

Assessment Agreement for C-PACE Financing

[CITY]¹ [COUNTY OF _____], NORTH CAROLINA

COMMERCIAL PROPERTY ASSESSED CAPITAL EXPENDITURE (C-PACE) PROGRAM

¹ NTD: G.S. 160A-239.13(a) authorizes “a statewide C-PACE Program in which any local government may participate.” G.S. 160A-239.12(8) defines “local government” as a “city or county.” North Carolina law does not distinguish between a “city” or other types of municipalities (e.g., towns or villages). The term “city” in G.S. 160A-239.12(8) should be interpreted consistently with the definition of “city” in G.S. 160A-1(2), which means “a municipal corporation organized under the laws of [the] State . . . and having the powers, duties, privileges and immunities conferred by law on cities, towns and villages.” This model Assessment Agreement for C-PACE Financing uses the term “City,” which should be changed to “Town” or “Village,” as applicable.

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Assessment Agreement for C-PACE Financing

[City]/[County of _____], North Carolina

This ASSESSMENT AGREEMENT FOR C-PACE FINANCING (this “**Agreement**”) is made and entered into as of this [] day of [], 20, (the “**Effective Date**”) by and among the [City]/[County of _____], North Carolina (the “[**City/County**]”)², Economic Development Partnership of North Carolina, Inc., a North Carolina nonprofit corporation (the “**Administrator**”), [**CAPITAL PROVIDER**], a [STATE] [ENTITY TYPE] (together with its successors and assigns, “**Capital Provider**”) and [**PROPERTY OWNER**], a [STATE][ENTITY TYPE] (the “**Property Owner**”) the holder of fee simple title to the real property identified on Exhibit A (the “**Property**”).

RECITALS

WHEREAS, through the adoption of Resolution No. [] (“**Resolution of Intent**”), the [City/County] on [] declared its intent to participate in the Commercial Property Assessed Capital Expenditure Program (the “**C-PACE Program**”) to allow the financing of certain “qualifying improvements” as defined in N.C. Gen. Stat. § 160A-239.12(14) (the “**Qualified Improvements**”), through the imposition of voluntary assessments on “qualifying commercial property” (as defined in N.C. Gen. Stat. § 160A-239.12(13)) pursuant to Article 10B of Chapter 160A of the General Statutes of North Carolina, as amended (as may be amended from time to time, the “**C-PACE Act**”); and

WHEREAS, in the Resolution of Intent, the [City/County] authorized the C-PACE Program to operate within its jurisdictional boundaries and for the Administrator to provide certain administrative services specified in N.C. Gen. Stat. § 160A-239.14; and

[**WHEREAS**, through the adoption of Resolution No. [] (“**Authorizing Resolution**”), the [City/County] on [] joined the C-PACE Program [and, as required by N.C. Gen. Stat. § 160A-239.15(b), the Board of Commissioners of the County of [], North Carolina has concurred with the participation by [City] in the C-PACE Program; and]³;

WHEREAS, the purpose and method of approval of C-PACE financing under the C-PACE Program are described in the Program Guidebook established by the Administrator, as the same may be amended from time to time prior to the Effective Date of this Agreement (the “**Program Guidebook**”); and

WHEREAS, the Property is located in the jurisdictional boundaries of the [City/County] and the [City/County] has consented to owners of eligible properties within its jurisdiction participating in the C-PACE Program; and

WHEREAS, the Property Owner has submitted a project application to the Administrator including a description of the Qualified Improvements that will be acquired, installed and/or modified on the Property; and

WHEREAS, the Administrator has reviewed such application materials to assess compliance with the C-PACE Act and Program Guidebook, and the Administrator has determined that the project proposed

² **NTD**: The defined term should be either (1) as discussed in Footnote 1 above, “City,” “Town” or “Village” (if a municipality), or (2) “County” (if a County).

³ **NTD**: N.C. Gen. Stat. § 160A-239.15(b) requires that each county in which a municipality is located concur in the municipality's adoption of the Authorizing Resolution. This bracketed information about the county's concurrence should be included in municipal assessment agreements, but need not be included in county assessment agreements.

by the Property Owner complies with such criteria and is approved for participation in the C-PACE Program (the “**Approved Project**”); and

WHEREAS, the Approved Project is to be financed pursuant to a financing agreement (the “**Financing Agreement**”) between the Property Owner and the Capital Provider and under which the Property Owner agrees to repay such Capital Provider for the C-PACE financing provided; and

WHEREAS, pursuant to the C-PACE Act, the [City/County] and the Property Owner must enter into an agreement whereby the Property Owner voluntarily consents to have an assessment imposed and a lien placed on the Property in exchange for receiving and repaying C-PACE financing; and

WHEREAS, it is a condition to closing of the Financing Agreement that the Property Owner and the [City/County] enter into this Agreement; and

WHEREAS, the Property Owner voluntarily and willingly agrees to have an assessment imposed on the Property by the [City/County] and to enter into this Agreement in order to finance the installation on the Property of the Qualified Improvements contemplated as part of the Approved Project, all on the terms set forth in the Financing Agreement;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the [City/County], the Capital Provider, the Administrator and the Property Owner formally covenant and agree as follows, with the intent to bind themselves and their respective successors and assigns:

AGREEMENT

Section 1. Purpose. The [City/County], the Capital Provider, the Administrator and the Property Owner are entering into this Agreement for the purpose of subjecting the Property to a C-PACE assessment to finance or refinance the installation or modification on the Property of the Qualified Improvements identified on Exhibit B attached hereto.

Section 2. The Property. This Agreement relates to the Property identified on Exhibit A attached hereto. The Property Owner has supplied to the [City/County] and Capital Provider current evidence of its ownership of title in fee simple to the Property and possesses all legal authority necessary to execute and deliver this Agreement.

Section 3. Assessment and Lien.

(a) The Property Owner hereby voluntarily consents to the imposition of an assessment levied against the Property by the [City/County] pursuant to this Agreement, the C-PACE Act and other applicable law in the principal amount of \$[____], together with all interest, penalties, charges, fees and other amounts due under and described in the Financing Agreement (the “**Assessment**”). Upon execution and delivery of this Agreement, the [City/County] will execute, and the Property Owner and Capital Provider shall cause to be recorded in the Office of the Register of Deeds of the County of [____]⁴, North Carolina (the “**Recording Office**”), together with a copy of this Agreement, a Notice of C-PACE Assessment and C-PACE Lien (“**Notice of Assessment**”), substantially in the form of Exhibit C attached hereto. The recording of the Notice of Assessment will cause the Assessment to attach as a lien upon the Property for the benefit of the [City/County] (the “**C-PACE Lien**”) and provide record notice to

⁴ NTD: Insert name of county in which the Property is located.

third parties of the existence of the C-PACE Lien.

(b) The execution and delivery of this Agreement by the parties authorizes and effectuates the imposition of the Assessment by the [City/County] against the Property without any further action required by the parties hereto.

(c) The Property Owner hereby promises to pay the Assessment to the Capital Provider on the due dates set forth in Exhibit D attached hereto (the “**Assessment Schedule**”). The Property Owner agrees, as provided in the Financing Agreement, to pay the amount due in installments according to the Assessment Schedule (each, an “**Assessment Installment**”), each such Assessment Installment to be paid by the Property Owner by its due date in order to avoid delinquencies and the accrual of interest and related penalties.

(d) The Assessment shall be secured by the C-PACE Lien until all obligations of the Property Owner with respect to the Assessment are paid in full as certified by the Capital Provider. Upon such payment in full, the Capital Provider shall provide notice to the County that the Assessment has been paid in full and directing the County to release the lien. Failure to pay any Assessment Installment will result in penalties and interest accruing on the amounts due under the terms and provisions of the Financing Agreement. In addition, under those circumstances, the C-PACE Lien may be subject to foreclosure in the manner specified in Section 5(b) below.

(e) The Property Owner hereby certifies to the [City/County], Capital Provider and Administrator that:

(i) the Property Owner is the holder of title in fee simple to the Property and title to the Property is not in dispute;

(ii) the Property Owner is current on all mortgage payments and property taxes relating to the Property;

(iii) the Property Owner is not insolvent or in bankruptcy proceedings;

(iv) the term of the financing of the Qualifying Improvements under the Financing Agreement does not exceed the remaining weighted average useful life of the Qualifying Improvements;

(v) the Property Owner has submitted to the Administrator a written statement, executed by each holder of a mortgage, deed of trust, or other lien on the Property securing indebtedness, indicating their consent to the Assessment and that the Assessment does not constitute an event of default under the terms of such mortgage, deed of trust, or other indebtedness secured by lien; and

(vi) the total amount of financing of the Qualifying Improvements under the Financing Agreement does not, as of the date hereof, exceed thirty-five percent (35%) of the current reasonable expected stabilized value of the Property after the installation or modification of the Qualifying Improvements.

Section 4. Term; Agreement Runs with the Land.

(a) Except as otherwise set forth in this Agreement, this Agreement shall terminate upon the full and complete satisfaction of the Assessment, whether by virtue of a final payment under the Assessment Schedule, prepayment of the Assessment or otherwise (including payment of all amounts due

under the Financing Agreement). After the satisfaction of any and all obligations of the Property Owner with respect to the Assessment, the parties hereto shall execute and deliver, and the Capital Provider shall cause to be recorded, such instruments as are necessary in order to release the C-PACE Lien.

(b) As set forth in N.C. Gen. Stat. § 160A-239.17(2), the C-PACE Lien placed pursuant to this Agreement establishes rights and obligations that are for the benefit of the Property and, therefore, such rights and obligations run with the land. In the event of a foreclosure on the C-PACE Lien or foreclosure on any other lien for delinquent federal, state or local taxes affecting the Property, any portion of the Assessment that has not yet become due and payable will not be accelerated or extinguished, and the Property will remain subject to the C-PACE Lien with respect to all remaining amounts to become due with respect to the Assessment.

(c) While any portion of the Assessment remains unpaid, the Property shall not be subdivided without the Capital Provider's prior written consent. In the event the Property is subdivided while any portion of the Assessment remains unpaid, the Assessment will apply to each of the newly created parcels on the basis of relative valuation at the time of the subdivision, unless otherwise agreed to by the Capital Provider in its sole discretion.

Section 5. Assignment to Capital Provider of Assessment Billing, Collection and Enforcement.

(a) The [City/County] hereby delegates to the Capital Provider, and the Capital Provider agrees to, or to cause its designee to, bill, collect and enforce the Assessment and C-PACE Lien. The Capital Provider and the [City/County] shall execute and deliver an Assignment of C-PACE Lien ("**Assignment of C-PACE Lien**"), substantially in the form of Exhibit E attached hereto, to evidence such delegation. Upon the recordation of the Notice of Assessment, the [City/County] and the Capital Provider shall cause the Assignment of C-PACE Lien to be recorded in the Recording Office. The Property Owner hereby consents to such delegation and assignment, and the recordation of the Assignment of C-PACE Lien in the Recording Office.

(b) Delinquencies and Private Foreclosure. As provided in the C-PACE Act, the Capital Provider shall enforce any delinquent Assessment Installment in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter 45 of the General Statutes of North Carolina, as amended, except that any Assessment Installments not yet billed or due may not be accelerated or extinguished by foreclosure of any delinquent Assessment Installment. In the event of any foreclosure, outstanding or delinquent state, local, or federal taxes or liens at the time of the foreclosure proceeding shall be satisfied first, with the C-PACE Lien superior to all other liens on the Property from the date on which the Notice of Assessment is recorded until the Assessment, and any interest, penalties, and charges accrued or accruing thereon, are paid. Any sale proceeds in excess of the overdue Assessment Installment and related interest, penalties, and charges, will be distributed by the Capital Provider in accordance with applicable law governing distribution of proceeds following the foreclosure of a deed of trust under Article 2A of Chapter 45 of the General Statutes of North Carolina.

(c) The capital provider shall inform the program administrator and any local government in which a property is located if a property owner is delinquent in their annual assessment payment, but in no event shall the notice be made later than 180 days after the scheduled annual assessment payment is due. The communication from the capital provider shall state the property address and parcel identification number, and the amount of the delinquent payment and the balance of the assessment on the property.

Section 6. Amendment.

(a) This Agreement may be modified only by the written agreement of the [City/County], the Capital Provider, the Administrator, the Property Owner, or any of their successors or assigns.

(b) The Property Owner agrees that it will, 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 Agreement.

Section 7. Binding Effect; Assignment. This Agreement inures to the benefit of and is binding upon the [City/County], the Administrator, the Capital Provider, the Property Owner and their respective successors and assigns; provided, however, that neither the [City/County] nor the Administrator may assign its rights and obligations under this Agreement without the prior written consent of the Capital Provider. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner (other than repayment of the Assessment in full in accordance with the terms of the Financing Agreement) will impair in any way the right to pursue a foreclosure with respect to the C-PACE Lien or the right to enforce the collection of the Assessment or any Assessment Installment against the Property. The Capital Provider may assign any or all of its rights arising under this Agreement without the consent of the [City/County], the Property Owner or the Administrator, provided the Capital Provider provides prior written notice of the assignment to an assignee unaffiliated with the Capital Provider to the [City/County], the Property Owner, and the Administrator.

Section 8. No Liability of the [City/County]. The [City/County] shall incur no liability as a result of any provision of this Agreement, nor shall any members of the governing body, officers, or employees of the [City/County] be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of this Agreement. This provision shall inure only to the [City/County], its governing body, employees, board members, and executives, and not to the benefit of the [City/County]'s successors or assigns of this Agreement. Nothing in this resolution shall be interpreted as authorizing the [City/County] to pledge, offer, or encumber its full faith and credit.

Section 9. Indemnification. Property Owner agrees to defend, indemnify and hold the [City/County], its officials, officers, employees, agents and contractors harmless from any and all claims, including but not limited to reasonable attorney's fees, costs, expenses, demands, losses and liabilities to or by third parties arising from, resulting from or connected with this Agreement, the Approved Project, the Assessment and the C-PACE Lien. Property Owner's duty to indemnify the [City/County] shall not apply to liability for damages to the extent caused by or resulting from the sole or contributory negligence or willful misconduct of the [City/County], its officials, officers, employees, agents or contractors. Property Owner agrees to defend, indemnify and hold the Capital Provider, its directors, officers, employees, agents and representatives harmless hereunder in the same manner provided in the Financing Agreement.

Section 10. Governing Law; Venue. This Agreement is governed by and construed in accordance with the laws of the State of North Carolina. Any legal action brought under this Agreement must be instituted in a court of competent jurisdiction in the State of North Carolina located in the county in which the Property is located.

Section 11. Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this

Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 12. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Signatures Appear on Following Page

IN WITNESS WHEREOF, the [City/County], the Administrator, the Capital Provider and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

[CITY/COUNTY]:

[City/County], North Carolina

By: _____
Name: _____
Title: _____

ADMINISTRATOR:

**Economic Development Partnership of North Carolina,
Inc.**

By: _____
Name: _____
Title: _____

CAPITAL PROVIDER:

[CAPITAL PROVIDER]

By: _____
Name: _____
Title: _____

PROPERTY OWNER:

[PROPERTY OWNER]

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[To be inserted]

EXHIBIT B
QUALIFIED IMPROVEMENTS

[To be inserted]

EXHIBIT C

FORM OF NOTICE OF C-PACE ASSESSMENT AND C-PACE LIEN

[To be inserted]

EXHIBIT D

ASSESSMENT SCHEDULE

Period	Bill date	Delinquent After Date	Payment	Interest	Principal	Principal Remaining	Annual Collection Costs**	Total Payment Due
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								

EXHIBIT E

FORM OF ASSIGNMENT OF C-PACE LIEN

[To be inserted]