

**COMMERICAL PROPERTY ASSESSED
CLEAN ENERGY (C-PACE) FINANCING PROGRAM**

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the “Agreement”) is made and entered into as of the date it is fully executed (the “Effective Date”), by and among the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “County”); _____, a [state of organization] [type of business entity] (the “Property Owner”); and _____, a [state of organization] [type of business entity] (the “Capital Provider”), and their respective successors and assigns (collectively, the “Parties”).

RECITALS:

WHEREAS, § 15.2-958.3 of the Virginia Code (the “C-PACE Act”), authorizes the creation of a statewide Commercial Property Assessed Clean Energy (“C-PACE”) Program (the “Statewide Program”), sponsored by the Virginia Department of Energy (“Virginia Energy”) and managed by the Virginia PACE Authority, its selected program administrator (the “Program Administrator”), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the locality; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner’s voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the County has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the County by causing the County to opt into the Statewide Program, adopting the Statewide Program as the County’s own C-PACE Program, and to implement such determination, the Board of Supervisors of the County has adopted Chapter ____ of the Code of the County (the “Ordinance”); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the County, and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement will have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) The Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the “Property”).

(b) The Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the County of its approval of the Property Owner’s application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) The Property Owner represents and covenants that it has entered or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. The Property Owner and the Capital Provider acknowledge and agree that the Financing Agreement will include only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act and the Ordinance.

(d) The Parties acknowledge and agree that if the Property Owner defaults on the C-PACE Loan, the County may enforce the C-PACE Lien for the benefit of the Capital Provider according to the C-PACE Documents, the C-PACE Act, the Locality Agreement, and the Ordinance. If the County determines not to enforce the C-PACE Lien, which determination will be made within 30 days of receipt by the County from the Capital Provider of notice of the Property Owner’s default under the terms of the C-PACE Documents, then the County will, within 15 days of the County’s determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan’s closing, regardless of whether the C-PACE Loan is then in default.

(e) The Property Owner and the Capital Provider confirm that they have obtained Lender Consents for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner’s Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): The Program Fees will be deducted from C-PACE Payments and remitted by the Capital Provider to the Program Administrator in accordance with the C-PACE Documents and the Program Guidelines and in the amount of \$_____, as follows:

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to the Property Owner under the Program, the Property Owner hereby requests and authorizes the County to levy a C-PACE Lien against the Property in the Loan Amount, together with all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs) payable in connection therewith. To evidence the C-PACE Lien, the Property Owner requests that the County execute a C-PACE Lien Certificate that will be recorded in the Land Records of the County, which C-PACE Lien Certificate will state that it secures both the Loan Amount and also all interest, delinquent interest, late fees, other types of fees, penalties, Program Fees, and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule will be attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider as set forth in the Assessment Payment Schedule and remitted as follows:

Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs, and Program Fees, has been satisfied and paid in full, the Capital Provider and the County, acting at the request and direction of the Capital Provider (which will certify such payment in full to the County), will execute a joint release of the C-PACE Lien Certificate, and the Capital Provider will record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the County.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan will be serviced by the Capital Provider, and the Property Owner's C-PACE Payments will be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason the Property Owner's C-PACE Payments are payable to the Program Administrator or the County, then the party receiving such C-PACE Payments will remit all such payments to the Capital Provider within 30 days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents, and the Program Guidelines.

(f) Maintenance of Assessment. The County will maintain and continue the C-PACE Lien on the Property for the benefit of the Capital Provider until the C-PACE Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees, and other sums due, is paid in full.

(g) Assignment. The Capital Provider will have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery, and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

(1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;

(2) The Program Administrator and the Property Owner are notified in writing

of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least 30 days before the next Payment is due according to the Assessment Payment Schedule;

(3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes the Capital Provider's obligations under the C-PACE Documents; and

(4) If for any reason C-PACE Payments are being paid to the County, it will not be obligated to remit C-PACE Payments to a new Capital Provider to which the C-PACE Loan is being assigned until a recorded copy of the C-PACE Assignment (CP) has been provided to the County at the following addresses:

County:
Director of Finance
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902
Attn: County Executive

Upon written notice to the Program Administrator and the Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor will be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance, and the Program Guidelines:

(1) Delinquent Payments on the C-PACE Loan will incur interest and penalties as set forth in the C-PACE Documents.

(2) The C-PACE Lien, together with any penalties and interest thereon:

(i) has the same priority status as a lien for County real estate taxes;

(ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;

(iii) will run with the land, and notwithstanding Virginia Code § 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure

of: (i) a County property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.

- (iv) In the event of a sale or transfer of the Property by the Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.

(3) In the event of the Property Owner's default under the terms of the C-PACE Documents, the County may enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. The Capital Provider will cooperate with the County in its enforcement of the C-PACE Lien by providing all necessary documents and information concerning the delinquent C-PACE Loan as requested by the County Attorney's Office. If the County determines not to enforce the C-PACE Lien itself, which determination will be made within 30 days of receipt by the County from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the County will, within 15 days of the County's determination not to enforce the C-PACE lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and will, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the County and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the County will have the status of "Special Counsel to the County" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Virginia Code § 58.1-3966 and § 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The County waives its right to require such legal counsel to post the optional bond described in Virginia Code § 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the County or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, will (i) be added to the

Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein will prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Virginia Code § 58.1-3974 and § 58.1-3975.

(4) In a bill in equity for sale of a Property to collect Delinquent Payments, the County will be entitled to recover the Delinquent Payments, late fees, other types of fees, penalties, Program Fees, interest due, and the costs and expenses of collection, including attorney's fees and costs, all as set forth in the C-PACE Documents.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, the Property Owner acknowledges and agrees as follows:

- (1) After the C-PACE Lien Certificate is recorded, the Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;
- (2) The Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of the Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;
- (3) To the extent permitted by the Financing Agreement, the Property Owner waives all defenses to the imposition of personal liability for corporate officers as permitted under § 58.1-3965(F) of the Virginia Code;
- (4) The Property Owner must provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(A)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. All Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program will be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to County. No provision of this Agreement requires the County to expend

or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement will commence upon the Effective Date and will be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the County, the Property Owner will indemnify and hold harmless the Capital Provider and the County, their Supervisors, directors, officers, employees, agents, subsidiaries, and affiliates (each, an “Indemnified Party”), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions, or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys’ fees, arising from or associated with this C-PACE Loan transaction. This section will survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement, and the Program Guidelines.

(b) Further Assurances. The Property Owner further covenants and agrees to do, execute, and deliver, or cause to be done, executed, and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the County or the Capital Provider, the Property Owner will continue to make the C-PACE Payments required under the C-PACE Documents, and will execute any and all documentation to perfect and enforce the C-PACE Loan as required by the County or Capital Provider. The invalidity of any clause, provision, or section of this Agreement will not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together will constitute but one and the same instrument. Electronically transmitted and digitally signed signatures will have the same force and effect as, and will be treated as, “wet ink” original signatures.

(e) Notices. All notices, requests, consents, and other communications (collectively, “Notices”) must be in writing and delivered, mailed by first-class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the County:
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902
Attn: Director of Finance

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

Notice by e-mail under this paragraph is permitted only if each party listed above has furnished its respective e-mail address as part of its notice address above. By doing so, each such party, for itself and its successors and assigns, will supply to each of the other Parties any replacement e-mail address within two business days of its adoption, by a permitted means other than e-mail. All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the Parties.

(g) Applicable Law and Venue. This Agreement and its provisions will be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue will be in the County.

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the County and their respective successors and permitted assigns.

(i) Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

(j) 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

DRAFT

IN WITNESS WHEREOF, the County, the Property Owner, and the Capital Provider have each caused this Agreement to be executed on the final date entered below:

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey B. Richardson, County Executive

Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

DRAFT

PROPERTY OWNER:
[insert Property Owner’s name]

By: _____
Name: _____
Title: _____
Date: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

DRAFT

CAPITAL PROVIDER:

[insert Capital Provider’s name]

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

Exhibit A
Property Description

DRAFT

Exhibit B

Assessment Payment Schedule

DRAFT