).

### Assessment:

The estimated amount of the Assessment is \$[0.00] (the "Assessment Amount"), of which \$[0.00] is estimated to be allocable to the cost of the Improvements, \$[0.00] is estimated to be allocable to incidental expenses, \$[0.00] is estimated to be allocable to fund a reserve, and \$[0.00] is estimated to be allocable to capitalized interest.

The actual amount of the Assessment will be provided to you in the Final Costs and Payment Summary after the Notice of Assessment and Payment of Contractual Assessment Required relating to the Assessment has been recorded and the Bonds have been issued. Such notice shall not be recorded until the Improvements have been completed. Assuming such notice is recorded within [90] days of the date of this Contract, the amount of the Assessment shall not exceed \$[0.00].

The Assessment Interest Rate is [0.00] %.

The final scheduled Assessment installment shall be payable in the fiscal year preceding the Final Maturity Date of the Bonds specified below.

### Bonds:

The Final Maturity Date of the Bonds shall be no later than September 2, [2001].

### Estimated Annual Assessment Installments:

The schedule of the estimated annual installments of the Assessment is based on the following assumptions:

1. Corresponding Bonds allocable to the Assessment are issued in an amount equal to Assessment Amount.
2. Bonds are to be issued on [Estimated Bond Issuance Date].
3. The Improvements will be completed and paid for, and the Notice of Assessment and Payment of Contractual Assessment Required will be recorded, on a date in the tax year commencing on July 1, [20\_\_] and ending on June 30, [20\_\_] (the "Estimated Recording Date").

4. The Annual Percentage Rate (APR)<sup>1</sup> attributable to the Assessment is [0.00]%. APR is the Effective Cost of Credit in consumer loans and real estate loans expressed as a percentage interest rate. The annual percentage rate is the interest rate the borrower actually pays, including fees required in order to participate in the Program.
5. The total amount of incidental expenses (which includes recording fees and other costs associated with the Assessment and the Bonds), reserve, and capitalized interest to be added to your assessment is \$[0.00].
6. The Annual Assessment Administrative Fee will be in an annual amount equal to \$[].

<sup>1</sup> Annualized effective rate over the full assessment term.

Estimated Payment Schedule: <sup>1</sup>

Tax Year (Commencing July 1 and Ending June 30)	Interest	Principal	Total Assessment Installment	Annual Assessment Administrative Fee <sup>2</sup>	Total Contractual Assessment Payment
[2001]-[2002] <sup>2</sup>	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]
[2001]-[2002]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]
[2001]-[2002]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]
[2001]-[2002]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]
[2001]-[2002]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]	\$[0.00]

<sup>1</sup> The Estimated Initial Tax Year shown on preceding schedule is based upon the Estimated Recording Date; the actual Initial Tax Year will be based upon the actual date the Improvements are completed and paid for and the Notice of Assessment and Payment of Contractual Assessment Required is recorded.

AN UPDATED SCHEDULE OF ANNUAL ASSESSMENT INSTALLMENTS SHALL BE SPECIFIED IN THE "NOTICE OF ASSESSMENT AND PAYMENT OF CONTRACTUAL ASSESSMENT REQUIRED" TO BE RECORDED BY THE AUTHORITY IN THE OFFICE OF THE COUNTY RECORDER OF [COUNTY NAME]. UPON THE ISSUANCE OF THE BONDS, THE ACTUAL ANNUAL ASSESSMENT INSTALLMENTS WILL BE DETERMINED IN ACCORDANCE WITH THE CHAPTER 29 AND THE 1915 ACT, AS DESCRIBED IN THIS CONTRACT. AND WILL BE PROVIDED TO YOU IN THE FINAL COSTS AND PAYMENT SUMMARY.

<sup>2</sup> Estimated, subject to change.

**Prepayment:**

The Assessment may be prepaid in whole or in part, as described in Section 3(f) of this Contract.