NEW JERSEY PROPERTY ASSESSED CLEAN ENERGY (PACE)

PARTICIPATION AGREEMENT

THIS New Jersey Property Assessed Clean Energy Participation Agreement (the “Participation Agreement”) is entered into this day of , 20 (the “Execution Date”), by and between , a municipal corporation duly organized and existing under the laws of the State of New Jersey whose mailing address is , (the “**Municipality**”) and the **New Jersey PACE** (the **“Program”)**, A NJ Nonprofit Corporation. The foregoing also are referred to herein collectively as the “**Parties**” or singly as “**Party**.”

WHEREAS, the New Jersey Legislature has enacted Public Law 2011, Chapter 187, “AN ACT concerning the financing of renewable energy and energy efficiency systems, amending P.L.1960, c.183, and supplementing R.S.40:56-1 et seq..” also known as “the Property Assessed Clean Energy Act” or “the PACE Act”, and additional legislation pending as bill A2579/S1510, permitting municipalities to establish special assessment programs for the purposes of financing voluntary conservation, clean energy, and resiliency improvements for private property owners; and

WHEREAS, the New Jersey PACE legislation referenced above authorizes a municipality that has adopted a Property Assessed Clean Energy (“PACE”) Ordinance to establish a PACE Program, so that owners of Qualifying Property can access financing for Qualified Improvements to their properties located in the municipality; financed by private financing, self-liquidating bond financing and/or by other means, and to enter into a contract with a Program to administer functions of its PACE Program in accordance with this Participation Agreement; and

WHEREAS, the Municipality has adopted a PACE Ordinance; and

WHEREAS, the Parties wish to establish their respective responsibilities in the administration of the PACE Program.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. Capitalized terms used in this Contract shall have the meanings given them in P.L. 2011, Chapter 187, as revised, unless otherwise specified herein. In addition, these terms are defined as follows:

1.1. PACE Agreement. “Pace Agreement” means an agreement between the owner of a Qualifying Property and the Program that authorizes the creation of a municipal PACE Assessment on said Qualifying Property, is approved in writing by all owners of the Qualifying Property, and sets forth the obligations of the property owner and the Program.

1.2. PACE Financing. “PACE Financing” means financing made available to the owner(s) of a Qualified Property for a Qualifying Improvement.

1.3 Qualifying Improvement. “Qualifying Improvement” means any energy efficiency and renewable energy systems, installations and tangible improvements, including resiliency improvements, as set forth in the legislation, and as may be amended from time to time.

1.4 Qualified Property. “Qualified Property” means any real estate property located within a PACE District that has applied for and has received Program approval for project processing pursuant to this Participation Agreement.

1.5. Terms and Conditions. Pursuant to P.L. 2011, Ch. 187, as amended, the Program has established terms and conditions under which municipalities and program participants may participate in the New Jersey PACE Program created hereunder. The Parties agree that they, the Program, and this Participation Agreement may be amended only by mutual agreement in written form.

2. PROGRAM’S RESPONSIBILITIES. The Program shall undertake the following:

2.1. Administration. Administer the functions of a PACE Program which administration shall include, without limitation:

A. the Program shall enter into a PACE Agreement with each owner of a Qualifying Property in the Municipality;

B. the Programwill disburse the PACE Financing to the property owner, or control its disbursement by a third party;

C. the Program will collect data required to quantify carbon savings and/or other measures, which may facilitate access to and eligibility for voluntary carbon markets, for federal grants for energy efficiency, and/or for other incentive programs

3. MUNICIPALITY’S RESPONSIBILITIES. The Municipality shall undertake the following:

3.1. Assessment and Collection Responsibilities.

A. the Municipality will create and record a Notice of the PACE Agreement in the appropriate County Registry of Deeds to create a PACE Lien;

B. the Program will record any lien, if needed, due to nonpayment of the PACE Assessment;

C. the Program shall promptly record the discharge of a PACE lien upon full payment of the PACE Financing;

D. the Municipality will send PACE Assessment statements with payment deadlines to the property owners;

E. the Municipality will be responsible for the collection of the PACE Assessments from the property owners;

F. the Municipality will be responsible for remitting PACE Assessment payments to the Program or to its agent pursuant to the terms of the PACE Agreement.

3.2. Assistance and Cooperation. The Municipality agrees to cooperate with the Program in the administration of the Municipality’s PACE Program, including but not limited to, providing information about applicant properties including property tax payment, lien status, and taxable value and providing reasonable assistance to the Program for required data collection, recordkeeping and reporting functions, and providing reasonable support to the Program’s PACE financing, PACE Assessment, and billing and collection functions.

4. JOINT RESPONSIBILITIES. Together, the Parties agree that they will jointly undertake the following:

4.1. Education and Outreach Programs. The Parties agree~~s~~ to develop and implement an education and outreach program so that owners of property in the Municipality are made aware of the Municipality’s PACE program.

5. TERM

5.1. This Participation Agreement is for a period of ten (10) years and shall automatically be renewed for additional periods of five (5) years as long as there are PACE assessments in force, unless either Party provides the other with ninety (90) days’ advance written notice of intent not to renew this Participation Agreement.

6. TERMINATION

6.1. Either Party may terminate this Participation Agreement for convenience (“Termination”) by providing the other with ninety (90) days’ advance written notice of termination (the “Termination Date”). Termination means the cessation of the Program and the obligations of the Parties pursuant to this Participation Agreement as they pertain to the processing and execution of additional projects and loans after the Termination Date, but shall not mean the cessation of the obligations of the Parties pursuant to this Participation Agreement with regard to outstanding PACE Assessments, loans or projects.

7. LIABILITY

7.1. Except as specified by any other provision of law to the contrary, neither the municipality nor any municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, shall be liable to the Program or to any other person for claims, of whatever kind or nature, related to the PACE Program established under this Participation Agreement, including, without limitation, claims for or related to uncollected PACE Assessments, except for matters of gross negligence or criminal intent.

7.2. Other than the fulfillment of its obligations specified in this Participation Agreement, the Municipality has no liability to a property owner for or related to Qualifying Improvements financed under this PACE Program.

8. MISCELLANEOUS PROVISIONS

8.1 Notices. All notices, demands or other communications made pursuant to this Participation Agreement shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, or (ii) by overnight courier~~.~~ Such notice shall be deemed effective upon delivery addressed as follows:

To the Municipality:

To New Jersey PACE:

New Jersey PACE

8 Revere Drive

Basking Ridge, NJ 07920

Attention: Executive Director

8.2 Entire Agreement, Modifications. This Participation Agreement constitutes the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. Except as provided herein, this Participation Agreement cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

8.3 Headings. The section headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Participation Agreement.

8.4 Severability. If any section, term, covenant, or condition of this Participation Agreement or the application thereof to any person or circumstances shall be illegal, invalid or unenforceable because of judicial construction, the remaining sections, terms, covenants, and conditions of this Participation Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each section, term, covenant, or condition of this Participation Agreement shall be valid and be enforced to the fullest extent permitted by Law.

8.5 Governing Law, Remedies. This Participation Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between the Parties arising out of or relating to this Participation Agreement shall be decided by a New Jersey court of competent jurisdiction.

8.6 Assignment; Successors and Assigns. This Participation Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld. This Participation Agreement shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

# 8.7 Non-Waiver. Except as expressly provided in this Participation Agreement, the failure or waiver, or successive failures or waivers on the part of either Party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either Party hereto, its successors or Participation Agreement permitted assigns, to enforce the same in the event of any subsequent breach thereof.

# IN WITNESS WHEREOF, the Parties hereto have caused this Participation Agreement, to be executed by their duly authorized representatives as of the date first set forth above.

# By and on behalf of the MUNICIPALITY

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(Signature)

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(Name)

\_\_\_\_\_\_\_

(Title)

# By NEW JERSEY PACE

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(Signature)

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(Name)

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(Title)

Version v4 (2015)