

Midway City Council
6 February 2024
Regular Meeting

Resolution 2024-01 /
C-PACE Program
Documents



RESOLUTION 2023-01

A RESOLUTION ADOPTING VARIOUS DOCUMENTS FOR THE HOMESTEAD RESORT TO UTILIZE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING

WHEREAS, the Utah Code authorizes governmental entities such as Midway City to participate in the Commercial Property Assessed Clean Energy (C-PACE) Program; and

WHEREAS, participation in the C-PACE Program does not financially obligate the City; and

WHEREAS, the lender will indemnify the City against any legal liability.

WHEREAS, participation in the C-PACE program allows private commercial developers to receive financing for energy efficiency and water conservation improvements; and

WHEREAS, the City Council of Midway City finds that it is in the best interest of its citizens to encourage energy efficiency and water conservation; and

WHEREAS, Midway City desires to work with the Homestead Resort to facilitate the C-PACE program financing.

NOW THEREFORE, be it hereby **RESOLVED** by the City Council of Midway City, Utah, as follows:

Section 1: The Mayor of Midway City is authorized to execute on behalf of the City the attached documents.

PASSED AND ADOPTED by the Midway City Council on the _____ day of _____, 2024.

MIDWAY CITY

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, Recorder

(SEAL)

Exhibit A

WHEN RECORDED, RETURN TO:
Jacob Carlton, Esq.
Gilmore & Bell, P.C.
15 West South Temple, Suite 1450
Salt Lake City, Utah 84101

ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST

This ASSIGNMENT OF NOTICE OF ASSESSMENT INTEREST (this “Assignment”) is dated as of December __, 2023 by Midway City, Utah, a political subdivision and body politic duly organized and validly existing under the Constitution and laws of the State of Utah (“Assignor”) to Petros PACE Finance Titling Trust, a Delaware statutory trust (“Assignee”).

KNOW ALL MEN BY THESE PRESENTS, that for value received, Assignor hereby grants, assigns and transfers to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor’s interest under that certain Notice of Assessment Interest, dated as of December __, 2023, by Assignor, recorded on December __, 2023 as Instrument No. _____ in the office of the records of Wasatch County, State of Utah (the “Notice of Assessment Interest”), together with the obligations secured by the Notice of Assessment Interest and all other instruments, documents and certificates executed in connection therewith.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

“ASSIGNOR”

MIDWAY CITY, UTAH

By: _____

Name: _____

Title: _____

STATE OF UTAH)

: ss.

COUNTY OF WASATCH)

On December ____, 2023 personally appeared before me, _____, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of Midway City, Utah in his/her capacity as _____ of Midway City, Utah.

My Commission Expires: _____

Notary Public

Residing at: _____, Utah

“ASSIGNEE”

PETROS PACE FINANCE TITLING TRUST, a
Delaware statutory trust

By: Petros PACE Finance, LLC,
a Texas limited liability company,
its Attorney-in-Fact

By: _____
Name: Mansoor Ghori
Title: Manager

STATE OF _____)
: ss.
COUNTY OF _____)

On December ___, 2023 personally appeared before me, Mansoor Ghori, who duly acknowledged to me that he executed the foregoing instrument on behalf of Petros PACE Finance Titling Trust, a Delaware statutory trust, in his capacity as Manager of Petros PACE Finance, LLC, a Texas limited liability company, its Attorney-in-Fact.

My Commission Expires:

Notary Public
Residing at: _____

EXHIBIT A

LEGAL DESCRIPTION AND TAX ID NUMBER OF
PROPERTY TO BE ASSESSED

[To Come]

Tax Identification Number: 00-0006-2104

Exhibit B

WHEN RECORDED, RETURN TO:

Jacob B. Carlton
Gilmore & Bell, P.C.
15 West South Temple, Suite 1450
Salt Lake City, UT 84101

NOTICE OF ASSESSMENT INTEREST

Notice is hereby given that Midway City, Utah, a political subdivision and body politic duly organized and validly existing under the Constitution and laws of the State of Utah (the “City”) claims an interest in the properties described on Exhibit A (the “Property”) arising out of the requirements of one or more energy assessment areas (the “Assessment Area”) and the terms and provisions of a Written Agreement, dated as of December __, 2023 (the “Written Agreement”) between the City and Petros PACE Finance Titling Trust, a Delaware statutory trust and its successors and assigns, levying an assessment against certain properties in the Assessment Area.

[The remainder of this page left blank intentionally]

Dated this December ____, 2023.

MIDWAY CITY, UTAH

By: _____

Name: _____

Title: _____

STATE OF UTAH)

: ss.

COUNTY OF WASATCH)

On December ____, 2023 personally appeared before me, _____, who duly acknowledged to me that he/she executed the foregoing instrument on behalf of Midway City, Utah in his/her capacity as _____ of Midway City, Utah.

My Commission Expires:

Notary Public
Residing at: _____, Utah

EXHIBIT A

LEGAL DESCRIPTION AND TAX ID NUMBER OF
PROPERTY TO BE ASSESSED

[To Come]

Tax Identification Number: 00-0006-2104

Exhibit C

WRITTEN AGREEMENT

This WRITTEN AGREEMENT (this “Agreement”) is entered into this December ____, 2023 (the “Effective Date”), between MIDWAY CITY, UTAH, a political subdivision and body politic duly organized and existing under the Constitution and laws of the State of Utah (the “Local Entity”) and PETROS PACE FINANCE TITLING TRUST, a Delaware statutory trust (including its designee, successors and assigns, the “Lender”).

RECITALS:

1. Pursuant to the Commercial Property Assessed Clean Energy Act, Title 11 Chapter 42a, Utah Code Annotated 1953, as amended (the “Act”), the Local Entity’s executive or administrator may authorize the designation of an energy assessment area and the levying of an assessment within such energy assessment area to facilitate the financing of the costs of acquiring, constructing and installing certain energy efficiency upgrades and/or renewable energy systems and related improvements to be owned by one or more property owners and assign to a third-party lender the Local Entity’s rights in its energy assessment lien.

2. The Homestead Group, LLC, a Utah limited liability company (the “Borrower”), as the owner of the real property identified in Exhibit A attached hereto (the “Property”), has requested that the Local Entity designate an energy assessment area, the boundaries of which will be coterminous with the boundaries of the Property, and levy an assessment against the Property to facilitate the financing of the costs of acquiring, constructing and installing certain energy efficiency upgrades and/or renewable energy systems and related improvements (collectively, the “Improvements”) to the Property as authorized under the Act.

3. The undersigned executive or administrator of the Local Entity hereby determines that it is in the best interest of the Local Entity to (a) designate an energy assessment area encompassing the Property and (b) to levy an assessment against the Property benefited by Improvements to the Property to finance the costs of said Improvements.

4. The Borrower has provided the Local Entity an executed Consent of Lienholder to Assessment (the “Waiver and Consent”), a copy of which is attached hereto as Exhibit B from each person or institution holding a lien on the Property.

5. The undersigned executive or administrator of the Local Entity now desires to designate the energy assessment area, to levy said assessments and, pursuant to Section 11-42a-302 of the Act, to assign to the Lender the Local Entity’s rights in the energy assessment lien all in accordance with this Agreement.

NOW, THEREFORE, in consideration of the premises stated herein, the designation of the Energy Assessment Area (as defined below), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

Section 1. Requirements for Designation of Energy Assessment Area. Pursuant to Section 11-42a-202 of the Act, the Borrower has provided to the Local Entity:

(a) the written consent from each person or institution holding a lien on the Property (the “Loan”);

(b) evidence that there are no delinquent taxes, special assessments, or water or sewer charges on the Property;

(c) evidence that the Property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency, that has not been cured;

(d) evidence that there are no involuntary liens, including a lien on the Property, or on the proceeds of a contract relating to the Property, for services, labor, or materials furnished in connection with the construction or improvement of the Property; and

(e) the written consent of the Borrower to the Local Entity’s designation of the Energy Assessment Area, levying of the assessment, and creation of the Assessment Lien (as defined below) on the Borrower’s property.

Section 2. Designation of Energy Assessment Area. Pursuant to Section 11-42a-201 of the Act, the Local Entity hereby designates a voluntary energy assessment area that shall be known as the “Marriott Autograph Hotel C-PACE Assessment Area” (the “Energy Assessment Area”). The legal description and tax identification number of the Energy Assessment Area are set forth in Exhibit A attached hereto.

Section 3. Levy of Assessment. Pursuant to Section 11-42a-201 of the Act, the Local Entity hereby authorizes the levy of an assessment against the Property in an aggregate principal amount not to exceed \$45,000,000 (the “Assessment Lien”) which shall bear interest at an interest rate not exceeding 12% per annum and shall mature on or prior to thirty (30) years following the Effective Date hereof. The final terms of the Assessment Lien shall be as set forth in a financing agreement between the Lender and the Borrower (the “Financing Agreement”) and shall be deemed approved by the Local Entity provided that the final aggregate principal amount, the final interest rate and the maturity date of the assessment levied do not exceed the parameters set forth in this Section 3. Per Section 11-42a-204 of the Act, the assessments will not exceed in the aggregate the sum of: (a) the contract price or estimated contract price of the Improvements; (b) overhead costs not to exceed fifteen percent (15%) of the sum of the contract price or estimated contract price; (c) an amount for contingencies of not more than ten percent (10%) of the sum of the contract price or estimated contract price; (d) capitalized interest; and (e) an amount sufficient to fund a reserve fund. If Lender and the Borrower fail to agree to the terms set forth in the Financing Agreement, or do not close the Loan for any other reason, then the Lender’s sole obligation hereunder shall be the release of the Assessment Lien by filing a termination of the Notice of Assessment Interest (as defined below).

Pursuant to Section 11-42a-201(2) of the Act, the Local Entity will, as soon as practicable following the Effective Date hereof, give notice of the execution of this Agreement by posting a copy of this Agreement (i) on the Utah Public Notice website, (ii) on the Local Entity's official website, and (iii) in a public location within the jurisdictional boundaries of the Local Entity for a period of at least twenty-one (21) days.

In addition, pursuant to Section 11-42a-201(4) of the Act, the Lender will cause to be filed with the Wasatch County Recorder a notice of assessment interest (the "Notice of Assessment Interest") with respect to this Agreement, stating that the Local Entity has an assessment interest in the Energy Assessment Area describing the Energy Assessment Area by legal description and tax identification number, and containing any other information required by Section 11-42a-201 of the Act. The Lender shall file the Notice of Assessment Interest within five (5) days after the Effective Date of this Agreement.

Section 4. Assignment of Assessment Lien. Pursuant to Section 11-42a-302 of the Act, the Local Entity hereby assigns to the Lender all its rights and interests in the Assessment Lien, including but not limited to the rights and powers of the Local Entity at law or in equity to enforce the Assessment Lien, including those set forth in Sections 11-42a-303 (other than those set forth in Section 11-42a-303(2) of the Act) and 11-42a-304 of the Act.

Section 5. Requirements for Written Agreement. In connection with the assignment of the Assessment Lien to the Lender as set forth herein and pursuant to Section 11-42a-302(2)(b), the Lender agrees that:

(a) It shall be subject to an audit by the auditor of the State of Utah (the "State") regarding the Assessment Lien;

(b) It shall submit to the Local Entity monthly reports, including information regarding payments received by the Lender in connection with the Assessment Lien;

(c) The Local Entity shall in no event be liable for any actions taken by the Lender in connection with Assessment Lien; and

(d) The Local Entity is not liable to repay the Loan or any other costs in connection with the Assessment Lien, and the repayment of the Loan is not an obligation of the Local Entity or a charge against the Local Entity's general credit or taxing power.

Section 6. Local Entity Approval of Improvements. The Local Entity hereby authorizes and approves the Improvements listed on Exhibit C attached hereto as improvements which may be financed under the Act.

Section 7. Written Agreement. This Agreement shall constitute the written agreement pursuant to Section 11-42a-104 and Section 11-42a-302(1)(b) of the Act.

Section 8. Representations and Warranties of the City. The Local Entity represents and warrants that:

(a) It is a political subdivision and body politic duly organized and validly existing under the Constitution and laws of the State of Utah;

(b) the execution and delivery of this Agreement by the Local Entity does not materially conflict with, violate, or constitute on the part of the Local Entity a material breach or violation of any of the terms and provisions of, or constitute a material default under (i) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (ii) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the Local Entity is party or by which the Local Entity is or may be bound or to which any of the Local Entity's property or assets is or may be subject; or (iii) the creation and governing instruments of the Local Entity;

(c) there is no action, suit, proceeding, inquiry, or investigation at law or in equity, with merit, by or before any court or public board or body to which the Local Entity is a party, or threatened against the Local Entity wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the Local Entity of this Agreement; and

(d) this Agreement (i) does not conflict with or create a material breach or default under any existing law, regulation, order, or agreement to which the Local Entity is subject, and (ii) after expiration of the 30-day statute of repose (or challenge period) under Section 11-42a-104 of the Act, will be a legal, valid, and binding obligation of the Local Entity enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency, or other similar laws generally affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases.

Section 9. Representations and Warranties of Lender; Release and Indemnification.

(a) The Lender represents and warrants that:

(i) The Lender is validly organized and existing under the laws of the United States of America;

(ii) Assuming the due authorization, execution and delivery by the Local Entity, this Agreement constitutes a valid and binding obligation of the Lender, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights and by the application of equitable principles and by the exercise of judicial discretion in appropriate cases;

(iii) The execution and delivery of this Agreement by the Lender does not materially conflict with, violate, or constitute on the part of the Lender a material breach or violation of any of the terms and provisions of, or constitute a material default under (A) any existing constitution, law, or administrative rule or regulation, decree, order, or judgment; (B) any corporate restriction or any bond, debenture, note, mortgage, indenture, agreement, or other instrument to which the Lender is a party or by which the Lender is or may be bound or to which any of the Lender's property or assets is or may be subject; or (C) the creation and governing instruments of the Lender; and

(iv) There is no action, suit, proceeding, inquiry, or investigation at law or in equity, with merit, by or before any court or public board or body to which the Lender is a party, or threatened against the Lender wherein an unfavorable decision, ruling, or finding would adversely affect the validity or enforceability or the execution and delivery by the Lender of this Agreement.

(b) The Lender hereby releases the Local Entity from any possible claim it may have that results from any act or omission of the Local Entity with respect to this Agreement, the financing to which it relates, or the designation of the Energy Assessment Area, the levying of the assessment, or the creation of the Assessment Lien.

(c) The Lender shall indemnify and hold harmless the Local Entity from and against any and all losses, liabilities, penalties, fines, damages, and claims, and all related costs and expenses (including attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from or in connection with any dispute, claim, demand, action, citation, or legal proceeding (i) arising out of or related to the financing of the Improvements, (b) arising out of or related to the enforcement of the assessment and the Assessment Lien, or (c) resulting from any act or omission of the Lender or any act or omission of the Local Entity related to the foregoing, except to the extent arising out of the Local Entity's gross negligence or willful misconduct.

Section 10. Effective Date. Pursuant to Section 11-42a-201(3)(a) of the Act, this Agreement shall take effect as of the Effective Date.

Section 11. Severability. The invalidity or un-enforceability in particular circumstances of any provision of this Agreement will not extend beyond such provision or circumstances and no other provision hereof will be affected by such invalidity or un-enforceability.

Section 12. Headings. The headings of the sections of this Agreement are inserted for convenience only and will not affect the meaning or interpretation hereof.

Section 13. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their successors and assigns. Lender may assign its rights and

obligations under this Agreement to any person, firm, corporation, partnership (limited or general) or other entity without the prior written consent of the Local Entity.

Section 14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

Section 15. Counterparts. This Agreement may be executed in several counterparts, all or any of which may be treated for all purposes as an original and shall constitute and be one and the same instrument.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the Local Entity, by the undersigned, and the Lender have executed this Agreement all as on the date first set forth above.

DATED this December __, 2023.

MIDWAY CITY, UTAH

By: _____

Name: Celeste Johnson

Title: Mayor

PETROS PACE FINANCE TITLING
TRUST, a Delaware statutory trust

By: Petros PACE Finance, LLC,
a Texas limited liability company,
it's Attorney-in-Fact

By: _____
Mansoor Ghori, Manager

(Signature Page to Written Agreement – Marriott Autograph Hotel C-PACE)

S-1

EXHIBIT A

Legal Description and Tax Identification Numbers

[To Come]

Tax Identification Number: 00-0006-2104

EXHIBIT B

Consent of Lienholder

EXHIBIT C

C-PACE Improvements to be Financed

[To Come]