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ASSIGNMENT AGREEMENT OF C-PACE ASSESSMENT

THIS ASSIGNMENT AGREEMENT OF C-PACE ASSESSMENT (this "Assignment Agreement" or "Agreement") is made effective as of the ____ day of _____, 202_, by and between [MUNICIPALITY], a municipal corporation of the State of New Jersey (the "State"), having an address at _____ (the "Assignor"), and [CAPITAL PROVIDER], a _____, having a principal office at _____ (the "Assignee"); and together with the Assignor, the "Parties", and each, a "Party").

BACKGROUND

WHEREAS, the New Jersey Economic Development Authority (the "Authority") has established the Garden State C-PACE Program (the "C-PACE Program"), and developed the Garden State C-PACE Program Guidelines (the "Program Guidelines"), pursuant to and in accordance with P.L. 2021, c. 201 (N.J.S.A. 34:1B-374 et seq.) (the "Act"), to facilitate private and other loan financing for clean energy and resiliency-related improvements to commercial and certain other types of properties (each, a "C-PACE Project"); and

WHEREAS, the C-PACE Program facilitates private and other loan financing for the implementation of a C-PACE Project by imposing a local improvement assessment in accordance with N.J.S.A. 40:56-1 et seq. (a "C-PACE Assessment") on real property as a means of securing such financing to fund a C-PACE Project; and

WHEREAS, _____ (the "Project Owner") applied to the Authority for approval of Project Owner's proposed project ("Project") located at [Property Address] (the "Project Property") and the Authority determined that such Project complies with the criteria under the Act and the Program Guidelines and is eligible for a C-PACE Assessment; and

WHEREAS, the Authority and the Assignee have entered into a Capital Provider Participation Agreement (the "Capital Provider Agreement") that sets forth certain rights and obligations of the Authority and the Assignee; and

WHEREAS, the Assignee and the Project Owner have entered into a financing agreement (the "Direct Financing Agreement"), pursuant to which the Assignee has agreed to provide financing to the Project Owner to finance costs of the Project Owner's Project, such financing to be secured by an assignment to the Assignee of the C-PACE Assessment, in accordance with the Act and the Program Guidelines; and

WHEREAS, the municipality in which the Project Property is located (“Municipality”), the Assignor, all Property Owners of the Project Property (“Owner”), and the Project Owner entered into a C-PACE Assessment Agreement dated _____ (the “Assessment Agreement”) and a Notice of Assessment dated _____ (the “Notice of Assessment”), each with respect to the Project, pursuant to which the Assignor imposed a C-PACE Assessment on the Project Property; and

WHEREAS, the Project Owner has requested that the Assignor assign the C-PACE Assessment to the Assignee to facilitate the financing of the Project; and

WHEREAS, the Assignor and the Assignee desire to enter into this Assignment Agreement to assign the C-PACE Assessment to the Assignee as security for financing from the Assignee to the Project Owner to finance costs of the Project; and

WHEREAS, pursuant to the Act, if the Owner is delinquent on taxes, charges, or other assessments as well as delinquent on a C-PACE Assessment, any payments with respect to its C-PACE Assessment are required to be applied towards any and all such delinquencies before being applied to any payment of the C-PACE Assessment; and

WHEREAS, the Act and the Program Guidelines sets forth certain other rights, remedies, and obligations of the Owner, the Project Owner, the Assignor, and the Assignee with respect to the C-PACE Assessment and the assignment thereof to the Assignee; and

WHEREAS, the Assignor desires to assign to the Assignee, in accordance with the Act and the Program Guidelines, all of Assignor’s right, title and interest in and to the C-PACE Assessment, subject, however, to the provisions of the Act and the Program Guidelines.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and provisions set forth below:

ASSIGNOR HEREBY ABSOLUTELY grants, conveys, transfers and assigns to Assignee, without recourse or warranty of any kind, express or implied, all of Assignor’s right, title and interest in and to the C-PACE Assessment created pursuant to and under the Notice of Assessment and the Assessment Agreement, together with the obligations of the Project Owner and the Owner secured thereby and all other instruments, documents and certificates executed in connection therewith, subject to and in accordance with the provisions of the Act (the “Assigned Interest”). This Assignment is not an assignment of Assignor’s obligations to bill, collect, remit, and enforce the C-PACE Assessment;

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever, from and after the date hereof.

ASSIGNEE HEREBY ACCEPTS the foregoing assignment of the Assigned Interest (the “Assignment”).

1. Defined Terms. Capitalized terms used in this Assignment Agreement and not defined herein shall have the meanings ascribed thereto in the Assessment Agreement, a true copy of which is attached hereto as Exhibit A.

2. Absolute Assignment. The Assignment shall be an unconditional, absolute, and present assignment and not a mere assignment in the nature of a pledge or the mere grant of a security interest.

3. Assignor's Obligations; Remittance Instructions.

(a) Pursuant to the Act, the Program Guidelines, and the Assessment Agreement, the Assignor is obligated to levy, bill, collect, remit, and enforce the C-PACE Assessment.

(b) The Assignor shall remit payments of the C-PACE Assessment to the Assignee in accordance with the instructions set forth on Schedule I hereto. The Assignee may revise the remittance instructions by providing at least ___ business days prior written notice to the Assignor.

4. Assignor's Representations. The Assignor represents, warrants, and agrees that:

(a) the Assignor is entitled to receive all Assessment Installments in accordance with the Act, the Program Guidelines, and the terms of the Assessment Agreement;

(b) the Assignor has not previously sold, assigned, or transferred the C-PACE Assessment;

(c) the Assignor has full power and authority to assign the Assigned Interest to the Assignee and has taken such actions as are necessary in order to authorize and effectuate the Assignment;

(d) except for the Assignment herein to the Assignee, the Assignor shall not sell, assign, or transfer the C-PACE Assessment during the term of the Assignment; and

(e) to the extent permitted by law, the Assignor will take such action or actions for the benefit of the Assignee as the Assignee shall reasonably request in order that the Assignee may realize the benefits of this Assignment Agreement and receive the C-PACE Assessment pursuant to and in accordance herewith; provided, however, as between the Assignor and the Assignee, such action or actions taken by the Assignor shall be at the cost and expense of the Assignee.

5. No Waiver. Failure of the Assignee to exercise any of its rights or remedies hereunder or under the Assessment Agreement shall not be construed to be a waiver by the Assignee of any of such rights or remedies.

6. Recordation of Documents. The [Assignor][Assignee] shall record or cause to be recorded in the County Recording Office the following documents within the time required in the Program Guidelines in the following order: (i) the Notice of Assessment; (ii) the Assessment Agreement;

and (iii) this Assignment Agreement. Amended documents shall be recorded in the same manner and in the same order.

7. Amendment. This Assignment Agreement shall not be amended or modified in any respect, in whole or in part, except in a writing executed by the Assignor and the Assignee.

8. Release of C-PACE Lien; Termination of Assignment Agreement. Upon the payment or other discharge in full of the C-PACE Assessment, the Assignee shall cooperate with the Project Owner to provide joint written notice thereof to the Assignor. This Assignment Agreement and the Assignment of the Assigned Interest shall terminate upon the termination of the Assessment Agreement.

9. Assignee's Successors in Interest. This Assignment Agreement inures to the benefit of the named Assignee and its successors and assigns and binds the Assignee and the Assignee's successors, assigns and legal representatives.

10. Section 15. Third-Party Administrators; Other Government Agencies. The Authority has the current responsibility for the oversight of the C-PACE Program. In the event that, pursuant to the Act, the Authority contracts with one or more third-party administrator or enters into a memorandum of agreement with one or more State government agencies or instrumentalities, the Municipality, the Project Owner, and the Owner shall cooperate with such third-party administrator or State government agency or instrumentality and enter into such amendments to this Agreement or such new agreements with respect to the C-PACE Program as may be required at such time in connection with the change in C-PACE Program administration.

11. Remedies.

(a) Neither the Assignor nor any of its officials, officers, directors, employees, or agents shall have any personal liability hereunder, the Assignee's recourse to the Assignor being limited to the Assigned Interest.

(b) Notwithstanding anything in this Agreement to the contrary, (i) the Parties hereto agree that the levying, billing, collecting, and/or remitting of C-PACE Assessment amounts in accordance with the Act and the Assessment Agreement are ministerial and administrative in nature, and the Assignee may bring an action in mandamus, a claim for specific performance, or any similar action or remedy (except an action seeking monetary damages from the Assignor) against any necessary party to ensure the necessary levying, billing, collecting, and remitting of C-PACE Assessment amounts; and (ii) the Assignee shall have only such rights and remedies with respect to enforcing the payment by the Owner of the C-PACE Assessment as provided in the Act, including, without limitation, an action to compel Assignor to enforce a lien through an action to foreclose pursuant to N.J.S.A. 34:1B-378.

12. Indemnification and Limitation of Liability.

(a) To the fullest extent permitted by law, the Assignee shall indemnify and hold harmless the Assignor, its successors and assigns, and its officials, officers, directors, employees

and agents (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) from and against, and shall pay or reimburse the Indemnified Parties for, any and all liabilities, obligations, losses, damages, penalties, actions, demand, claims, judgments, suits, costs, expenses, taxes or disbursements of any kind or nature whatever (including reasonable attorneys’ fees and expenses), which the Indemnified Parties may sustain, be subject to, or be caused to incur by reason of, any claim, suit or action of whatever nature, related directly or indirectly to, or arising under, out of, or in connection with, the Direct Financing Agreement, the Assessment Agreement, the Assignment Agreement, any other Uniform Assessment Document, the Project Property, or the existence, acquisition, construction, equipping, installation, financing, functioning or use of the Project (hereinafter referred to as a “Loss” or “Losses”); provided, however, that the Assignee shall not be liable for any Loss or Losses resulting from an Indemnified Party’s own gross negligence or willful misconduct. In any such suit or action, the Assignor shall be entitled to, but shall not be required to, intervene, whether as party defendant or intervenor, and retain attorneys of its choosing, the reasonable cost of such attorneys to be borne by the Assignee.

(b) The Assignor shall not be liable to the Assignee for any action taken or omitted to be taken by the Assignor or by any officials, officers, directors, employees or agents of the Assignor under or pursuant to this Assignment Agreement, except for the Assignor’s own gross negligence or willful misconduct. In addition, in no event shall the Assignor be liable for any incidental, indirect, special or consequential damages. No officials, officers, directors, employees or agents of the Assignor shall be personally liable or be subject to any personal liability or accountability whatsoever by reason of or with respect to this Assignment Agreement.

(c) The provisions of this Section 12 shall survive the termination of this Agreement.

13. Assignor’s Role and Responsibilities.

The Assignee acknowledges and agrees that:

(a) Pursuant to the Act, the Program Guidelines, and the Assignor’s Program Agreement, the Assignor is obligated to (i) levy, bill, collect, remit, and enforce the C-PACE Assessment, and (ii) maintain records of and report to the Authority any occurrences of the following events, no later than thirty (30) days after the occurrence of any such event: a delinquency in the payment of a C-PACE Assessment; the commencement of foreclosure proceedings with respect to a C-PACE Assessment; and the completion of foreclosure proceedings with respect to a C-PACE Assessment.

(b) The Assignor does not endorse any product, system, design, equipment, material, appliance, or other aspect of the Project, or any design, engineering, or construction contractor or subcontractor or any manufacturer or supplier, and Assignor’s levying, billing, collecting, remitting, and enforcement of a C-PACE Assessment does not imply any such endorsement. The Assignor does not guarantee that implementation and operation of the Project will result in reduced energy usage or in cost savings to the Project Owner or any occupants of the Project Property. The Assignor makes no warranty or representation, either express or implied, as to, and assumes no liability with respect to, the value, design, condition, quality, safety, performance, merchantability, or fitness for a particular purpose, or fitness for any use, of the Project or any portion thereof, or any product, system, design, equipment, material, or appliance installed in, on

or as part of the Project, and expressly disclaims any and all such warranties, representations, and liability.

(c) The Assignor will not mediate any disputes between any participants in the Project including but not limited to, the Project Owner, the Owner, the Owner's tenants, the Assignee, any design, engineering or construction contractors or subcontractors, or any manufacturers or suppliers.

14. Rules of Construction. If and to the extent there is any conflict or inconsistency between the Act and this Agreement, the Act shall control. If and to the extent there is any conflict or inconsistency between this Agreement and the Program Guidelines, the Program Guidelines shall control.

15. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall, to any extent, be held illegal, invalid or unenforceable by any court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held illegal, invalid or unenforceable, shall not be invalidated, rendered unenforceable, or otherwise affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

16. 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.

17. Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered by any of the following methods: (i) by first class mail, postage prepaid; (ii) by overnight delivery service; (iii) by messenger delivery service; or (iv) by Electronic Means; in each case at the respective addresses set forth below. "Electronic Means" means email communication, facsimile transmission, or other similar electronic means of communication providing evidence of transmission.

If to the Assignor:

[Address]

Attention:

Email:

Fax:

If to the Assignee:

[Address]

Attention:

Email:

Fax:

18. Governing Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the State. In any action, in equity or law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the State.

19. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof.

20. 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.

[SIGNATURES FOLLOW]

Schedule I

Remittance Instructions

EXHIBIT A

COPY OF EXECUTED ASSESSMENT AGREEMENT