

INTRODUCED: September 9, 2019

AN ORDINANCE No. 2019-249

To amend ch. 11 of the City Code by adding therein a new art. VIII (§§ 11-190—11-197) to establish a commercial property assessed clean energy program in accordance with Va. Code § 15.2-958.3, for the purpose of facilitating the development of clean energy projects.

Patron – Ms. Larson

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: SEP 23 2019 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 11 of the Code of the City of Richmond (2015) be and hereby is **amended** and reordained by adding therein a new article number VIII, consisting of sections numbered 11-190 through 11-197, as follows:

ARTICLE VIII

**COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY FINANCING
PROGRAM**

**Sec. 11-190. Commercial Property Assessed Clean Energy Financing Program;
established; purpose.**

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

(a) There is hereby established the Commercial Property Assessed Clean Energy Financing Program in accordance with Code of Virginia, §15.2-958.3. Pursuant to this article, the City may authorize contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction. In addition, private lending institutions shall be provided the opportunity to participate in such contracts.

(b) The purpose of the program for which this article provides is to promote the renovation and construction of commercial, non-profit and multi-family buildings and structures by incorporating renewable energy production and distribution facilities, energy usage efficiency improvements, or water usage efficiency improvements. The City finds that this will promote the general health and welfare of the community. Water usage efficiency improvements, in particular, benefit the public water supply and wastewater treatment services provided by the City.

(c) In establishing the program for which this article provides, the City finds that the city of Richmond has numerous older buildings with many years of remaining life, and that the renovation, retrofit, or rehabilitation of these buildings with qualifying clean energy improvements would make them more efficient and reduce their greenhouse gas emissions. The rehabilitation of commercial and industrial buildings and structures that are at least 40 years old, in particular, supports the same public purposes advanced by the real estate tax exemption provided for this activity.

(d) The City further finds that the promotion and development of new buildings and structures with energy efficient or water efficient features that exceed current building code requirements, or which use renewable energy, will enhance the real property tax base of the City,

make these buildings, if rented, more attractive to tenants, and thereby promote employment and economic growth in the City.

Sec. 11-191. Definitions.

For the purposes of this chapter, the terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates that a different meaning is intended:

Borrower means the person who owns or leases an eligible property and voluntarily applies for and obtains a program loan, or that person's successor in title.

Borrower certificate means a notarized certificate from the borrower, certifying that (i) the borrower is (a) current on payments on all loans secured by a mortgage or deed of trust lien on the Property, (b) current on real and personal property tax payments, (c) current on all federal, state, and local taxes and that there is no federal income tax lien, judgment lien, or other involuntary lien against the property, and (d) not insolvent or in bankruptcy proceedings, and (ii) that the title of the benefitted property is not in dispute as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the capital provider and the City.

Capital provider means the private lending institution that originates a program loan, or its successors or assigns in interest; or, if the City Council appropriates funds for this purpose and if applicable, the City. The capital provider is the source of funding for, or the current holder of, program loans.

Cost as applied to qualifying improvements shall include the cost of all (a) labor, (b) materials, machinery and equipment, (c) architectural, engineering, consulting (such as energy audits and assessments, feasibility studies and reports, and financial projections), financial and

legal services, (d) plans, specifications and studies, (e) physical and building condition surveys, (f) commissioning expenses, (g) project management, (h) energy savings or performance guaranty or insurance, (i) post-installation evaluation, measurement and verification, and building accreditation, (j) permitting fees, (k) due diligence, financing, and closing costs for the program loan, including administrative and capital provider fees that are directly attributable to a qualifying improvement, and (l) reserves for construction period interest.

Eligible property means a property meeting the conditions specified in Section 11-193.

Program means the Commercial Property Assessed Clean Energy Financing Program created by this article.

Program administrator means (i) an independent third party whose services are procured by the City or (ii) the Chief Administrative Officer or the designee thereof.

Program guidelines means those procedures, rules, disclosures, and restrictions promulgated, imposed and enforced by the program administrator for the administration of the program.

Program memorandum means a memorandum concerning the assessment lien for which this article provides, which shall (i) be executed by the borrower, the capital provider, and the City, (ii) include the Amortization Schedule, and (iii) be recorded in the Clerk's Office of the Circuit Court of the City of Richmond against the property at closing to evidence the voluntary special assessment lien for which this article provides and to secure the repayment of the program financing to the capital provider.

Project means the development of qualifying improvements on an eligible property.

Property means an eligible property as defined in Section 11-193, located within the city of Richmond, for which a program loan is applied for or received.

Qualifying improvements means one or more of the improvements listed in Section 11-192.

Sec. 11-192. Qualifying improvements.

The cost of the following types of qualifying improvements to existing buildings and structures, or new construction, on eligible property, may be financed through the program:

(a) Renewable energy production and distribution facilities, including but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas, or methane recovery systems.

(b) Energy usage efficiency systems reasonably expected to reduce the energy usage of the eligible property, including but not limited to, high efficiency lighting and building systems, heating, ventilation and air conditioning upgrades, air duct sealing, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, cogeneration systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, weather-stripping, fenestration and door improvements and modifications, insulation (both in walls, roofs, floors and foundations and in heating, ventilation and air conditioning systems' radiant barriers), building energy management systems, process equipment upgrades, and other forms of conservation; provided, that for qualifying improvements that are part of a new building or structure, such qualifying improvements shall exceed the minimum energy efficiency requirements of then-applicable law, ordinance, regulation or code.

(c) Water usage efficiency improvements, such as recovery, purification, recycling and other forms of water conservation. For new construction, these improvements qualify for

program financing only if they exceed the minimum water usage efficiency requirements of then-applicable law, ordinance, regulation, or code.

(d) Construction, renovation, or retrofitting of eligible property directly related to the accomplishment of any purpose listed in subsections (a), (b), or (c), above, whether such qualifying improvement was erected or installed in or on a building or on the ground, it being the express intention of the City to allow qualifying improvements that constitute, or are part of, the construction of a new structure or building to be financed with a program loan.

(e) Any other category of improvement approved by the Chief Administrative Officer as qualifying for financing under the program, with the concurring written opinion of either the City Attorney that such improvement is authorized by or consistent with the Commonwealth's authorizing legislation for commercial property accessed clean-energy financing programs.

(f) The Sample List of Eligible Improvements published by the Mid-Atlantic PACE Alliance dated June 2018 is non-exhaustive and may be used as a guide in determining which proposed improvements qualify for program funding.

Sec. 11-193. Eligible properties.

Eligible properties include all assessable real estate located within the city of Richmond, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, other than (a) any condominium project as defined in Code of Virginia, §55.1-2000 or (b) any residential property containing four or fewer dwelling units. Eligible properties shall be eligible to participate in the program.

Sec. 11-194. Program arrangements.

(a) The capital providers for the program may be private lending institutions. Public funds may be the source of program funding to the extent appropriated for that purpose by the City Council.

(b) The time period during which borrowers shall repay the program loan shall not exceed the weighted average useful life of the qualifying improvements or 20 years, whichever is less. However, the maximum term of a program loan for solar improvements shall be 25 years.

(c) Program loan payments shall be combined with the City's real property tax billing and collection, and payable into the treasury of the City. The Director of Finance shall apply any loan payment first to the City's real estate taxes, penalties, and interest which are due and payable on the date of receipt of the payment and second, upon having paid all real estate taxes due, to the program voluntary special assessment in accordance with the program loan documents. The borrower shall notify the capital provider and the Director of Finance if any program loan payment is a prepayment, at the time the payment is made.

(d) The interest rate of a program loan shall be determined by mutual agreement of the borrower and the capital provider.

(e) All of the costs incidental to the financing, administration, and collection of the program loan shall be borne by the borrower. The program is intended to be self-financed through fees that are designed to cover the costs to design and administer the program, including the compensation of any third-party administrator. The Chief Administrative Officer shall collect a non-refundable program application fee of \$250.00 from the borrower upon receipt of an application for program financing. In addition, the Chief Administrative Officer shall collect a fee of 0.5 percent of the program loan amount, up to \$10,000.00, to be collected with each loan

payment, which shall be stated in the written contract between the City, the borrower, and the capital provider to offset the cost of administering the program loans.

(f) The minimum amount of any single program loan shall be \$20,000. The maximum amount of any single program loan shall be \$5,000,000.00. The maximum aggregate dollar amount that may be financed through the program is \$15,000,000.00. In the event that applications for program financing appear likely to exceed the maximum aggregate dollar amount, priority shall be given to applicants on a first-come, first-served basis.

(g) The program administrator is authorized and directed to prepare program guidelines for program loans. The program guidelines shall include, without limitation:

1. Disclosures about program fees, costs, and program processes;
2. Eligibility requirements for participation in the program by capital providers, contractors, and other stakeholders;
3. Eligibility requirements for borrowers, qualifying improvements, and projects; and
4. Suggested underwriting criteria including, without limitation, underwriting guidelines established by the Virginia Department of Mines, Minerals, and Energy or the Mid-Atlantic PACE Alliance Regional C-PACE Toolkit published in June 2018, such as financial ratios related to:
 - a. Total loan (including program loan) to value benchmarks;
 - b. Program assessment to value benchmarks;
 - c. Savings to investment ratio; and
 - d. Debt service coverage ratio.

(h) Additional requirements.

(1) Every borrower, on behalf of itself and any affiliated entities, whether in existence at the time of the program application or created thereafter and any of its individual shareholders, principals, managers or other associated individuals, shall (a) waive the right to bid, either directly or indirectly, on the property at any auction held in the course of foreclosure for delinquent real estate taxes or the program voluntary special assessment, and (b) waive the right to occupy, possess, or use, either directly or indirectly, any eligible property for a period of five years after the date of the foreclosure auction.

(2) Every borrower shall:

a. Waive all defenses, affirmative or otherwise, to the foreclosure action related to any collection suit brought for the nonpayment of any program obligation. This waiver shall apply to any litigation action initiated under the laws of the Commonwealth of Virginia or any administrative collection action as afforded the Director of Finance or any duly appointed collection agent thereof;

b. Waive all defenses to the imposition of personal liability for corporate officers as permitted under Code of Virginia, § 58.1-3965(F) and the collection thereof as stated in subparagraph (a) above;

c. Agree to provide a confession of judgment pursuant to Code of Virginia, §§8.01-431 through 8.01-441, if requested by the City or the capital provider to accompany any note related to the financing for any qualifying improvements.

d. These waiver provisions shall be a burden that runs with the land intended to bind successors or assigns in title while any program obligation remains outstanding.

Sec. 11-195. Chief Administrative Officer authorization; loan agreements.

(a) Each program loan agreement shall be in substantially the form of the document attached to Ordinance No. 2019-____, adopted _____, with such additions, deletions or alterations as permitted by this article.

(b) The Chief Administrative Officer is authorized to enter into program loan agreements on behalf of the City. The Chief Administrative Officer may procure program administration services if needed, to the extent that funds for this purpose are appropriated.

(c) The parties to any program loan agreement shall be the borrower, the capital provider, and the City.

(d) The Chief Administrative Officer may not execute any program loan agreement unless the conditions for the priority status of the voluntary special assessment lien are met, in addition to the underwriting requirements.

(e) The program loan documents shall include provisions for the amendment of the program loan agreement. No capital provider or borrower may amend any program loan agreement without consent of the City, as evidenced by the signature of the Chief Administrative Officer, which shall not be unreasonably withheld, conditioned or delayed.

Sec. 11-196. Voluntary special assessment lien.

(a) A program loan shall be secured by a voluntary special assessment lien in the amount of the initial program loan amount, plus all interest, penalties, fees, costs and other amounts accrued or accruing thereon in accordance with the program loan documents against the

property where the qualifying improvements are being installed, the existence, terms and conditions of which shall be evidenced by the recordation of a program memorandum in the Clerk's Office of the Circuit Court of the City of Richmond. The capital provider shall record the program memorandum at closing. The capital provider shall inform the Director of Finance of any changes to the anticipated yearly assessment, and of any changes to the amortization schedule, on or before July 1st of each year for which program loan payments are due.

(b) The voluntary special assessment lien shall have the same priority status as a property tax lien against real property so long as (i) a written subordination agreement, in a form and substance acceptable to each prior lien holder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien, and (ii) a borrower certificate is submitted to the City prior to recording the program memorandum.

(c) The City's obligation to remit program payments to the capital provider shall be a limited obligation, only payable if and when installment payments are received from the borrower and not applied by the Director of Finance to the City's real property taxes, penalties, and interest as directed by this article. The Director of Finance shall promptly process, deposit, and credit program installment payments no later than 45 days after receipt.

(d) The voluntary special assessment lien, and the program memorandum, shall not be amended without the City's consent, except as provided in the program loan documents, including, without limitation the capital provider's transfer, assignment, or sale as provided in this section. The City's consent shall not be unreasonably withheld, conditioned or delayed. Program loans may be transferred, assigned or sold by a capital provider at any time during the loan term without consent from the borrower, the City, or any other party; provided that the

capital provider shall (i) record an assignment of the program loan in the Clerk's Office of the Circuit Court of the City of Richmond, and (ii) deliver a copy of the recorded assignment to the Director of Finance and the program administrator, if applicable. The Director of Finance shall not be obligated to remit program payments to a new capital provider unless a recorded copy of the assignment has been provided to the Director of Finance at least thirty days before the next installment payment due date. Recordation of the assignment shall constitute an assumption by the new capital provider of the rights and obligations contained in the program loan documents.

(e) The voluntary special assessment lien shall run with the land. That portion of the assessment that has not yet become due shall not be eliminated by foreclosure of a property tax lien.

(f) The voluntary special assessment shall be payable to the Director of Finance in installments over a period of years, due at the same time as real property taxes. Program loans shall not constitute a pledge of the faith and credit of the City.

(g) Delinquent payments shall be subject to all fees and collection methods permitted under the laws of the Commonwealth of Virginia for the collection of delinquent taxes.

(h) The Director of Finance shall enforce the voluntary special assessment lien in the same manner that a property tax lien against real property is enforced. The Director of Finance shall be entitled to recover costs and expenses, including attorneys' fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect delinquent property taxes, including utilizing any administrative remedies provided by the Commonwealth of Virginia. The costs and expenses recovered by the City shall be in addition to any costs, expenses, interest, or other amounts due and owing to the capital provider in accordance with the program loan documents. For the purposes of enforcement of the voluntary special assessment

lien herein, any eligible property which has an outstanding voluntary special assessment imposed pursuant to this article shall be enforceable after June 30th following the first anniversary of either the real estate tax or the special assessment having become due under the authority of Code of Virginia § 58.1-3965.1.

Sec. 11-197. Role of City; limitation of liability.

Borrowers and capital providers participate in the program at their own risk. The City makes no representation or warranty as to the validity, enforceability, priority, or any other character of any program loan agreement or voluntary special assessment lien and borrowers and capital providers agree to release and hold the City harmless from and against any and all liabilities, claims, suits, liens, judgments, damages, losses, and expenses, including without limitation, reasonable legal fees and costs arising in whole or in part from acts, omissions, breach or default of borrowers or capital providers in relation to or under the performance of any program loan agreement.

§ 2. That the document entitled “C-PACE Assessment and Financing Agreement” attached to this ordinance shall be the program loan agreement to which the new section 11-195(a) of the Code of the City of Richmond (2015), as amended, refers.

§3. This ordinance shall be in force and effect July 1, 2020.



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

Ordinance/Resolution Request

TO Allen Jackson, Richmond City Attorney
Richmond Office of the City Attorney

THROUGH Meghan K. Brown
Interim Council Chief of Staff *MKB*

FROM William E. Echelberger, Jr, Council Budget Analyst *[Signature]*

COPY Kristen N. Larson, 4th District Representative
Haskell Brown, Deputy City Attorney
Aaron Bond, 4th District Liaison

DATE August 28, 2019

PAGE/s 1 of 2

TITLE Commercial Property Assessed Clean Energy Program (C-PACE Program)

RECEIVED

AUG 28 2019

OFFICE OF THE CITY ATTORNEY

This is a request for the drafting of an Ordinance Resolution

REQUESTING COUNCILMEMBER/PATRON

Kristen N. Larson, 4th District Representative

SUGGESTED STANDING COMMITTEE

Finance and Economic Development

ORDINANCE/RESOLUTION SUMMARY

The Patron requests an ordinance to establish a Commercial Property Assessed Clean Energy Program (C-PACE Program) for the City of Richmond effective on July 1, 2020.

BACKGROUND

Summary:

- Commercial Property Assessed Clean Energy Programs (C-PACE Programs) are authorized by § 15.2958.3. Code of Virginia. (Copy attached)
- C-PACE programs enable owners of commercial and industrial buildings to use private sector money to finance energy efficiency, renewable energy, and water efficiency improvements to their property.
 - Property owners receive private funding for energy savings upgrades
 - Loans are paid back through their property tax bill based on a special assessment.
 - The special assessment is tied to the property and transfers with a change of ownership.
- Arlington County cites the following benefits of its C-PACE program:
 - 100 percent financing for existing building projects; up to 20 percent financing for new construction projects
 - Long terms (up to 25 years)

- o Long terms (up to 25 years)
- o No upfront, out-of-pocket expense
- o No personal guarantee required
- o No application fee
- o Well-designed projects for existing buildings are cash-flow positive.
- The Virginia Energy Efficiency Council (VEEC) is a non-profit organization founded to advance energy efficiency in Virginia.
 - o VEEC membership is drawn from the private and public sector.
 - o Has published a model C-PACE ordinance. (Copy Attached)
- The FY20 effective date will give the administration time to develop administrative procedures.
- Program administration is typically provided by contracted administrators that are typically paid for from fees.
- Five Virginia localities either have, or in the process of establishing, a C-PACE Program:
 - o Arlington County – Active
 - o Fredericksburg – Active
 - o Loudoun County – In process
 - o Fairfax County – In process
 - o Petersburg – In process

FISCAL IMPACT STATEMENT

Fiscal Impact Yes No

Budget Amendment Required Yes No

Estimated Cost or Revenue Impact

Start-up may require the time of existing staff, however, the cost to administer the special assessments in FY21 and later will be paid from the revenues of the third party administrator.

Attachment/s Yes No

C-PACE ASSESSMENT AND FINANCING AGREEMENT

by and among

as Borrower

and

[CAPITAL PROVIDER NAME] (together with its successors, assigns and/or designees),
as Capital Provider

and

CITY OF RICHMOND,
as **CITY/**

Dated as of _____, 20__

C-PACE ASSESSMENT AND FINANCING AGREEMENT

THIS C-PACE ASSESSMENT AND FINANCING AGREEMENT (this “**Agreement**”) is made as of [_____, 20__] (“**Effective Date**”) between [BORROWER NAME], a _____ organized under the laws of the [Commonwealth of Virginia] [*IF FOREIGN ENTITY ADD*: and authorized to do business in the Commonwealth of Virginia] (together with its successors and/or assigns, “**Borrower**”), [CAPITAL PROVIDER NAME], a _____ organized under the laws of the [Commonwealth of Virginia] [*IF FOREIGN ENTITY ADD*: and authorized to do business in the Commonwealth of Virginia] (together with its successors and/or assigns, “**Capital Provider**”), and the CITY OF RICHMOND, Virginia (“**City**”). Borrower, Capital Provider and the City are referred to herein individually as a “**Party**” and collectively as the “**Parties**.” Any and all capitalized terms used in this Agreement, which are not specifically defined herein, shall have the meanings set forth in **Section 1.01** below.

RECITALS

A. Pursuant to the C-PACE Act and the Ordinance, the City established the City C-PACE program to facilitate financing for the initial acquisition and installation of Eligible Improvements with willing owners of Eligible Property (“**Program**”). The Program allows private financing for Eligible Improvements by utilizing the local C-PACE assessment and collection mechanism to provide security for repayment of C-PACE financing in accordance with the C-PACE Act, the Ordinance, the Program Guidelines and the C-PACE Documents.

B. Borrower is the legal and beneficial fee simple title owner/[leasehold] of that certain real property, together with all improvements thereon and appurtenances thereto (including without limitation the Improvements), located in _____, Virginia and having an address of _____, as more particularly described in **Exhibit A** attached hereto and incorporated herein (“**Property**”).¹

C. Borrower has applied to the Program to obtain C-PACE Financing from Capital Provider for the Improvements, which C-PACE Financing is further evidenced and secured by, among other things, the C-PACE Lien.

D. In accordance with the Program’s energy efficiency eligibility requirements, Borrower has contracted to [renovate or retrofit the Property and/or construct a new building and/or improvements on the Property to reduce energy and/or water consumption and/or install renewable energy systems on the Property]. The C-PACE improvements to be constructed on the Property (1) are generally described in the Financing Schedule and more particularly described in the Construction Contract, (2) meet the requirements of the C-PACE Act and the Ordinance, and

¹ *Note to Drafter: If Borrower has a leasehold interest in a long-term lease, this Agreement will need to be revised to include the fee simple owner as a party and to incorporate certain other provisions related to the leasehold structure as may be required by Capital Provider and the City. Additionally, if the transaction structure involves a PACE-secured Power Purchase Agreement, this Agreement will need to be revised to include relevant provisions required by Capital Provider and the City.*

(3) shall be permanently affixed to the Property and installed in accordance with the Program Guidelines ("**Improvements**").

E. Borrower (1) has completed the Program application requirements, including without limitation, obtaining a Lender Consent from each Senior Lender, and (2) has agreed to the recordation of the C-PACE Lien against the Property in the amount of the C-PACE Financing.

F. Capital Provider has agreed to provide the C-PACE Financing for the Improvements on the condition of Borrower's agreement to repay the C-PACE Financing and subject to the terms and conditions contained in the C-PACE Documents, including without limitation, Borrower's execution and delivery of the C-PACE Note to Capital Provider.

G. The City has agreed to levy, assess, collect and enforce the C-PACE Lien in the same manner as the City levies, assesses, collects and enforces Real Estate Taxes on the Property, subject to the terms and conditions contained in the C-PACE Documents.

H. Borrower shall repay the C-PACE Financing in accordance with the C-PACE Documents, and the City will use the C-PACE Payments to make payments to Capital Provider and the City as provided in the Amortization Schedule and the Ordinance.

I. The Parties have determined that the most efficient and effective way to implement the financing, acquisition, construction and installation of the Improvements and to further the public purposes contained in the C-PACE Act and Ordinance is through this Agreement, pursuant to the C-PACE Act and Ordinance and on the terms contained in the C-PACE Documents, with (i) Capital Provider funding the C-PACE Financing; (ii) Borrower acquiring, constructing, and installing the Improvements and timely making the C-PACE Payments to fully repay the C-PACE Financing to Capital Provider; and (iii) the City levying, collecting and enforcing the C-PACE Lien, including remitting all C-PACE Payments actually received by Borrower to Capital Provider.

J. Borrower, Capital Provider and the City desire to set forth their respective rights and obligations relating to the C-PACE Financing in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and for Ten Dollars cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

INTERPRETATION

Section 1.01. Definitions. Any and all capitalized terms used in this Agreement, which are not specifically defined, shall have the meanings set forth below.

(a) "**Agreement**" is defined in the Preamble, and all references to the Agreement herein include all exhibits and schedules attached hereto.

(b) “**Amortization Schedule**” means that certain amortization schedule of C-PACE Payments necessary to repay the C-PACE Financing, which is attached to this Agreement, the C-PACE Note and the C-PACE Memorandum. The initial Amortization Schedule shall be established on the Closing Date and may be updated periodically in accordance with this Agreement.

(c) “**Assignment and Assumption Agreement**” is defined in **Section 4.14**.

(d) “**Borrower**” means [_____] and includes any and all successors in title to Borrower.

(e) “**Borrower Certificate**” means a notarized certificate from Borrower, certifying that (i) Borrower is (A) current on all loan payments secured by a lien on the Property, (B) current on Real Estate Tax and personal property tax payments, (C) current on all federal, state and local taxes and that there is no federal income tax lien, judgment lien, or other involuntary lien against the Property, and (D) not insolvent or in bankruptcy or foreclosure proceedings, and (ii) the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to Capital Provider.

(f) “**Budget**” means the detailed budget of all costs necessary to purchase, install, and/or construct the Improvements in accordance with the Plans.

(g) “**Business Day**” means any day on which Capital Provider and the City are open for business, other than a Saturday, Sunday, federal holiday or state holiday in Virginia.

(h) “**Capital Provider**” is defined in the Preamble.

(i) “**Capitalized Interest**” means the interest that accrues on the C-PACE Financing (at the Interest Rate) from the Closing Date to the Repayment Start Date, which shall be capitalized into the C-PACE Financing amount, as reflected on the Amortization Schedule.

(j) “**City**” means the City of Richmond, Virginia, and its finance director, assessor, or other City officials responsible for levying, assessing, collecting and/or enforcing taxes (including Real Estate Tax) for the City.

(k) “**Clerk’s Office**” means the Clerk’s Office of the Circuit Court of City.

(l) “**Closing**” means the closing of the transactions contemplated by this Agreement, which shall take place on the Closing Date.

(m) “**Closing Conditions**” is defined in **Section 2.04**.

(n) “**Closing Date**” means the Effective Date.

(o) “**Code**” means the Code of Virginia of 1950, as amended to date and as it may hereafter be amended.

(p) “**Completion Certificate**” means a certificate of completion executed by Borrower and Contractor in substantially the form attached hereto and incorporated herein as **Exhibit C**, as may be modified by Capital Provider in its reasonable discretion.

(q) “**Completion Date**” means the date on which all of the following events have occurred: (i) construction of the Improvements has been completed in accordance with the Plans, in a lien-free condition, except for the Permitted Liens and any other liens that Borrower is appealing or contesting by appropriate legal or other proceeding (which shall be promptly initiated and conducted by Borrower in good faith and with due diligence); (ii) Borrower has delivered a fully-executed Final Lien Waiver and a fully-executed Completion Certificate to Capital Provider; (iii) Borrower has delivered a temporary or final certificate of occupancy to Capital Provider, if required for the Improvements; (iv) all required approvals, reports and information required to be submitted to Capital Provider or the City have been submitted and approved, and (v) all other requirements of the C-PACE Documents have been satisfied. The Completion Date is estimated to occur on or before [_____, 20__]. Notwithstanding anything to the contrary contained in this Agreement, the Completion Date shall occur no later than [_____, 20__], unless otherwise approved by Capital Provider, in its reasonable discretion.

(r) “**Construction Contract**” means that certain fully-executed construction contract dated [_____, 20__] between Borrower and Contractor.

(s) “**Construction Period**” means the period of time beginning on the Closing Date and ending on the Completion Date, which is estimated to be [_____ (___)] months after the Closing Date.

(t) “**Contractor**” means [NAME OF GENERAL CONTRACTOR], a general contractor that is licensed, bonded and insured in Virginia and has been approved by Capital Provider. If Contractor is changed, Borrower shall obtain prior written consent from Capital Provider approving the replacement contractor.

(u) “**C-PACE**” means Commercial Property Assessed Clean Energy.

(v) “**C-PACE Act**” means Virginia’s clean energy financing law, codified at Section 15.2-958.3 of the Code.

(w) “**C-PACE Advance**” means an advance of the C-PACE Financing proceeds made by Capital Provider to Borrower during the Construction Period in accordance with the terms and conditions of this Agreement.

(x) “**C-PACE Advance Schedule**” means that certain schedule of C-PACE Advances, which is attached hereto and incorporated herein as **Schedule II**.

(y) “**C-PACE Amendment**” means a written amendment executed by Borrower, Capital Provider and the City, which shall be recorded in the Clerk’s Office against the Property to evidence each amendment to the C-PACE Financing and the C-PACE Lien, a form of which C-PACE Amendment is attached hereto and incorporated herein as **Exhibit D**.

(z) “**C-PACE Assignment**” means a written assignment executed by Capital Provider from time to time without consent from Borrower or the City, which shall be recorded in the Clerk’s Office against the Property to evidence Capital Provider’s assignment of the C-PACE Financing and C-PACE Lien, a form of which C-PACE Assignment is attached hereto and incorporated herein as **Exhibit E**.

(aa) “**C-PACE Documents**” means this Agreement, the C-PACE Note, C-PACE Memorandum, Disbursement Memorandum, C-PACE Amendment (if any), C-PACE Assignment (if any), completion guaranty (if any), UCC-1 Financing Statement(s) (if any), *[INSERT OTHER APPLICABLE DOCUMENTS]*, and any other document executed in connection with the transactions contemplated by this Agreement.

(bb) “**C-PACE Financing**” means that certain C-PACE loan in the aggregate amount of [_____ and ___/100 Dollars (\$____. __)] made under the Program by Capital Provider to Borrower to finance the Improvements on the Property in accordance with the C-PACE Act, the Ordinance and the C-PACE Documents, which (i) includes principal, interest, Capitalized Interest, fees (including Program Fees), and transaction expenses (including costs of appraisals, environmental reports, title reports, transfer and/or recording fees and taxes), and (ii) shall be paid back with interest (at the Interest Rate) over the Term in accordance with the C-PACE Documents. During the Term, the C-PACE Financing amount may be modified by Capital Provider to reflect accrued interest, Default Interest, late fees, penalties, payments, prepayments and other adjustments that are contemplated by the C-PACE Documents.

(cc) “**C-PACE Lien**” means the voluntary, irrevocable, special assessment lien levied against the Property pursuant to the C-PACE Act, at Borrower’s request, to evidence and secure the C-PACE Financing, which (i) is of equal priority with the City Real Estate Tax lien; (ii) as to the current C-PACE Payment that is due and any Delinquent C-PACE Payments, is senior to (A) all other special assessment liens, and (B) all previously recorded senior liens, provided a Lender Consent is recorded for each senior lien; (iii) shall run with title to the Property and shall not be extinguished by a foreclosure; and (iv) is evidenced by the C-PACE Memorandum, as such C-PACE Lien may be amended and assigned from time to time in accordance with the C-PACE Documents.

(dd) “**C-PACE Memorandum**” means that certain Memorandum of C-PACE Assessment Lien, which shall (i) be executed by Borrower, Capital Provider, and the City, (ii) include the Amortization Schedule, and (iii) be recorded in the Clerk’s Office against the Property at Closing to evidence the C-PACE Lien and to secure the repayment of the C-PACE Financing to Capital Provider, a form of which C-PACE Memorandum is attached hereto and incorporated herein as **Exhibit B**.

(ee) “**C-PACE Note**” means a promissory note evidencing Borrower’s obligation to repay the C-PACE Financing, executed by Borrower and made payable to Capital Provider in the original principal amount of the C-PACE Financing, a form of which is attached hereto and incorporated herein as **Exhibit G**, and shall include without limitation, any and all modifications, restructurings, extensions, consolidations, amendments and/or assignments thereof.

(ff) “**C-PACE Payments**” means the periodic, installment payments of the C-PACE Financing, due and payable by Borrower to the City to repay the C-PACE Financing in such amounts and at such times as set forth on the Amortization Schedule (as may be amended from time to time in accordance with the C-PACE Documents).

(gg) “**Default Interest**” means the interest that accrues at the Default Rate if Borrower defaults under the C-PACE Documents or an Event of Default occurs. Computations of Default Interest shall be based on a year of 360-days but shall be calculated for the actual number of days in the period for which Default Interest is charged.

(hh) “**Default Rate**” means the lower of [_____ percent (___%)] per annum or the highest annual interest rate allowed by applicable law.

(ii) “**Delinquency**” is defined in **Section 5.01**.

(jj) “**Delinquent C-PACE Payment**” means any C-PACE Payment that was not paid by Borrower when due, which shall include without limitation, all interest, late fees, penalties and costs of collection incurred pursuant to the C-PACE Documents.

(kk) “**Disbursement Conditions**” is defined in **Section 2.05**.

(ll) “**Disbursement Memorandum**” means that certain memorandum containing the Closing disbursements and wiring instructions for the transactions contemplated by this Agreement, which shall be executed by Borrower, Capital Provider, and the City, a form of which is attached hereto and incorporated herein as **Exhibit L**.

(mm) “**DMME**” means the Virginia Department of Mines, Minerals and Energy.

(nn) “**DMME Guidelines**” means the Uniform Statewide Financial Underwriting Guidelines for C-PACE Financings, issued on December 1, 2015, by the PACE Stakeholder Committee organized by DMME.

(oo) “**Effective Date**” is defined in the Preamble.

(pp) “**Eligible Improvement**” means any improvement, renovation, addition, construction, installation, modification of or to, an Eligible Property or a building located on an Eligible Property, if designed to (i) facilitate renewable energy production and distribution, (ii) reduce energy consumption, or (iii) reduce water consumption, which Eligible Improvements include without limitation, the types of Eligible Improvements listed in the Ordinance and may include new construction or renovations to existing improvements or structures.

(qq) “**Eligible Property**” means all assessable real estate located within the city of Richmond, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, other than (a) any condominium project as defined in §55-79.2 of the Code, or (b) any residential property containing four (4) or fewer dwelling units.

(rr) “**Environmental Claim**” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or legally binding directive, by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health and safety of any Person or to natural resources or the environment.

(ss) “**Environmental Laws**” means any and all federal or state (or any subdivision of either of them) statutes, ordinances, directives, orders, rules, regulations, judgments, governmental authorizations, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Borrower or the Property.

(tt) “**Event of Default**” has the meaning given such term in **Section 5.01**.

(uu) “**Exclusivity Covenants**” means the covenants and undertakings of Borrower and its affiliates, for the benefit of Capital Provider, whereby Borrower shall not (i) solicit, initiate or encourage submission of proposals or offers from any third person, relating to any acquisition or purchase of the C-PACE Financing, or (b) participate in any discussions or negotiations regarding, or furnish any information or otherwise cooperate in any way with, facilitate or encourage any effort or attempt by any person to purchase the C-PACE Financing.

(vv) “**Failure to Complete Fee**” is defined in **Section 2.11**.

(ww) “**Final Conditions**” is defined in **Section 2.06**.

(xx) “**Final Lien Waiver**” means a final lien waiver and release approved by Capital Provider in its reasonable discretion and executed by Contractor, which shall be in substantially the form attached hereto as **Exhibit I**.

(yy) “**Financing Schedule**” means that certain C-PACE Financing Schedule attached hereto and incorporated herein as **Schedule I**.

(zz) “**Financing Term**” means a period of [_____] (___) years, beginning on the Repayment Start Date and ending on the date on which the C-PACE Financing and any other amounts owed pursuant to the C-PACE Documents have been repaid in full in accordance with the C-PACE Documents and the Amortization Schedule (as may be amended from time to time).

(aaa) “**Governmental Authority**” means any federal, state, municipal, county, national or other government, governmental department, commission, board, bureau, court, agency, instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

(bbb) “**Hazardous Materials**” means any chemical, material or substance, exposure to which is prohibited, limited or otherwise regulated pursuant to any Environmental Law.

(ccc) “**Hazardous Materials Activity**” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

(ddd) “**Improvements**” is defined in **Recital D** of this Agreement.

(eee) “**Indemnified Party**” is defined in **Section 4.10**.

(fff) “**Interest Rate**” means the annual interest rate under the C-PACE Financing, as determined by Capital Provider, which equals [_____ percent (___%)].

(ggg) “**Lender Consent**” means, for each Senior Lender, an executed, written consent and subordination agreement (in substantially the form attached hereto and incorporated herein as **Exhibit F**), which shall be recorded in the Clerk’s Office at Closing to evidence Senior Lender’s consent to the C-PACE Financing and to subordinate Senior Lender’s lien on the Property to the C-PACE Payments (as and when each C-PACE Payment becomes due and payable) during the Term.

(hhh) “**Lien Waiver**” means a lien waiver and release (other than a Final Lien Waiver) approved by Capital Provider in its reasonable discretion and executed by Contractor and Borrower, certifying to Capital Provider that all materials furnished and work performed under the Construction Contract to date have been fully paid (except for any retainage allowed by the Construction Contract and any outstanding change requests) and confirming that there will be no mechanics’ liens or claims therefor by Contractor or any subcontractors with respect to the amounts covered in the Lien Waiver, which Lien Waiver shall be in substantially the form attached hereto as **Exhibit H**.

(iii) “**Material Adverse Effect**” means a material adverse effect on and/or material adverse developments with respect to (i) the business, operations, properties, assets or condition (financial or otherwise) of Borrower; (ii) the ability of Borrower to fully and timely perform its obligations pursuant to this Agreement; (iii) the legality, validity, binding effect or enforceability against Borrower of the C-PACE Documents; (iv) the rights, remedies and benefits available to, or conferred upon, Capital Provider under this Agreement or any related agreements; or (v) the construction, development, operation, leasing, use or value of the Improvements.

(jjj) “**Ordinance**” means the “[*Insert Locality Name*] Commercial Property Assessed Clean Energy (C-PACE) Ordinance,” adopted on [_____, 20__], in accordance with the C-PACE Act, which establishes the Program.

(kkk) “**PACE**” means Property Assessed Clean Energy.

(lll) **“PACE Confirmation”** is defined in **Section 2.08**.

(mmm) **“Party”** and **“Parties”** are defined in the Preamble.

(nnn) **“Permitted Liens”** means any of the following affecting Borrower or the Property: (i) the Permitted Title Exceptions; (ii) any lien, encumbrance or restriction permitted under any Senior Lender agreement evidencing or securing the debt obligations of Borrower to Senior Lender in connection with the Property; (iii) the C-PACE Lien as evidenced by the recorded C-PACE Memorandum; (iv) any other liens or encumbrances as Capital Provider may approve in writing from time to time; and (v) any subleases, concessions, occupancy agreements, use agreements and licenses in the ordinary course of business for the operation of the business on the Property, as approved by Capital Provider in its reasonable discretion.

(ooo) **“Permitted Title Exceptions”** means the title exceptions set forth on **Exhibit K** attached hereto and incorporated herein.

(ppp) **“Plans”** is defined in **Section 3.05**.

(qqq) **“Program”** is defined in **Recital A** of this Agreement.

(rrr) **“Program Administrator”** means (i) an independent third party (authorized by written contract with the City), or (ii) a designated City official, which, in either case, possesses the authority to administer the Program as provided by the Code, the Ordinance and the Program Guidelines.

(sss) **“Program Fee”** means the City fee for managing the Program (including levying the C-PACE Lien and collecting and disbursing the C-PACE Payments), which Program Fee shall be due and payable to the City in accordance with this Agreement.

(ttt) **“Program Guidelines”** means those procedures, rules, disclosures, and restrictions promulgated, imposed and enforced by Program Administrator for the governance of the Program.

(uuu) **“Property”** is defined in **Recital B** of this Agreement.

(vvv) **“Real Estate Tax”** means the local tax on real estate which the City levies pursuant to Title 58.1, Chapter 32 of the Code.

(www) **“Release”** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

(xxx) **“Repayment Date”** means the due date for each of Borrower’s C-PACE Payments during the Financing Term, which is the date that Real Estate Taxes are due to the City

(i.e., [January 14 (for the period from January 1 through June 30) and June 14 (for the period from July 1 through December 31)]), as provided in the Amortization Schedule.

(yyy) “**Repayment Start Date**” means the first Repayment Date that occurs after the Completion Date.

(zzz) “**Senior Lender**” means each lender entitled to the benefits of a security interest in the Property, whether evidenced by an existing security instrument recorded in the Clerk’s Office against the Property, or a security instrument to be recorded in connection with the Closing.

(aaaa) “**Term**” is defined in **Section 2.01**.

(bbbb) “**Virginia**” means the Commonwealth of Virginia.

Section 1.02 Conventions. Unless otherwise expressly provided in this Agreement:

(a) references to Persons include their successors and permitted assigns, and whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter, and singular or plural, forms;

(b) the terms “include,” “includes” or “including” shall be deemed to be followed by the phrase “without limitation;” and,

(c) references to the Recitals, Articles, Sections, Exhibits and Schedules mean the recitals, articles, sections, exhibits and schedules referenced in or attached to this Agreement, respectively.

ARTICLE II

C-PACE FINANCING

Section 2.01. C-PACE Financing of Improvements; Term; Interest. Capital Provider will provide the C-PACE Financing to Borrower for the construction of the Improvements, and Borrower hereby agrees to (a) use the proceeds of the C-PACE Financing solely to construct the Improvements and pay the allowable fees and costs required to be paid in connection therewith, and (b) cause the C-PACE Financing to be repaid on the terms and conditions contained in the C-PACE Documents. The C-PACE Financing will be provided for a term commencing on the Closing Date and ending on the expiration of the Financing Term (“**Term**”), unless the C-PACE Financing is prepaid (if permitted) in accordance with this Agreement. During the Term, interest shall accrue on the unpaid principal balance of the C-PACE Financing at the Interest Rate. The Interest Rate is not necessarily the lowest rate charged by Capital Provider. The C-PACE Financing will be fully amortized over the Term as shown on the Amortization Schedule.

Section 2.02. Absolute Obligation; Evidence of Indebtedness. This Agreement is an “evidence of indebtedness” for all purposes, it being the express intent of the Parties that this Agreement contains all of the loan and repayment terms and the provisions imposing the C-PACE Lien against the Property for the benefit of Capital Provider. The debt evidenced by the C-PACE

Financing is a commercial (and not a consumer) loan for the specific purpose of financing the Improvements on the terms and conditions as set forth herein. Borrower hereby promises and agrees to repay the C-PACE Financing, as such amount may be increased during the Term to include applicable interest, Default Interest, fees and/or C-PACE expenses, in accordance with the provisions of the C-PACE Act, the Ordinance, the C-PACE Documents and other applicable law.

Section 2.03. Security/Collateral for C-PACE Financing. To secure the C-PACE Financing, Borrower hereby grants to Capital Provider the C-PACE Lien. Borrower and the City hereby consent to the C-PACE Lien being recorded against the Property for the benefit of Capital Provider to evidence and secure the C-PACE Financing. Borrower and City acknowledge and agree to the imposition of the C-PACE Lien on the Property as a priority lien (equal in priority with Real Estate Taxes) to secure the C-PACE Financing, enforceable against the Property as provided in the C-PACE Act, the Ordinance and the C-PACE Documents.

Section 2.04. Funding; Conditions Precedent to Closing. On the Closing Date, Capital Provider shall disburse the C-PACE Financing (net of Capitalized Interest, which shall be retained by Capital Provider) in accordance with the Disbursement Memorandum, subject to the Closing Conditions. The remaining C-PACE Financing amount (after all disbursements have been made in accordance with the Disbursement Memorandum) will be deposited into an account to be maintained with Capital Provider (or its designee) for the benefit of Borrower, the proceeds of which will be disbursed from time to time in accordance with this Agreement. In connection with Closing and prior to Capital Provider funding the C-PACE Financing, the following conditions precedent to Closing shall be fully satisfied, in Capital Provider's sole and absolute discretion, or waived in writing by Capital Provider ("**Closing Conditions**"):

(a) Borrower shall have provided to Capital Provider fully-executed originals of the C-PACE Documents.

(b) Borrower shall have disclosed all financial liens and/or encumbrances on the Property, and the title report for the Property shall have been updated prior to Closing, confirming that no additional matters of record exist.

(c) The final, fully-executed Construction Contract shall have been approved by Capital Provider.

(d) The current Plans and current Budget shall have been approved by Capital Provider.

(e) Borrower shall have provided to Capital Provider evidence satisfactory to Capital Provider of current insurance policies on the Property as required by this Agreement.

(f) Borrower shall be current on all payments of (i) debt service for indebtedness secured by a lien on the Property, and (ii) Real Estate Taxes and other assessments levied on the Property, and Borrower shall have delivered the executed Borrower's Certificate to Capital Provider and the City.

(g) Capital Provider shall have received the fully-executed Memorandum and confirmation that the Memorandum has been recorded in the Clerk's Office.

(h) All Lender Consents shall have been approved by Capital Provider, and Capital Provider shall have received all fully-executed Lender Consents and confirmation that all Lender Consents have been recorded in the Clerk's Office.

(i) Program Administrator has completed its review of the transaction contemplated by this Agreement and has determined that the transaction meets the Program requirements and is in compliance with the Program Guidelines.

(j) Borrower shall have submitted such additional documents as Capital Provider may reasonably require, all in form and substance satisfactory to Capital Provider in its reasonable discretion.

(k) *[INSERT ADDITIONAL CLOSING CONDITIONS REQUIRED BY CAPITAL PROVIDER].*

Section 2.05. Conditions Precedent to Disbursements. Capital Provider's obligation to make any C-PACE Advances (excluding the final C-PACE Advance, which is addressed in **Section 2.06** below) shall be subject to the complete satisfaction of the following conditions precedent, in Capital Provider's sole and absolute discretion ("**Disbursement Conditions**"):

(a) Borrower's continued satisfaction of all Closing Conditions (other than those that correspond solely to an earlier date).

(b) The final Plans and the final Budget, in each case as then in effect, shall have been approved by Capital Provider.

(c) Upon Capital Provider's request, Borrower shall have provided copies of all existing permits received as of such date and not previously delivered to Capital Provider.

(d) Borrower shall be in compliance in all material respects with the terms and conditions of the C-PACE Documents, and no Event of Default shall have occurred and be continuing in connection with the C-PACE Documents.

(e) No order or notice shall have been given by any Governmental Authority stopping construction or stating that the work or construction is in violation of any law, ordinance, code or regulation that could reasonably be expected to have a Material Adverse Effect, unless such order or notice has been rescinded or stayed, and a copy of such rescission or stay has been delivered to and shall be satisfactory to Capital Provider in its sole discretion.

(f) All C-PACE Advances shall be made in accordance with this Agreement and the C-PACE Advance Schedule, or as otherwise mutually agreed by the Parties.

(g) *[INSERT ADDITIONAL DISBURSEMENT CONDITIONS REQUIRED BY CAPITAL PROVIDER].*

Section 2.06. Conditions Precedent to Final C-PACE Advance. Capital Provider's obligation to make the final C-PACE Advance shall be subject to the satisfaction of the following conditions precedent, in Capital Provider's sole and absolute discretion ("**Final Conditions**"):

- (a) Continued satisfaction of all Closing Conditions and all Disbursement Conditions (in each case, other than those that correspond solely to an earlier date).
- (b) Construction of the Improvements has been completed in accordance with the Plans, in a lien-free condition, except for the Permitted Liens and any other liens that Borrower is appealing or contesting by appropriate legal or other proceeding (which shall be promptly initiated and conducted by Borrower in good faith and with due diligence).
- (c) Borrower has delivered a fully-executed Final Lien Waiver and a fully-executed Completion Certificate to Capital Provider.
- (d) Borrower has delivered a temporary or final certificate of occupancy (as applicable) and all engineer's and architect's certifications (as applicable) to Capital Provider.
- (e) All required approvals, reports and information required to be submitted to Capital Provider and/or the City have been submitted and approved.
- (f) All other requirements of the C-PACE Documents have been satisfied.
- (g) *[INSERT ADDITIONAL FINAL CONDITIONS REQUIRED BY CAPITAL PROVIDER].*

Section 2.07. Amount and Frequency of C-PACE Financing Disbursements.

- (a) Provided that the Disbursement Conditions (or the Final Conditions in the case of the final C-PACE Advance) have been fully satisfied, each C-PACE Advance will be disbursed by Capital Provider to or at the direction of Borrower within ten (10) days after Capital Provider receives a disbursement request in a form reasonably acceptable to Capital Provider, together with documentation satisfactory to Capital Provider, in its sole discretion, to support the amount and recipients of each C-PACE Advance.
- (b) Each disbursement of a C-PACE Advance by Capital Provider shall either reimburse Borrower for construction costs already incurred by Borrower or be disbursed directly to Contractor, subcontractors or other suppliers for construction costs incurred in accordance with the Budget and the C-PACE Advance Schedule. Borrower may apply any savings or under-Budget line item cost in the approved Budget to increase the amount of any other line item in the approved Budget, subject in each instance to Capital Provider's review and approval, which approval shall not be unreasonably withheld.
- (c) Each disbursement of a C-PACE Advance by Capital Provider shall be conditioned upon Borrower's compliance with the provisions of the C-PACE Documents and shall be made in accordance with the approved Plans, Budget, and C-PACE Advance Schedule, in each case as then in effect; provided, however, that at all times the undisbursed portion of the C-PACE Financing shall be sufficient, in Capital Provider's sole discretion, to complete the Improvements (including, without limitation, all non-construction costs associated with the Improvements).
- (d) Capital Provider shall have the right to make the final determination, in its sole discretion, as to the amount of each C-PACE Advance. Capital Provider may, in its sole

discretion, determine the number and frequency of each C-PACE Advance, which will not exceed one hundred (100%) percent of the cost of the work then completed and in place or contemplated in the Plans and Budget, less the standard retainage of [_____ percent (___%)] for all construction costs, which retainage will be disbursed to Borrower in connection with the final C-PACE Advance.

(e) The final C-PACE Advance will be made once all of the Final Conditions have been satisfied, in Capital Provider's sole and absolute discretion.

(f) The aggregate amount of all C-PACE Advances shall not exceed the amount of the C-PACE Financing, and Capital Provider shall have no obligation to make any C-PACE Advances from and after the date on which the final C-PACE Advance was made.

(g) ***[INSERT ADDITIONAL DISBURSEMENT PROVISIONS AS REQUIRED BY CAPITAL PROVIDER].***

Section 2.08. Repayment of C-PACE Financing.

(a) No C-PACE Payments shall be due from Borrower until the Repayment Start Date. Borrower and Capital Provider shall execute a written acknowledgement of the Completion Date (and any related dates) for purposes of updating the Amortization Schedule, which will be substantially similar to the form attached hereto and incorporated herein as **Exhibit J** ("**PACE Confirmation**").

(b) Beginning on the Repayment Start Date and continuing on each Repayment Date during the Financing Term, in addition to paying Real Estate Taxes, Borrower shall pay the C-PACE Payment in the same manner as Real Estate Taxes are paid to the City, in accordance with the Amortization Schedule. It is a material provision of the C-PACE Financing that Borrower timely makes each C-PACE Payment on or before its respective Repayment Date so that the City can timely distribute each C-PACE Payment in accordance with the C-PACE Documents.

(c) Borrower acknowledges and agrees that (i) the C-PACE Lien shall run with the title to the Property and shall automatically bind all successor owners of the Property until the C-PACE Financing is paid in full and the C-PACE Lien is released by Capital Provider in accordance with the C-PACE Documents and the C-PACE Act; and (ii) the C-PACE Financing may not be prepaid, in whole or in part, except as follows:

(i) ***[INSERT PREPAYMENT TERMS/ PREPAYMENT PREMIUM, IF ALLOWED]***

(d) Within [ten (10)] days after each Repayment Date, provided that Borrower has remitted funds sufficient to pay each C-PACE Payment (and related fees detailed below), the City shall pay to Capital Provider each C-PACE Payment, less the Program Fee, which shall be retained by the City (and shall be in addition to the amount of the C-PACE Payment due to Capital Provider), in accordance with the Amortization Schedule. Upon receipt of each C-PACE Payment from the City, Capital Provider shall apply each C-PACE Payment as follows:

(i) First, to pay Capital Provider for any shortfall with respect to interest payments, penalties, late fees and other charges (including Default Interest and costs of collection) due but unpaid in prior months;

(ii) Second, to pay Capital Provider for any shortfall with respect to principal due but unpaid in prior months;

(iii) Third, to pay to pay Capital Provider for current interest; and,

(iv) Fourth, to pay Capital Provider for current principal.

Section 2.09. Commitment Fee; Deposit. Borrower shall pay to Capital Provider in readily available funds, a commitment fee equal to [\$_____] and payable as follows:

(a) a [\$_____] deposit upon acceptance of Capital Provider's term sheet, which has been received by Capital Provider; and

(b) the remaining commitment fee balance in the amount of [\$_____] to be paid to Capital Provider at Closing.

Section 2.10. Expenses of Capital Provider. Borrower shall pay all reasonable, documented out-of-pocket costs associated with the C-PACE Financing, including without limitation, any reasonable attorney's fees, third party reports, bank inspector fees, lien searches, filing fees, recordation taxes, other taxes, insurance premiums, etc., whether or not Closing occurs, which fees shall be capitalized into the C-PACE Financing at Closing as shown on the Amortization Schedule.

Section 2.11. Failure to Complete the Improvements. Borrower hereby freely and willingly agrees to forfeit the payment of the commitment fee to Capital Provider and to pay the additional fee identified in the Financing Schedule if Borrower fails to draw down the C-PACE Financing to complete the Improvements under the provisions of the C-PACE Documents ("**Failure to Complete Fee**"). Borrower acknowledges and agrees that the purpose of the Failure to Complete Fee is to make Capital Provider whole and to pay all costs incurred by the City in processing Borrower's application and filing (and releasing) the C-PACE Memorandum.

Section 2.12. Borrower's Failure to Repay C-PACE Financing. If Borrower fails to pay all or part of the C-PACE Financing when due, the Parties hereby acknowledge and agree to the following:

(a) Default Interest on any unpaid C-PACE Payments (or portions thereof) shall accrue at the Default Rate from the date such C-PACE Payment was due until it is paid in full in accordance with the C-PACE Documents.

(b) The Default Interest shall be added to the C-PACE Financing balance and shall continue to accrue Default Interest thereafter unless and until all accrued and unpaid Default Interest is paid in full.

(c) The Default Interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of the City as a result of Borrower's failure to pay Real Estate Taxes or other taxes or assessments on the Property. In addition, C-PACE Payments shall continue to be levied as special assessments in accordance with the existing Amortization Schedule, notwithstanding Borrower's failure to pay all or part of any past C-PACE Payment. From time to time during the Term, Capital Provider may request the City and Borrower to approve and execute a C-PACE Amendment, which contains an amended Amortization Schedule that includes then-current accrued and unpaid interest, Default Interest, penalties, expenses and collection costs due to Capital Provider in connection with the C-PACE Financing. Capital Provider will record the C-PACE Amendment in accordance with the provisions of this Agreement.

(d) Borrower hereby acknowledges and agrees that failure to pay any C-PACE Payment will result in penalties and interest accruing in favor of Capital Provider on the amounts due, in addition to penalties and interest that may accrue in favor of the City.

(e) Borrower's failure to pay each C-PACE Payment on or before the respective Repayment Date shall result in a late fee to Capital Provider in the amount of [ten percent (10%)] of the delinquent C-PACE Payment, without regard to the number of months such C-PACE Payment has been delinquent. A delinquent C-PACE Payment will also accrue Default Interest at the Default Rate. The late fee and the Default Interest shall be due and owing to Capital Provider, in addition to any other fees, penalties or interest due and owing to the City.

ARTICLE III

BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to and for the benefit of Capital Provider and the City that the following statements are true, complete and correct as of the Effective Date and will be true, complete and correct as of the Completion Date and during the Financing Term:

Section 3.01. Organization and Authority. Borrower is a _____ *[INSERT TYPE OF ENTITY AND STATE]*, duly organized, validly existing and in good standing in the state of its organization and with authority to do business under the laws of Virginia. Borrower has all necessary power and authority to own the Property, conduct its business and enter into the transactions contemplated by this Agreement. Borrower has the right to enter into and perform this Agreement, and the execution, delivery and performance of this Agreement, the C-PACE Documents and all other documents executed in connection therewith have been duly authorized, executed and delivered and constitute legal, valid and binding obligations of Borrower, each enforceable in accordance with its respective terms. Borrower shall maintain in full force and effect at all times its existence, rights, privileges, and franchises and shall qualify and remain qualified in all jurisdictions where qualification is required.

Section 3.02. Financial Statements. All financial statements delivered to Capital Provider are true, complete and correct, have been prepared in accordance with generally accepted accounting principles (or such alternate accounting method acceptable to Capital Provider) consistently applied, fairly represent the financial condition of Borrower as of the date thereof, and

no material adverse change has occurred in the financial condition presented therein since such date.

Section 3.03. No Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting Borrower or the Property, which could have a Material Adverse Effect on Borrower, its financial condition, the Property, the Improvements or Borrower's ability to satisfy its obligations under this Agreement.

Section 3.04. Title. Borrower has good, marketable and insurable fee simple/[leasehold] title to the Property, and there are no liens or encumbrances on the Property other than the Permitted Liens. Prior to completion of the Improvements, Borrower shall preserve and retain title to the Property. When completed, Borrower will be the only owner of the Improvements and all equipment related to the Improvements.

Section 3.05. Compliance With Laws. Borrower has complied with, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Property and construction of the Improvements. All permits, consents, approvals and authorizations required to be issued by any governmental body necessary for (a) the construction of the Improvements in accordance with the plans and specifications submitted by Borrower and which are incorporated into the Construction Contract ("**Plans**"); (b) the construction, connection and operation of all utilities necessary to service the Improvements; and (c) the construction and use of all roadways, driveways, curb cuts and other vehicular or other access to and egress from the Improvements, as shown on the Plans either (i) have been obtained, are valid, are in full force and effect and have been complied with by Borrower in all respects; or (ii) will be obtained, will be valid, will be in full force and effect prior to the initiation of construction, and Borrower will be in compliance therewith in all respects prior to Capital Provider's disbursing any C-PACE Financing proceeds. Construction of the Improvements in accordance with the Plans will comply with applicable zoning, use, building or other applicable codes, laws, regulations and ordinances and any restrictive covenants affecting the Property.

Section 3.06. Approval of Plans and Budgets. Each set of Plans, upon submission to Capital Provider, shall represent a true and accurate reflection of the Improvements (at the time of submission) and shall have been approved as required by all governmental bodies or agencies having jurisdiction or will be approved prior to the first disbursement request. Upon submission to Capital Provider, the Budget shall represent an accurate, current estimate of all costs necessary to construct the Improvements in accordance with the Plans. The construction costs for the Improvements (or any portion thereof) shall not exceed the cost therefor contained in the Budget. Borrower is responsible for any costs in excess of the Budget.

Section 3.07. Compliance With Documents. The execution and delivery of this Agreement by Borrower and compliance with the provisions hereof, do not and will not, in any material respect, conflict with or constitute on the part of Borrower a breach or default under any agreements or instruments to which it is a party or by which it is bound. No Event of Default has occurred hereunder, and no event has or shall have occurred and/or be continuing, which with the passage of time or the giving of notice, or both, would constitute a default or an Event of Default under this Agreement.

Section 3.08. No Misrepresentation or Material Nondisclosure. The information provided by Borrower to Capital Provider and the City in the C-PACE application and other C-PACE Documents was true and correct as of the effective date of each documents and remains true and correct as of the Effective Date and during the Term. Borrower has not made and will not make to Capital Provider or the City, in this Agreement, the C-PACE Documents or otherwise, any untrue statement of a material fact, and Borrower has not omitted and will not omit to state a material fact, the omission of which makes any statement misleading.

Section 3.09. Insurance. Borrower has provided to Capital Provider and the City satisfactory evidence of current insurance policies on the Property, which meet the requirements of this **Section 3.09**, and Borrower has provided evidence that such insurance shall be maintained in force during the Term, which meets the requirements set forth below:

(a) *Property Insurance:* Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter included on a "Special Form" or "Special Cause of Loss" insurance policy. Such policy will name Capital Provider as mortgagee/loss payee on the improvements and the personal property at the Property: (i) in an amount equal to one hundred percent (100%) of the "Full Replacement Cost," which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation (the determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Capital Provider's election, by reference to such indices, appraisals or information as Capital Provider determines in its sole discretion); (ii) containing an agreed amount endorsement with respect to the improvements and personal property at the Property or waiving all co-insurance provisions; (iii) providing for no deductible in excess of [\$10,000] for all such insurance coverage other than the coverage provided for water damage and coverages for which deductibles are measured in days instead of monetary value; (iv) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses; and (v) containing such other insurance as Capital Provider may reasonably require from time to time during the Term. This coverage is to be evidenced on Acord 27.

(b) *Commercial General Liability Insurance:* Insurance against liability arising on the Property and out of the ownership, use, occupancy, or maintenance of the Property or the business conducted on the Property, including liability arising from the negligence or other acts or omissions of all insured and additional insured parties, with limits of [\$2,000,000] per occurrence (or such other amount as Capital Provider may reasonably require from time to time during the Term, naming each of Capital Provider and the City as an additional insured. This coverage is to be evidenced on Acord 25.

(c) Each insurance policy must provide for thirty (30) days' notice to Capital Provider in the event of cancellation or nonrenewal.

(d) Such insurance shall be maintained in force during the Term, and all insurance policies must be issued by insurance companies admitted in the Virginia having a Best

rating of "A-" or better, and in form and content reasonably acceptable to Capital Provider and the City.

(e) If Borrower fails to maintain the required insurance, Capital Provider may obtain the required insurance in amounts and limits sufficient to protect Capital Provider's interests, and Borrower shall be obligated to pay Capital Provider for the cost of such insurance.

(f) During the Construction Period, Borrower shall provide to Capital Provider evidence of any additional insurance coverage required to be maintained by Capital Provider.

Section 3.10. Environmental Laws. Borrower does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of Hazardous Materials or hazardous wastes (as defined in any Environmental Laws), and the Property has not been so used previously, except as previously disclosed in writing to Capital Provider. There are no underground storage tanks located on the Property. There is no past or present non-compliance with Environmental Laws in connection with the Property, which has not been fully remediated in accordance with Environmental Laws. There is no environmental remediation required (or anticipated to be required) with respect to the Property. Borrower does not know of, and has not received, any written or oral notice or other communication from any Person relating to (a) any Hazardous Materials or remediation thereof, (b) the possible liability of any Person pursuant to any Environmental Law or other environmental conditions in connection with the Property, or (c) any actual or potential administrative or judicial proceedings in connection with the foregoing.

Section 3.11. Improvements. The Improvements are in compliance with the Program, the C-PACE Act, the Ordinance, and the C-PACE Documents.

Section 3.12. No Damage or Condemnation. The Property is not damaged by waste, vandalism, fire, hurricane, earthquake or earth movement, windstorm, flood, tornado or other casualty adversely affecting the value of a Property or the use for which the Property was intended, and the Property is in substantially the same condition it was at the time the most recent appraisal was obtained. There is no proceeding pending or, to the knowledge of Borrower, threatened for the total or partial condemnation of the Property.

Section 3.13. Lienholder Consent. Borrower has disclosed to Capital Provider the identities of all Senior Lenders and has obtained and delivered to Capital Provider a Lender Consent for each Senior Lender to be recorded in connection with Closing. To Borrower's knowledge, no Lender Consent has been withdrawn or revoked.

Section 3.14. Repayment of C-PACE Financing. Borrower shall pay the C-PACE Financing and all other amounts due hereunder and under the C-PACE Note at the times and in the amounts required by this Agreement, the Note and the Amortization Schedule.

Section 3.15. Incorporation of Representations and Warranties. Each request by Borrower for a C-PACE Advance shall constitute a covenant and certification by Borrower that the representations and warranties contained herein are true, complete and correct as of the date of each C-PACE Advance request.

ARTICLE IV

ADDITIONAL COVENANTS AND AGREEMENTS

Section 4.01. Compliance With C-PACE Act. Borrower has read the C-PACE Act and the Ordinance and covenants and agrees to comply in all respects with the provisions of the C-PACE Act and the Ordinance, including without limitation the following:

(a) The repayment obligation of the C-PACE Financing shall constitute and secure the C-PACE Lien against the Property until paid in full.

(b) The C-PACE Financing (and each C-PACE Payment) shall be collected in the same manner as the Real Estate Taxes are collected by the City. The C-PACE Lien shall be enforced in the same manner as the Real Estate Taxes are enforced by the City, including the collection of any penalties or fees and the exercise of any remedies. The C-PACE Lien shall be evidenced by the C-PACE Memorandum, which shall be recorded against the Property in the Clerk's Office. The C-PACE Lien shall be released when all amounts due thereunder are paid in full in the manner provided for by the C-PACE Act.

Section 4.02. Maintenance of Property. Borrower shall, at all times, maintain the Property and, after construction, the Improvements, in good condition and repair. Borrower shall pay when due all taxes and assessments (including the Real Estate Taxes and the C-PACE Payments), water charges, sewer charges and all other charges levied on or against the Property, and upon written request, submit to Capital Provider and the City official receipts evidencing such payments.

Section 4.03. Construction Start and Completion. Borrower shall commence construction of the Improvements and shall diligently proceed with construction of the Improvements in accordance with the approved Plans and Budget and in a good and workmanlike manner in accordance with all applicable laws, ordinances, codes, rules and regulations. Construction of the Improvements shall be completed on or prior to the Completion Date, which is estimated to be [_____, 20__].

Section 4.04. Protection Against Liens. Borrower shall promptly pay and discharge all claims for labor performed and materials and services furnished in connection with construction of the Improvements and shall take all other steps necessary to prevent the assertion of mechanics' or materialmen's claims or liens either against the Property or the Improvements.

Section 4.05. Construction Inspections; Reports. Capital Provider, the City and/or their respective representatives shall have the right at all reasonable times to enter upon the Property and inspect the construction of the Improvements. Borrower shall permit Capital Provider and the City to examine all records and other documents relating to the Property and the Improvements and to perform such examinations or energy audits as may be reasonably necessary to confirm compliance with the C-PACE Act, the Ordinance and the C-PACE Documents.

Section 4.06. Periodic Reports/Certifications. During the Construction Period, Borrower shall provide to Capital Provider and the City upon reasonable request (but not more than once every six (6) months), a written statement, certified as true, correct and complete, setting

forth the status of the Improvements and all sources and uses of funds with respect to the Improvements, a current actual Budget analysis and an updated schedule for the completion of the Improvements, a current list of all directors and officers of the Borrower and such other information as Capital Provider and/or the City may reasonably require.

Section 4.07. Notice of Claims; Adverse Matters. Borrower shall promptly notify Capital Provider and the City in writing of all pending or threatened litigation or other matters that may materially adversely affect the Property or Borrower's ability to meet its obligations under this Agreement or otherwise with respect to the Improvements.

Section 4.08. Damage or Destruction. Borrower shall promptly notify Capital Provider and the City if the Improvements or the Property is damaged or destroyed by fire or any other cause. Upon the occurrence of a casualty, Capital Provider will either apply the insurance proceeds to the restoration of the Property or repay the outstanding balance of the C-PACE Financing. Capital Provider shall not have any obligation to make additional C-PACE Advances upon the occurrence of a casualty. If restoration of the Property is approved by Capital Provider, Borrower shall immediately proceed with the restoration thereof and shall restore the Improvements in accordance with the Plans or other similar plans approved by Capital Provider. If, in Capital Provider's judgment, the proceeds of insurance are insufficient to complete the restoration, Borrower shall deposit with Capital Provider such amounts as are necessary, in Capital Provider's reasonable judgment, to complete the restoration. Disbursement of insurance proceeds (plus any supplemental funds provided by Borrower) shall, at Capital Provider's election (made by written notice to Borrower), be deposited with Capital Provider and disbursed in Capital Provider's reasonable discretion.

Section 4.09. Condemnation. If the Improvements or the Property or any part thereof are taken by condemnation or subject to an imminent threat of condemnation, Capital Provider's obligation to make additional C-PACE Advances shall immediately terminate unless, in Capital Provider's sole discretion, the Property and the Improvements can be replaced and restored in a manner which will enable the Improvements to be functionally and economically utilized and occupied as originally intended. If Capital Provider determines in its sole discretion that the Improvements can be so restored, then the rights and obligations of Borrower, Capital Provider and the City subsequent to a taking by condemnation or imminent threat thereof and the disbursement of any condemnation proceeds actually paid to Capital Provider and undisbursed C-PACE Advances, shall be the same as described in **Section 3.08** with regard to insurance proceeds.

Section 4.10. Indemnification. Without limitation of any other obligation or liability of Borrower or any right or remedy of Capital Provider or the City contained herein, Borrower agrees to indemnify and hold harmless Capital Provider and the City, as well as their respective 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 statutorily created or under the common law, including all costs and expenses (including, without limitation, reasonable fees and disbursements of attorneys, engineers and consultants) and all other liabilities whatsoever (including, without limitation, liabilities under any applicable environmental laws, regulations or rules) which shall at any time or times be incurred, suffered, sustained or required to be paid by any such Indemnified Party (except any of the foregoing which result from

the negligence or willful misconduct of the Indemnified Party) on account of or in relation to or in any way in connection with any of the arrangements or transactions contemplated by, associated with or ancillary to this Agreement, or any other documents executed or delivered in connection herewith or therewith, all as the same may be amended from time to time, whether or not all or part of the transactions contemplated by, associated with or ancillary to this Agreement or any such other documents are ultimately consummated, resulting from any conduct, act or failure to act by Borrower or its affiliates or related parties. In any investigation, proceeding or litigation, or the preparation therefor, Capital Provider and the City shall each select its own counsel and, in addition to the foregoing indemnity, Borrower agrees to pay promptly the reasonable fees and expenses of such counsel. In the event of the commencement of any such proceeding or litigation, Borrower shall be entitled to participate in such proceeding or litigation with counsel of its choice at its own expense; provided that such counsel shall be reasonably satisfactory to Capital Provider and the City. This section shall survive the execution, delivery, performance and repayment of this Agreement and the C-PACE Financing, and the extinguishment of the C-PACE Lien.

Section 4.11. Further Assurances. Upon request of Capital Provider or the City, Borrower shall provide such additional information and execute such additional documents as Capital Provider and/or the City deem reasonably necessary or appropriate (in their sole discretion) to carry out the purposes of this Agreement, the C-PACE Documents and/or the Program in relation to the Improvements.

Section 4.12. Assignment of C-PACE Financing and C-PACE Lien.

(a) Capital Provider shall have the unrestricted right at any time and from time to time, and without Borrower's or the City's consent, to transfer and assign all of its rights and obligations under the C-PACE Documents to one or more entities, persons, banks or financial institutions capable of funding the C-PACE Financing. Each assignment by Capital Provider shall be evidenced by a C-PACE Assignment, together with such other documentation required by Capital Provider and the assignee, and Borrower shall execute such documents (if any) that Capital Provider or the assignee deems necessary to effect a transfer. Upon the full execution and recordation of the C-PACE Assignment, the assignee shall be a successor party to the C-PACE Documents and shall have all of the rights and obligations of Capital Provider provided herein and therein, and Capital Provider shall be released from its obligations, effective as of the date of the C-PACE Assignment.

(b) In furtherance of the foregoing, Capital Provider may furnish any information concerning the Property, Borrower or the Improvements in its possession from time to time to prospective assignees. Borrower hereby agrees to the release of such information.

(c) Capital Provider shall cause the C-PACE Assignment to be recorded in the Clerk's Office and shall furnish a recorded copy of any C-PACE Assignment to the City.

Section 4.13. Integrity of the Property as a Single Parcel. Borrower shall not, by act or omission, impair the integrity of the Property as a single, separate, subdivided and zoned taxable lot or otherwise remove or separate the Improvements from the Property, without the express written consent of Capital Provider and the City, which consent may be withheld in Capital Provider's or the City's sole and absolute discretion. If the Property consisted of multiple parcels

as of the Closing Date, Borrower shall not, by act or omission, cause any changes to such parcels, including but not limited to consolidating the parcels, changing the parcel boundaries, and/or modifying the tax parcel identification numbers, without the express written consent of Capital Provider and the City, which consent may be withheld in Capital Provider's or the City's sole and absolute discretion.

Section 4.14. Transfers; Binding on Future Owners. The sale, transfer, pledge or hypothecation of the Property or any reorganization or modification of Borrower's ownership structure shall be permitted only following the completion of the Improvements construction (as evidenced by the Completion Certificate), and then only if such transfer is fully subject to the C-PACE Financing, the C-PACE Lien and the provisions of the C-PACE Documents. Any and all transfers of the Property shall be subject automatically to this Agreement and the C-PACE Lien. All obligations under the C-PACE Documents shall run with the land and shall bind all future owners and tenants, where applicable, of the Property or any interest therein as if the same were expressly assumed by such parties. Notwithstanding the foregoing, upon transfer of fee simple title to or a possessory interest in the Property or any portion thereof to a new owner, Borrower (and each person or entity who may, from time to time, own fee simple title to or a possessory interest (other than a leasehold interest for a term) in all or part of the Property) shall cause the new owner to execute an assignment and assumption of this Agreement, substantially in the form attached hereto as **Exhibit O** ("**Assignment and Assumption Agreement**") and shall promptly deliver the fully-executed Assignment and Assumption Agreement to Capital Provider, which Capital Provider shall cause to be recorded in the Clerk's Office.

Section 4.15. Exclusivity Covenants; New C-PACE Projects. Borrower shall comply with and abide by the Exclusivity Covenants as of the Effective Date and during the Term. Borrower agrees that if, during the Term, Borrower submits an application with respect to a new C-PACE project, Borrower shall immediately notify Capital Provider and provide to Capital Provider copies of all application materials and other information reasonably requested by Capital Provider regarding each new C-PACE project. Capital Provider shall have a period of 30 days after receipt of notice to elect to provide additional C-PACE financing for each new C-PACE project. Capital Provider shall exercise this right by providing written notice to Borrower of its election during such 30-day period. If Capital Provider provides notice of its intent to provide additional C-PACE financing for a new project, then the Exclusivity Covenants shall apply with respect to each new project. If Capital Provider does not timely provide notice of its election to provide additional C-PACE financing for the new C-PACE project, then Capital Provider shall be deemed to have waived its rights under this **Section 4.15** with respect to such new project only, but shall retain its rights hereunder for any subsequent new projects during the Term.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.01. Events of Default. The occurrence of any of the following events shall constitute an "**Event of Default**" hereunder:

(a) failure by Borrower to make any payment required under the C-PACE Documents when due or beyond any applicable cure period, if any ("**Delinquency**");

(b) failure by Borrower to perform or observe any covenant, condition or agreement to be performed or observed by Borrower under this Agreement (other than a Delinquency) or any other C-PACE Documents, and such failure continues for 30 days after written notice thereof to Borrower from Capital Provider;

(c) Borrower is in default or there exists an Event of Default (as defined in any of the C-PACE Documents) under any of the C-PACE Documents or any other agreement to which Borrower is a party;

(d) any written representation, warranty or disclosure made to Capital Provider or the City by Borrower proves to be materially false or misleading as of the date when made, whether or not such representation or disclosure appears in the C-PACE Documents;

(e) failure to pay Real Estate Taxes, other taxes or other assessments on the Property when due and payable;

(f) failure to commence and diligently pursue construction of and completion of the Improvements;

(g) there occurs any event which, in Capital Provider's reasonable discretion, has a Material Adverse Effect on: (i) the ability of Borrower to perform any of its obligations hereunder or under any of the C-PACE Documents; (ii) the business or financial condition of Borrower; or (iii) the timely repayment of the C-PACE Financing;

(h) any encumbrance on any portion of the Property is created, which encumbrance purports to have priority over the C-PACE Lien with the exception of general Real Estate Tax liens;

(i) the existence of any liens with respect to the Property, including mechanics,' materialmen's, repairmen's or other liens that have not been dismissed or bonded within thirty (30) days;

(j) there is a material deviation in the Improvements from the Plans without the prior written consent of Capital Provider, or the appearance of defective workmanship or materials, in Capital Provider's sole discretion, which has not been cured for a period exceeding thirty (30) days;

(k) Borrower shall institute or have instituted against it any proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, receivership, or relief of debtors, (i) seeking to adjudicate it bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order; or (iii) seeking entry of an order for relief or appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, or other official with similar powers, for it or for any substantial part of its property; and in the case of any such proceeding or other action instituted against (but not by or with the consent of) such credit party, either (A) such proceeding or action shall remain undismissed or unstayed for a period of 60 days or more; or (B) any action sought in such proceedings shall occur. Nothing in this **Section 5.01** shall be deemed to be a waiver of any

right which Capital Provider or the City may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as may be amended, to file a claim or submit a ballot to accept or reject a proposed plan of reorganization in any relevant bankruptcy proceeding for the full amount due to Capital Provider under the C-PACE Documents;

(l) Borrower commences any legal proceeding against Capital Provider or the City seeking to recover damages or other affirmative recovery against Capital Provider or the City, including any proceeding asserting claims based on any theory of lender liability; or contests or in any way interferes, directly or indirectly, with (i) any foreclosure action, other action or proceeding to exercise remedies hereunder; or (ii) any other enforcement of Capital Provider's rights, powers, and remedies under any of the C-PACE Documents;

(m) there is any fraud or material misrepresentation by Borrower made in or in connection with the C-PACE Financing or C-PACE Documents;

(n) *[INSERT ADDITIONAL EVENTS OF DEFAULT REQUIRED BY CAPITAL PROVIDER].*

(o) Borrower ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties; or

(p) Borrower attempts to remove, sell, transfer, encumber, part with possession or sublet the Property, the Improvements or any part thereof without Capital Provider's prior written consent.

Section 5.02. Capital Provider Remedies. Upon the occurrence of an Event of Default, Capital Provider may (but shall not be obligated to), in addition to any other remedies which it may have under the C-PACE Act, Ordinance, C-PACE Documents or applicable law, at its option and without prior demand or notice, take any or all of the following actions:

(a) If a Delinquency occurs, Capital Provider shall have the remedy provided in [Section [58.1-3915] of the Code, which includes, among other remedies, Borrower's payment to the City (for the benefit of Capital Provider) a penalty equal to [ten percent (10%) of the unpaid C-PACE Financing and one and one-half percent (1.5%) interest accrued monthly on the outstanding C-PACE Financing balance]. Following a Delinquency, Capital Provider shall also have any and all foreclosure and tax sale rights provided in the C-PACE Act, the Ordinance and Section [58.1-3915.1] of the Code. If any or all of the Property is sold at a tax sale for the failure to pay Real Estate Taxes, the Property shall remain subject to the obligation to pay the C-PACE Financing in subsequent years as provided in the C-PACE Act. A failure to repay the C-PACE Financing is similar to a failure to pay Real Estate Taxes and could ultimately result in a tax foreclosure upon the Property if a cure is not undertaken by Borrower or a Senior Lender. There

is no right of acceleration with respect to the C-PACE Financing, however Capital Provider shall have all other rights and remedies at law and in equity. All fees and expenses of the City in collecting the C-PACE Financing shall be included and paid for by Borrower.

(b) If a Delinquency occurs, all Parties to this Agreement shall be notified in accordance with the notice requirements contained in this Agreement.

(c) If an Event of Default occurs prior to Borrower's completion of the Improvements, Capital Provider may immediately terminate any pending disbursement of a C-PACE Advance (and Capital Provider shall have no obligation to make any additional C-PACE Advances) and apply all or any part of any undisbursed C-PACE Advance amounts to any amounts owing on the C-PACE Financing and/or to any other obligations of Borrower under the C-PACE Documents.

(d) If an Event of Default occurs prior to Borrower's completion of the Improvements, Capital Provider may enter the Property and complete construction of the Improvements in accordance with the Plans, with such changes therein as Capital Provider may from time to time and in its reasonable discretion deem appropriate, all at the risk and expense of Borrower.

(e) If any proceedings are instituted by or against Borrower related to the C-PACE Financing, Borrower shall pay any and all costs incurred by Capital Provider, including reasonable attorneys' fees actually incurred. No remedy contained in this Agreement is intended to be exclusive of any other remedy stated herein or of any other remedy otherwise available to Capital Provider at law or in equity. Capital Provider's failure to exercise any remedy provided herein shall not constitute a waiver of the right to exercise the same remedy at a later time or in connection with a subsequent Event of Default.

(f) Capital Provider may exercise any and all remedies available under the C-PACE Act, the Ordinance and/or the C-PACE Documents and may exercise any other rights and remedies available to it at law or in equity.

(d) All remedies of Capital Provider provided for herein are cumulative.

Section 5.03. C-PACE Enforceability. If (a) the C-PACE Act, the C-PACE Documents and/or any material provisions thereof are found by a court of competent jurisdiction to be illegal or otherwise unenforceable such that the C-PACE Financing and/or C-PACE Lien are not enforceable or otherwise not collectible in the manner set forth in the C-PACE Act or the C-PACE Documents for any reason, or (b) an action is brought by any person to have the C-PACE Act, the C-PACE Documents and/or the C-PACE Lien challenged, nullified or overturned, and during the pendency of the action, the C-PACE Documents and/or the C-PACE Lien may not be enforceable or collectible as contemplated under the C-PACE Act, then Borrower (i) shall continue to make the C-PACE Payments as required under the C-PACE Documents, and (ii) shall execute any and all documentation necessary to perfect and enforce the C-PACE Documents and the C-PACE Lien as may be required by Capital Provider or the City.

ARTICLE VI

MISCELLANEOUS

Section 6.01. No Waiver. No waiver of any default or breach by Borrower hereunder shall be implied from any failure by Capital Provider or the City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

Section 6.02. Successors and Assigns. This Agreement is binding upon and made for the benefit of Borrower, Capital Provider, the City, and their successors and/or permitted assigns, and no other person or persons shall have any right of action hereunder.

Section 6.03. Notices. All notices or other communications hereunder shall be in writing, addressed as set forth below (or at such other address as shall be specified by like notice), and delivered by any of the following methods: (a) by hand, (b) by certified mail (return receipt requested, postage pre-paid), (c) by nationally-recognized, overnight commercial courier, or (d) by e-mail (with read-receipt confirmation of transmission). Notices shall be deemed to have been duly given as follows: (i) if delivered by hand, on the date of delivery; (ii) if delivered by certified mail, on the date of delivery; (iii) if delivered by overnight courier, on the next Business Day after the notice is deposited with the overnight courier; or (iv) if delivered by e-mail, on the date sent (if sent during normal business hours of recipient), or on the next Business Day (if sent after normal business hours of recipient), provided, however, that an email shall be deemed to have been received when sending party receives a delivery-receipt confirmation of transmission, regardless of normal business hours of recipient:

To Capital Provider:

Attn: _____, _____

E-mail: _____

To the City:

Attn: _____, _____

E-mail: _____

To Borrower:

Attn: _____,
E-mail: _____

If notice is tendered under the terms of this Agreement and is refused by the intended recipient of the notice, the notice shall nonetheless be considered to have been received and shall be effective as provided in this **Section 6.03**. The giving of any notice required hereunder may be waived in writing by the Party entitled to receive such notice. Failure or delay in delivering copies of any notice to persons designated to receive copies shall in no way adversely affect the effectiveness of such notice to the Parties. The addresses of any Party may be changed by notice to the other Parties given in the same manner as provided above.

Section 6.04. Captions. The headings or captions in this Agreement are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement.

Section 6.05. Amendments. No amendment, modification, termination or waiver of any provisions of this Agreement shall be effective unless in writing and signed by all of the Parties.

Section 6.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Virginia.

Section 6.07. WAIVER OF JURY TRIAL. THE BORROWER HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THE C-PACE FINANCING, THIS AGREEMENT OR ANY TRANSACTION DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED THEREBY.

Section 6.08. Jurisdiction. Borrower agrees that the execution of this Agreement and the other C-PACE Documents, and the performance of its obligations hereunder and thereunder, shall be deemed to have a Virginia situs, and Borrower agrees to submit to the personal jurisdiction of the federal or state courts of Virginia with respect to any action that Capital Provider, the City, or their respective successors or assigns, may commence hereunder or thereunder. Accordingly, Borrower hereby specifically and irrevocably consents to the jurisdiction of the federal or state courts of Virginia with respect to all matters concerning this Agreement or any of the other C-PACE Documents, or the enforcement thereof. Any such action shall be brought in the locality in which the Property is located.

Section 6.09. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to Virginia law.

Section 6.10. Survival. The C-PACE Documents and the provisions thereof shall survive Closing and shall be enforceable against the Parties until the C-PACE Financing and all amounts due and owing in connection with the C-PACE Financing have been paid in full, as evidenced by the recordation of the termination of the C-PACE Memorandum.

Section 6.11. Virginia FOIA. Borrower understands and agrees that all data created, collected, received, stored, used, maintained or disseminated by the City in connection with the

Program, including that related to Borrower's use of the C-PACE Financing funds, may be subject to the [Virginia Freedom of Information Act]

Section 6.12. Power of Attorney. For the purposes of carrying out the provisions of this Agreement, Borrower hereby irrevocably constitutes and appoints Capital Provider and any of its officers, agents or designees, each with full power of substitution, as Borrower's true and lawful attorneys-in-fact (which appointment is coupled with an interest, cannot be revoked prior to payment in full of the C-PACE Financing and all sums secured by the C-PACE Lien and the C-PACE Documents and shall not terminate upon the disability, termination or dissolution of Borrower), in its name or otherwise, and at Borrower's expense, and authorizes any of them to perform any act described in the C-PACE Documents and to take any and all actions necessary and incidental thereto on behalf of Borrower and to execute such instruments or documents in its name or in the name of Borrower necessary or incidental to the realization or Capital Provider's rights under the C-PACE Documents. Borrower recognizes and agrees that the power of attorney granted pursuant to this **Section 6.11** is coupled with an interest and is not revocable until the termination of this Agreement in accordance with its terms, at which time the power of attorney shall automatically terminate. Borrower ratifies and confirms all actions taken by Capital Provider or its agents pursuant to this power of attorney in accordance herewith.

Section 6.13. Schedules and Exhibits. The following schedules and exhibits are attached hereto and incorporated herein as if fully set forth in this Agreement:

- Schedule I - Financing Schedule
- Schedule II - C-PACE Advance Schedule

- Exhibit A - Property Description
- Exhibit B - Form of C-PACE Memorandum
- Exhibit C - Form of Completion Certificate
- Exhibit D - Form of C-PACE Amendment
- Exhibit E - Form of C-PACE Assignment
- Exhibit F - Form of Lender Consent
- Exhibit G - Form of C-PACE Note
- Exhibit H - Form of Lien Waiver
- Exhibit I - Form of Final Lien Waiver
- Exhibit J - Form of PACE Confirmation
- Exhibit K - Permitted Exceptions
- Exhibit L - Form of Disbursement Memorandum
- Exhibit M - Confession of Judgment
- Exhibit N - Miscellaneous Waivers

***{THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON THE FOLLOWING PAGES.}***

IN WITNESS WHEREOF, Borrower, Capital Provider and the City have executed this Agreement as of the Effective Date by and through their duly authorized representatives.

City

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of the City of _____, Virginia.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Registration No.: _____

IN WITNESS WHEREOF, Borrower, Capital Provider and the City have executed this Agreement as of the Effective Date by and through their duly authorized representatives.

[CAPITAL PROVIDER]

By: _____
Name: _____
Title: _____

STATE OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, as _____
of the _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Registration No.: _____

IN WITNESS WHEREOF, Borrower, Capital Provider and the City have executed this Agreement as of the Effective Date by and through their duly authorized representatives.

[INSERT NAME OF BORROWER]

By: _____
Name: _____
Title _____

STATE OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____, as _____
of the _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____

Registration No.: _____

**SCHEDULE I
C-PACE FINANCING SCHEDULE**

[PENDING]

1. Failure to Complete Fee:

[TBD]

2. Improvements:

The Improvements are generally described as follows:
[_____].

**SCHEDULE II
C-PACE ADVANCE SCHEDULE**

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
FORM OF C-PACE MEMORANDUM

EXHIBIT C
FORM OF COMPLETION CERTIFICATE

EXHIBIT D
FORM OF C-PACE AMENDMENT

EXHIBIT E
FORM OF C-PACE ASSIGNMENT

EXHIBIT F
FORM OF LENDER CONSENT

EXHIBIT G
FORM OF C-PACE NOTE

EXHIBIT H
FORM OF LIEN WAIVER

EXHIBIT I
FORM OF FINAL LIEN WAIVER

EXHIBIT J
FORM OF PACE CONFIRMATION

EXHIBIT K
PERMITTED EXCEPTIONS

EXHIBIT L
FORM OF DISBURSEMENT MEMORANDUM

8771303.12 042951.00001