

C-PACE PROGRAM – APPLICANT’S UNDERTAKING

THIS C-PACE PROGRAM APPLICANT’S UNDERTAKING (this “Undertaking”) is made this ____ day of _____, 202_, by [APPLICANT] (“Applicant”), having an address at [street address of Applicant’s primary office].

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 (as may be amended from time to time, the “Program Guidelines”), pursuant to 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 real property (each, a “C-PACE Project”).

Applicant is executing and delivering this Undertaking as part of Applicant’s application (the “Application”) to the Authority for approval of Applicant’s proposed C-PACE Project located at [Property Address] (the “Property”).

Capitalized terms shall have the meanings given such terms in the Program Guidelines.

Applicant hereby acknowledges and agrees:

1. Applicant’s delivery of this Undertaking is a requirement under the Program Guidelines and is a material inducement to the Authority for the Authority to approve the Application, provided all other eligibility requirements are satisfied, and the Authority’s review of the Application cannot proceed without the delivery of this Undertaking.
2. The Authority does not provide legal advice. Applicant is advised to obtain its own legal representation in connection with its Application to and participation in the C-PACE Program.
3. The Authority’s review of the Application is limited to the review of the eligibility of Applicant’s proposed C-PACE Project under the Program Guidelines and the Act.
4. The Authority does not endorse any product, system, design, equipment, material, appliance, or other aspect of a C-PACE Project, and the Authority’s review and/or approval of a C-PACE Project does not imply any such endorsement. The Authority does not guarantee that installation and operation of the proposed C-PACE Project will result in reduced energy usage or in cost savings to Applicant or any occupants of the Property. The Authority 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 proposed C-PACE Project or any portion thereof, or any product, system, design, equipment, material, or appliance installed in, on or as part of the proposed C-PACE Project, and expressly disclaims any such warranties, representations, and liability.

5. Applicant is responsible for conducting its own due diligence, including, but not limited to, consideration of finances, performance, and pricing, before selecting any contractor or contractors for the proposed C-PACE Project. The Authority has not conducted any review of any of the contractors being engaged by Applicant to implement the C-PACE Project. Applicant further acknowledges that it cannot rely on the Authority's review of the Qualified Technical Reviewer as assurance of its performance. The Authority does not endorse any Qualified Capital Provider, Qualified Technical Reviewer, design, engineering or construction contractor, manufacturer, or supplier.

6. The Authority will not mediate any disputes between any participants in the C-PACE Program, including but not limited to, Applicant, other Property Owners, Property tenants, Qualified Capital Providers, Participating Municipalities, design, engineering or construction contractors or subcontractors, manufacturers, suppliers, utilities, or Qualified Technical Reviewers.

7. The Authority is not responsible for the proper disposal or recycling of any waste generated as a result of the implementation, installation, or operation of the proposed C-PACE Project.

8. The Authority does not provide any accounting or tax advice regarding how Applicant should treat the Direct Financing of the proposed C-PACE Project in Applicant's books and records. The Authority is not responsible for any tax liability imposed on Applicant in connection with the Direct Financing or payments to any of the contractors engaged in implementing the proposed C-PACE Project.

9. The Authority has the right to review the Direct Financing agreement between the Qualified Capital Provider and Applicant for compliance with the Act and the Program Guidelines.

10. Applicant shall allow the Authority access to its books and records relating to the proposed C-PACE Project, upon the Authority's request.

11. Applicant acknowledges that the Capital Provider may require Applicant to submit an application for any Project Change or proposed Project Change to the Authority and comply with the requirements for a Project Change pursuant to the Program Guidelines.

12. Applicant shall permit the Authority to conduct site visits or inspections and shall provide any additional information or documentation requested by the Authority in furtherance of the Authority's review of the C-PACE Project pursuant to the Program Guidelines.

13. Applicant is responsible for reviewing the terms, conditions, and obligations imposed by the C-PACE Assessment Agreement, the C-PACE Assessment Assignment Agreement, the Direct Financing agreement, all agreements with contractors, Qualified Technical Reviewers, and any other parties involved with the proposed C-PACE Project, and any amendments or supplements to any of the foregoing.

14. (a) To the fullest extent permitted by law, Applicant shall indemnify and hold harmless the Authority, its successors and assigns, and its members, 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, demands, 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 proposed C-PACE Program, any Uniform Assessment Document or any amendment or supplement thereto, the Property, or the existence, acquisition, construction, equipping, installation, financing, functioning, or use of the proposed C-PACE Project (hereinafter referred to as a “Loss” or “Losses”); provided, however, that the Applicant 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 Authority 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 Applicant.

(b) The Authority shall not be liable to the Applicant for any action taken or omitted to be taken by the Authority or by any members, officials, officers, directors, employees or agents of the Authority under or pursuant to the proposed C-PACE Program, except for the Authority’s own gross negligence or willful misconduct. In addition, in no event shall the Authority be liable for any incidental, indirect, special or consequential damages. No members, officials, officers, directors, employees or agents of the Authority shall be personally liable or be subject to any personal liability or accountability whatsoever by reason of or with respect to the proposed C-PACE Program, any Uniform Assessment Document or any amendment or supplement thereto, the Property, or the existence, acquisition, construction, installation, financing, functioning or use of the proposed C-PACE Project.

(c) The rights and remedies of the Applicant with regard to any tort claims shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and any rights and claims with regard to any contract claims shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., incorporated herein by reference.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned, a duly authorized representative of the Applicant, has executed this C-PACE Program Applicant's Undertaking as of the date first set forth above.

WITNESS: _____], as Applicant

Name:

By: _____
Name:
Title:

[Signature page to Undertaking]