

**COMMERCIAL PROPERTY ASSESSED
CLEAN ENERGY (“C-PACE”) AGREEMENT**

THIS AGREEMENT is made and entered into as of the 25th day of July, 2023, by and between **TOWN OF SALEM**, a municipal corporation organized and existing under the laws of the State of Connecticut (the “Municipality”), and the **CONNECTICUT GREEN BANK**, a quasi-public agency of the State of Connecticut (the “Green Bank”).

RECITALS

WHEREAS, Commercial Property Assessed Clean Energy (“C-PACE”) is a program to facilitate loan financing for clean Energy Improvements to commercial properties by utilizing a state or local assessment mechanism to provide security for repayment of the loans;

WHEREAS, section 16a-40g of the Connecticut General Statutes (as may be amended, the “Statute”) established the C-PACE program in Connecticut;

WHEREAS, subsection (b)(1) of the Statute directs the Green Bank to establish a commercial sustainable energy program (the “C-PACE Program”). A C-PACE Program is a program that facilitates financing for certain improvements to eligible properties and utilizes a municipal benefit assessment authorized by the Statute as security for such financing;

WHEREAS, pursuant to the Statute, the Green Bank and the Municipality are authorized to enter into a written agreement, as approved by the Municipality’s legislative body, pursuant to which the Municipality has agreed to assess, collect, remit and assign, benefit assessments to the Green Bank in return for Green Bank administering the C-PACE Program within the Municipality.

WHEREAS, this Agreement constitutes the written agreement authorized by the Statute.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and in order to effectuate the purposes of the Statute, it is hereby agreed as follows:

Section 1 - Definitions. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Statute.

Section 2 - Obligations of the Green Bank.

(a) **Program Requirements.** Subject to Section 7(i) of this Agreement, the Green Bank:

(1) Shall develop program guidelines governing (as may be amended from time to time, the “Program Guidelines”) the terms and conditions of the C-PACE Program;

(2) Shall receive and review applications submitted by Benefitted Property Owners within the Municipality for C-PACE Program financing, and approve or disapprove such applications in accordance with the Program Guidelines

(4) Shall establish the position of C-PACE Program liaison within the Green Bank;

(5) May establish a loan loss reserve or other credit enhancement program for the C-PACE Program;

(6) May use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for the C-PACE Program; and

(7) Shall adopt standards to ensure that the energy cost savings of the Energy Improvements over the useful life of such improvements exceed the costs of such improvements.

(8) May encourage Third-Party Capital Providers to provide financing directly to Benefited Property Owners in lieu of or in addition to the Green Bank providing such financing.

(b) Project Requirements. If a Benefitted Property Owner requests C-PACE financing from the Green Bank or a Third-Party Capital Provider, the Green Bank shall require that such project meet all applicable requirements of the Statute and the Program Guidelines.

(c) Financing Agreement for Project. The Green Bank or a Third-Party Capital Provider may enter into a financing agreement with the property owner of Qualifying Commercial Real Property (the "Financing Agreement"). The Financing Agreement shall clearly state the estimated benefit assessment that will be levied against the Qualifying Commercial Real Property. The Green Bank or a Third-Party Capital Provider shall disclose to the property owner the costs and risks associated with participating in the C-PACE Program, including risks related to the failure of the property owner to pay the benefit assessment provided for in the Financing Agreement. The Green Bank or a Third-Party Capital Provider shall disclose to the property owner the effective interest rate on the benefit assessment, including fees charged by the Green Bank to administer the C-PACE Program, and the risks associated with variable interest rate financing, if applicable. The Green Bank or a Third-Party Capital Provider shall notify the property owner that such owner may rescind any Financing Agreement entered into not later than three business days after such Financing Agreement is executed by the property owner and delivered to the Green Bank or a Third-Party Capital Provider. The Financing Agreement shall provide for the consent of existing mortgage holders and for the Benefit Assessment Lien to be recorded and assigned by the Municipality, as required by the Statute and described herein.

(d) Determination of Estimated and Final Benefit Assessments and Payments.

(1) Upon execution of the Financing Agreement, the Green Bank or the Third-Party Capital Provider shall determine the total benefit assessment amount, including fees charged by the Green Bank to administer the C-PACE Program, and shall set a fixed or variable rate of interest for the repayment of the benefit assessment amount. C-PACE Program

(2) The benefit assessment installment payment shall be due at the same time as the installments of the Municipality's real property taxes. If the Municipality changes its practices concerning the billing of annual real property taxes as to the number of installments and their due dates, the Green Bank will change its, and will cause Third-Party Capital Providers to change their, practices to the extent possible to correspond with the Municipality's practices.

Section 3 - Obligations of the Municipality.

- (a) Levy of Benefit Assessment. Upon receiving written notice from the Green Bank of the benefit assessment as provided in Section 2(c) herein, the Municipality shall promptly levy the benefit assessment against the Qualifying Commercial Real Property to be benefited by the project financed by the Green Bank or Third-Party Capital Provider and described in the Financing Agreement, and shall place a lien on the Qualifying Commercial Real Property to secure payment of the benefit assessment in the form of the attached Exhibit A (“Benefit Assessment Lien”). The Benefit Assessment Lien may have two attachments: (1) the legal description of the Qualifying Commercial Real Property and, if available, (2) the payment schedule associated with such Benefit Assessment Lien. As provided in the Statute, the benefit assessments levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the Qualifying Commercial Real Property on which they are made until they are paid. The Green Bank will reimburse the Municipality the cost charged by the Town Clerk for recording the Benefit Assessment Lien. Such Benefit Assessment Lien shall be levied and collected in the same manner as the property taxes of the Municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies and lien priorities as provided by the Statute.
- (b) Recording and Release of Lien. As provided in the Statute, each Benefit Assessment Lien shall be recorded and released in the manner provided for property tax liens, subject to the consent of existing mortgage holders, and shall take precedence over all other liens or encumbrances except a lien for taxes of the Municipality on real property, which lien for taxes shall have priority over such Benefit Assessment Lien.
- (c) Assignment of Benefit Assessment Lien. Upon the written request of the Green Bank, the Municipality shall assign, in the form of the attached Exhibit B, to the Green Bank any and all Benefit Assessment Liens filed by the Municipality’s tax collector, as provided in this Agreement. The Green Bank may sell or assign, for consideration, any and all Benefit Assessment Liens received from the Municipality. The assignee or assignees of such Benefit Assessment Liens shall have and possess the same powers and rights at law or in equity as the Municipality and its tax collector would have had if the Benefit Assessment Lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. The assignee shall have the same rights to enforce such Benefit Assessment Liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys’ fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to the assignment and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.
- (d) Amendment of the Benefit Assessment Lien. Pursuant to the Financing Agreement, the final amount of the benefit assessment may be adjusted after the levy of the Benefit Assessment Lien. Such an adjustment may be, but is not limited to, the result of a change in the energy improvement service contract amount during the construction period, a change in the amount of capitalized interest, or an amendment to the Financing Agreement. In the event that the final benefit assessment amount or payment schedule needs to be adjusted at the completion of the project, or any other time, the Green Bank or Third-Party Capital Provider shall amend the Benefit Assessment Lien to reflect such adjustment by recording an amendment in the form of the attached Exhibit C. Any such amendment of the Benefit Assessment Lien shall meet the requirements of

the Statute and the Program Guidelines. The Green Bank will reimburse the Municipality the cost charged by the Town Clerk for amending the Benefit Assessment Lien.

(e) Billing and Collection; Payment to the Green Bank. Green Bank and Municipality agree that the Municipality shall have no obligation to bill or collect benefit assessments. Green Bank shall bill and collect such benefit assessments in the same manner as real property taxes in the Municipality and in accordance with the Program Guidelines.

(f) Collection of Delinquent Payments.

(1) The Municipality shall have no obligation to collect delinquent benefit assessment payments. Notwithstanding the forgoing, if the Green Bank makes a written request to the Municipality for its assistance in the collection of delinquent benefit assessments and related charges, the Municipality, in its sole discretion, and the Green Bank may enter into a separate agreement for those services, which agreement shall provide for compensation to be paid to the Municipality for its collection services. The agreement may provide for the Municipality to pursue the collection of any delinquent benefit assessments with the same diligence it employs in the collection of the Municipality's real property taxes, including the commencement of foreclosure proceedings to the extent provided by the then-current statutes of the State of Connecticut, and to take such actions that are required to preserve the Benefit Assessment Lien securing the delinquent benefit assessments.

(2) The Municipality will provide written notice to the Green Bank of any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any real property for delinquent real property taxes if such real property is subject to a lien securing a delinquent benefit assessment. Similarly, the Green Bank shall provide written notice to the Municipality of the institution of a judicial foreclosure or other proceeding against any qualified commercial real property for a delinquent benefit assessment.

(g) Promotion of Program; Assistance for Green Bank Financing. The Municipality shall use good faith efforts to assist the Green Bank in local marketing efforts and outreach to the local business community to encourage participation in the C-PACE Program, such as including C-PACE Program information on the Municipality's website, distributing an informational letter from chief elected official to local businesses regarding the program, and conducting one or more business roundtable event(s).

Section 4 - Indemnification.

The Green Bank agrees that it will protect, defend, indemnify and hold harmless the Municipality and its officers, agents and employees to the extent of available proceeds derived from the benefit assessments from and against all claims, demands, causes of action, damages, judgments, losses and expenses, including reasonable attorney's fees, arising out of or in connection with the actions of the Green Bank's officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

Section 5 - Term.

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the benefit assessments have been paid in full or deemed no

longer outstanding. The Municipality may opt-out of continuation in the program at any time on sixty (60) days advance notice to the Green Bank, provided that the provisions of this Agreement shall continue with regard to benefit assessments assessed prior to such termination date until those benefit assessments have been paid in full or are no longer outstanding.

Section 6 - Default.

Each party shall give the other party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within the 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such default. The parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance, provided however, in no event shall either party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 7(c) of this Agreement.

Section 7 - Miscellaneous Provisions.

- (a) Assignment or Transfer. Except as provided in Section 3(c) hereof, a party may not assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State of Connecticut or to a private party or entity without the prior written consent of the other party.
- (b) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.
- (c) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.
- (d) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the parties, as follows:

If to the Municipality:

Town of Salem
270 Hartford Road
Salem, CT 06420]
Attention: First Selectman

If to the Green Bank:

Connecticut Green Bank
75 Charter Oak Avenue
Suite 1-103
Hartford, CT 06106
Attention: Legal Department

- (e) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by the Green Bank and the Municipality.
- (f) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State of Connecticut. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the State of Connecticut.
- (g) Entire Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.
- (h) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.
- (i) Conflict of Terms. Except as otherwise provided in this Agreement, if any provision or defined terms contained in this Agreement conflicts with any provisions or defined terms in the Statute, the provision contained in this Statute shall govern and control.

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

TOWN OF SALEM

By: _____
Ed Chmielewski, First Selectman

CONNECTICUT GREEN BANK

By: _____
Bryan T. Garcia, President

EXHIBIT A

CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT

The undersigned Tax Collector of the TOWN OF SALEM (“Municipality”), for and on behalf of the Connecticut Green Bank (the “Green Bank”), formerly known as the Clean Energy Finance and Investment Authority, pursuant to the Commercial Property Assessed Clean Energy Program established under Connecticut General Statutes Section 16a-40g, as amended (the “Act”), and the Municipal Agreement between the Municipality and Green Bank dated [_____], HEREBY LEVIES A BENEFIT ASSESSMENT AGAINST AND LIEN UPON certain real property commonly referred to as [Property Address] and described more particularly in the attached **Exhibit A** (the “Property”), situated in the Municipality and owned on the date hereof in whole or in part by [BORROWER IN CAPS] (the “Property Owner”), said levy and lien shall secure the repayment of financing for energy improvements made or to be made to the Property pursuant to that certain Financing Agreement between Property Owner and Green Bank dated [Financing Agreement Date], as may be amended (the “Financing Agreement”). This levy and lien are subject to the terms and conditions of the Financing Agreement and are made in accordance with the Financing Agreement. Upon the transfer or conveyance of the Property, each subsequent owner of the Property, by accepting title to the Property, assumes and agrees to perform all of the obligations and covenants set forth herein and in the Financing Agreement and each other document referenced therein, including, but not limited to, making the installment payments described below, from and after the date such owner acquires title to the Property. The amount and repayment of said levy and lien, as determined by Green Bank and provided to Municipality, are as follows: an installment payment plan is in effect for payment of the benefit assessment, and is based on the principal amount of the benefit assessment of \$[Lien Amount], with interest thereon at a fixed rate equal to [Rate#]% per annum, plus any additional fees and expenses pursuant to the Financing Agreement, with installments of principal and interest due and payable pursuant to the Financing Agreement[, all as set forth in the attached **Exhibit B**][the final installment payment plan and maturity date of this levy and lien shall be provided to the Municipality by Green Bank and filed on the Land Records of the Municipality]. In the event that any such installment shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid installment(s) at the rate of 18% per annum, as provided by the Act and by law. At such time as the principal and interest payments of the benefit assessment have been satisfied and paid in full, a release of this Certificate shall be filed in the Land Records of the Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Act to evidence a lien for the benefit assessment levied upon the Property for the special benefits conferred upon said Property by the renovation or retrofitting for energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances except a lien for taxes of the Municipality on real property, which lien for taxes shall have priority over this lien. For the purposes of this lien, the Green Bank and any future successors, assigns or heirs of such lien shall be bound by and irrevocably subordinated to any environmental land use restriction recorded on the land records of the Municipality pursuant to Conn. Gen. Stat. § 22a-133o after this lien is filed on the land records of the Municipality.

The portion of this Certificate which constitutes a levy of benefit assessment and notice of installment payment of benefit assessments is filed pursuant to the provisions of the Act and the Connecticut General Statutes, as amended. This Certificate and the levy and lien set forth herein shall run with the land and shall be binding upon Property Owner and its heirs, executors, administrators, successors and assigns.

By order of the First Selectman of the Town of Salem.

Dated this 25th day of July, 2023.

Name: Ed Chmielewski
Title: First Selectman

EXHIBIT B

ASSIGNMENT OF BENEFIT ASSESSMENT LIEN

KNOW ALL PERSONS BY THESE PRESENTS, that the TOWN OF SALEM, a Connecticut municipal corporation (hereinafter referred to as "Assignor"), acting herein by _____, its Tax Collector, duly authorized pursuant to a Municipal Agreement dated _____, 2023, between the Assignor and the Connecticut Green Bank (hereinafter referred to as "Assignee"), in consideration of One Dollar (\$1.00) and other valuable consideration paid to Assignor by the Assignee, the receipt of which is hereby acknowledged, hereby quit-claims, grants, bargains, sells, conveys, assigns, transfers and sets over unto Assignee, without warranty covenants and without recourse, all of its right, title and interest in and to that certain benefit assessment lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, filed by the _____ Tax Collector on the _____ Land Records, on property owned on the date hereof in whole or in part by _____ and as described on **Exhibit A** and also commonly referred to as _____, attached hereto and made a part hereof (the "Lien"), to have and to hold the same unto the said Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to the authority granted to Assignor as a municipality by Connecticut General Statutes Section 16a-40g, as amended.

By execution of this Assignment, the Assignor assigns to Assignee, and the Assignee assumes, all of the rights at law or in equity, obligations powers and duties as the Assignor and the Assignor's Tax Collector would have with respect to the Lien, if the Lien had not been assigned with regard to precedence and priority of such lien, the accrual of interest, charges, fees and expenses of collection, pursuant to Connecticut General Statutes Section 16a-40g, as amended.

This Assignment by the Assignor is absolute and irrevocable and the City/Town shall retain no interest, reversionary or otherwise, in the Lien.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this ____ of _____, 20____.

Assignor

By _____
Tax Collector

STATE OF CONNECTICUT))
COUNTY OF _____)

ss.: _____

On this the ____ day of _____, 20____, before me _____, the undersigned officer, personally appeared _____, Tax Collector, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained and that he/she acknowledged the same to be his/her free act and deed, before me, in his/her capacity as said Tax Collector.

EXHIBIT C

**CONFIRMATION AND AMENDMENT OF
BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE**

[Connecticut Green Bank, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut (“CGB”)] and _____, a _____ (the “Borrower”) are parties to that certain Financing Agreement dated as of _____, 20____, (as the same may be amended from time to time, the “Financing Agreement”).

Pursuant to the Financing Agreement, the Borrower has renovated or retrofitted the property located at _____, Connecticut (the “Property”), with energy improvements (the “Project”) in accordance with the requirements of the Commercial Property Assessed Clean Energy Program (the “Program”) established under Connecticut General Statutes Section 16a-40g, as amended, and [CGB] has provided the financing for such Project in the amount of \$_____ (the “Benefit Assessment Advance”), the repayment of which is provided for under a Benefit Assessment Lien (as hereinafter defined) recorded against the Property; and

The Borrower is obligated to make benefit assessment payments required by the Certificate of Levy and Lien of Benefit Assessment (the “Benefit Assessment Lien”) dated _____, 20__ and filed by the City/Town of _____, Connecticut (the “Municipality”) and recorded in the Land Records of the Municipality in Volume/Book ___ at Page ___; which Benefit Assessment Lien was assigned by the Municipality to CGB pursuant to that certain Assignment of Benefit Assessment Lien dated _____, 20____ and recorded in the Land Records of Municipality in Volume/Book ___ at Page ___[; which Benefit Assessment Lien was further assigned by CGB to [Entity] pursuant to that certain Assignment of Benefit Assessment Lien dated _____, 20__ and recorded in the Land Records of Municipality in Volume/Book ___ at Page ___].

Borrower has completed the Project and [CGB] has advanced the Benefit Assessment Advance to Borrower in accordance with the Program and the Financing Agreement. Pursuant to the Financing Agreement, the Benefit Assessment Lien shall be repaid in accordance with the installment payment plan attached hereto as Schedule 1 (the “Payment Schedule”). The Payment Schedule is based on the principal amount of the benefit assessment of \$_____ (the “Benefit Assessment Amount”), including any capitalized interest or any additional fees and expenses pursuant to the Financing Agreement, with interest thereon at the rate set forth in the Financing Agreement and with equal installments of principal and interest coming due as set forth in the Payment Schedule. To the extent the Payment Schedule and Benefit Assessment Amount differ from any payment schedule or benefit assessment amount set forth in the Benefit Assessment Lien, the Benefit Assessment Lien is hereby amended to incorporate the attached Payment Schedule and the Benefit Assessment Amount.

Except as amended and modified hereby, the Financing Agreement and the Benefit Assessment Lien shall continue unmodified and in full force and effect and each is hereby ratified and confirmed.

(Signature appears on following page)

Dated this ___ day of _____, 20_____.

WITNESSES:

[CONNECTICUT GREEN BANK]

_____ By: _____

Name:

Name: _____

_____ Title: _____

Name:

STATE OF CONNECTICUT)

) ss. _____

_____, 20_____

COUNTY OF _____)

Personally appeared _____, the _____ of [Connecticut Green Bank, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut], signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said body politic and corporate, before me.

Commissioner of the Superior Court
Notary Public
My Commission Expires:_____